



**NATIONAL DEMOCRATIC INSTITUTE
FOR INTERNATIONAL AFFAIRS**

THE 1989 SALVADORAN ELECTION: CHALLENGES AND OPPORTUNITIES

**A Pre-Election Survey Report
February 18 - 23, 1989**

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PREFACE

This report, prepared under the auspices of the National Democratic Institute for International Affairs (NDI), provides an overview of selected aspects of the Salvadoran electoral system examined during a February 18-23, 1989 NDI-sponsored electoral study mission to El Salvador. Participants included electoral experts and regional specialists from Guatemala, Puerto Rico, Venezuela and the United States (a list of the delegation members is provided in Appendix A).

NDI decided to conduct this study in mid-January when a controversy arose over proposed changes to El Salvador's Electoral Code, and their alleged disproportionate affect on the major parties in the presidential race. NDI believed that it could utilize its extensive experience in studying electoral systems to examine these issues and to lend support to those working for a free and fair election. A consensus was subsequently reached over the changes when the Supreme Court convened a special meeting between the executive and legislative branches. Nevertheless, NDI decided to press ahead, convinced that a pre-election survey mission could still serve a useful purpose by increasing understanding of the electoral process that has developed in the midst of El Salvador's highly polarized political environment.

The delegation's focus also shifted as a result of the January 23 FMLN proposals, which included aspects directly relevant to the electoral process. Coincidentally, the

delegation began its visit while the Salvadoran political parties and the FMLN were conferring about the proposals in Mexico. Given the high level of interest in this issue, it inevitably became a significant topic of discussion during the delegation's meetings.

This report is not intended to be a comprehensive analysis of the legal and administrative framework for the presidential election. A more detailed account of the system can be found in The International Human Rights Law Group's Report on the Salvadoran Electoral Process and in various documents published by the Salvadoran Central Election Council (CCE). This report, however, includes sufficient background material to stand alone, and provides a point of reference for international election observers and others interested in the March 19, 1989 presidential election. It is limited, however, to developments through February 23, when the delegation left the country.

Although the report reflects input from the international delegation that conducted the study, NDI assumes full responsibility for the accuracy of this report and the opinions and conclusions contained herein. Wherever possible, we have allowed Salvadorans to make their own case regarding the issues under examination. The Institute thanks all those who participated in this mission and the many Salvadorans who took time from their busy schedules to share their views with the delegation.

EXECUTIVE SUMMARY

An international delegation, sponsored by the National Democratic Institute for International Affairs (NDI), visited El Salvador February 18-23, 1989 to review the legal and administrative framework for the March 19 presidential election. The delegation met with a variety of government and non-government officials, including representatives of the Central Election Council, the Supreme Court, the political parties, the Catholic Church, human rights groups, the Ministry of Defense, labor organizations, lawyer federations and the academic community.

Given NDI's continuing interest in supporting democratic institutions, including electoral systems, the delegation focussed its efforts on the newly-enacted Electoral Code reforms, the administrative preparations for the election, the campaign climate and the recent proposals by the Farabundo Marti National Liberation Front (FMLN) as they relate to the electoral process.

Based on the information received while in El Salvador, the delegation offers the following summary conclusions:

- o The process established by laws and regulations for the conduct of the March 19 election is basically sound. A comprehensive framework for a procedurally correct election has been devised.
- o The Central Election Council has thus far fulfilled its responsibilities in a generally fair and expeditious manner.
- o The actual implementation of the legal and administrative procedures in the period preceding, during and after election day will determine the ultimate fairness of the election.

Observations on the specific issues reviewed are as follows:

Electoral Code Reforms

- o A recent agreement between the executive and legislative branches formally resolved a three-month dispute over reforms to the Electoral Code. Remaining concerns about the impact of certain reforms do not undermine the basic integrity of the electoral system.

Administrative Process

- o General preparations for the election appear, by and large, to be progressing smoothly. Nevertheless, concerns were raised that as many as 15 percent of the eligible electorate would not be able to vote because of problems with the processing and delivery of voting cards. Analysis of the electoral results may indicate whether the delays were the consequence of bureaucratic problems or an attempt to disenfranchise certain segments of the population for political reasons, or some combination of the two.

The Campaign Climate

- o The electoral campaign has occurred within a climate of increasing violence. Despite the undeniable hardship this situation has created, the contending parties are generally satisfied with the commitment of the authorities to the electoral process, and they do not view present conditions as an insurmountable obstacle to their participation.

FMLN Reforms

- o The electoral reforms contained in the recent FMLN proposals--relating to the extension of the vote to Salvadorans living outside of the country, the expansion of the Central Election Council, and the role of the military in the electoral process--merit appropriate study and consideration. The FMLN claims the proposals are designed to increase participation and confidence in the process. However, unless carefully scrutinized, they could cause considerable problems in their implementation.

In summation, the delegation concludes that, despite current circumstances in El Salvador, the electoral system has accommodated the basic needs of the political parties and the electorate. Thus, the potential exists for a free and fair presidential election. The delegation hopes that all Salvadorans will recognize that a vibrant democratic system offers the best means for resolving societal conflicts, and for resisting the challenges posed by extremists who take up arms to advance their cause.

meets the CCE's criteria, a voting card is issued, usually two weeks after the beginning of the process. As mentioned previously, the January 1989 Electoral Code reforms, and the subsequent Legislative Assembly compromise, set the deadline for delivery of the voting cards 30 days prior to the election.

Several parties claimed that rival parties had attempted to manipulate this system. For example, PDC representatives complained that lower level functionaries in ARENA-controlled municipalities (ARENA won 200 of the country's 244 mayoral seats in the 1988 municipal elections) had thwarted efforts by PDC supporters to apply for voting cards by "misplacing papers and refusing to accept valid identity forms." ARENA representatives, on the other hand, charged the PDC government with removing the names of ARENA supporters from the CCE data bank and authorizing the Ministry of Education to instruct public school teachers to register PDC supporters under the legal voting age of 18. In addition, both parties complained that an indeterminate number of their supporters would be unable to vote because the FMLN had allegedly destroyed large quantities of cards and municipal identity records in conflictive areas.

Notwithstanding these reports, none of the party officials interviewed claimed that the alleged fraud had invalidated the electoral process. However, given that all parties reported some problem with the processing of voting cards, an analysis of the electoral results might detect whether or not there had been any systematic attempt to disenfranchise certain voters.

selected by the Legislative Assembly from nominees submitted by the three political parties that received the largest number of votes in the most recent presidential election. The leading party in that election is entitled to designate the CCE President. The present CCE includes: President Jose Ricardo Perdomo (Christian Democrat Party (PDC)), Vice President Jorge Alberto Diaz (National Republican Alliance (ARENA)), and Vice President Juan Jose Binillia (National Reconciliation Party (PCN)).

At the sub-national level, the election is administered by five-member voting boards selected by the CCE. The boards are composed of representatives of the three parties with representation in the CCE; one representative of Authentic Christian Movement (MAC), a splinter party of the PDC with delegates in the Legislative Assembly; and a final member chosen by lottery from among the other three parties contesting the election. Each party is also allowed to be represented on "vigilance boards" that oversee the conduct of the election administrators at all levels.

This report examines the above laws and institutions as they affect the current Salvadoran electoral process. It is divided into four main sections: 1) the Electoral Code Reforms; 2) the Administrative Process; 3) the Campaign Climate; and 4) the FMLN proposals as they relate to the electoral process.

II. ELECTORAL CODE REFORMS

El Salvador's current Electoral Code was approved in January 1988 by the then PDC-dominated Legislative Assembly. Following the March 1988 legislative and municipal elections in which ARENA gained a legislative majority, the new Assembly undertook a review of the Electoral Code. In March 1988, ARENA won legislative approval for 49 amendments to the Code that allegedly reduced PDC influence on the electoral process, particularly that of the CCE President who, by virtue of the fact that the PDC won the most votes in the last presidential election, is a PDC member. Charging that ARENA was attempting to gain a disproportionate electoral advantage, President Duarte vetoed the amendments and, per the procedure set forth in the Constitution, petitioned the Supreme Court to make a determination on their constitutionality.

The ARENA-dominated Court ruled that 47 of the 49 amendments were constitutional. The President, however, again petitioned the Court to reject the amendments on the grounds that the Assembly had failed to follow proper procedures in approving the legislation. The political stalemate finally was resolved in January 1989, when the Supreme Court brokered an agreement between the contesting parties that cleared the way for the promulgation of the 47 amendments. (The two rejected amendments--numbers 33 and 40--would have transferred final authority for determining the official vote count from the CCE to the local polling stations.)

[A detailed account of the three-month long effort by the majority party in the Legislative Assembly (ARENA) to amend El Salvador's electoral code over the objections of President Duarte can be found in the International Human Rights Law Group's Report on the Salvadoran Electoral Process and in the December 20, 1988 and January 25, 1989 rulings of the Salvadoran Supreme Court.]

Despite the agreement between the legislative and executive branches on the electoral code reforms, and their general acceptance by representatives of most political parties, some members of the PDC persisted in viewing certain reforms as problematic. Among those cited were:

1. Article 2, setting the final date for the receipt of voting cards (carnet electoral) 45 days prior to the election (later changed to 30 days by an agreement within the Legislative Assembly). ARENA representatives argued that this reform is necessary to prevent the fraud that had been committed in the March 1988 elections when Salvadorans were allowed to receive their voting cards up to one day before the event. According to ARENA, PDC functionaries then working in the CCE printed large numbers of bogus voting cards in the final hectic days of the campaign while the agency's attention was focussed on other last minute administrative details. The earlier deadline for voting card delivery would presumably reduce the opportunity for such activity by allowing a more thorough scrutiny of the process. It would also allow the CCE

to concentrate on other important matters, such as staffing voting boards and preparing and delivering election materials. In defending this reform, ARENA members insisted that "it is better to maintain the quality, than the quantity of voting cards."

By contrast, several party representatives, particularly in the PDC, charged that this reform would deprive many otherwise qualified citizens of exercising their right to vote. (A more detailed account of the effects of this reform will be provided in the following section on the Administrative Process.) Critics argued that even the 30-day compromise reached in the legislature would not effectively address this concern.

PDC members also claimed that the early deadline for voting card delivery reduced the time limit for the completion of other important electoral procedures, such as challenges to the denial of voting cards. The reform, they argued, was designed to make it more difficult for PDC supporters to participate in the election. However, there was no proof offered to substantiate this charge; CCE members, including the PDC President, maintained that all parties would be equally affected by the reform.

2. Article 76, increasing the number of departments in the CCE from three to eight. Prior to the adoption of this reform, the CCE consisted of the General Secretariat, the Electoral Registry, and the Data Processing Department. The

reform added Departments of Finance, Planning, and Administration, as well as offices of the Comptroller and General Counsel.

This reform was seen by some PDC members as an attempt to limit the power of the CCE President by dividing functions previously under his direct supervision among the new departments. The requirement that personnel decisions in these departments would be subject to unanimous approval by the three-member (party-based) CCE, was seen as further diminishing the power of the CCE President by bestowing veto power on the other two Council members. Such an arrangement, it was argued, had led to unnecessary delays in filling certain positions.

In practice, however, the CCE President explained that a strict balance is maintained among the three parties represented on the CCE regarding personnel matters, with appointments equally divided along party lines. Although unanimity is required for such decisions, CCE members dismissed the notion that the system had created any staffing problems. In response to allegations that the additional layers of bureaucracy created by the reorganization had slowed the pace of work in the CCE, the CCE President defended the new arrangements as necessary to meet the increased demands on the agency.

3. Articles 89, 93 and 97, increasing the number of Departmental, Municipal, and Local voting board members from

three to five. While some parties hailed these reforms for broadening participation in the electoral process, others viewed them as a means of undermining the influence of the smaller parties unable to provide the necessary personnel for the more than 7,000 voting boards in the country. Representatives of the CD and Popular Union alliance (UP), stressed that party representation on local voting boards was particularly important, given that 22 percent of the votes in the 1988 elections were challenged at the local level. The UP representative added that, even if small parties could find the necessary personnel, they would be hard pressed to pay for the food that is customarily provided to the voting board members by their sponsoring parties.

When participating parties cannot provide a representative to the voting boards, the remaining board members choose a substitute from the general public if there is not enough time for the CCE to make the decision. Although concerns were expressed that the larger, better organized parties could "stack" the boards with their partisans, most believed that local familiarity with potential board substitutes would guard against this practice.

CCE-directed training for voting board members is not mandatory, although instructions provided by the CCE outlining voting board procedures are judged to be clear and readily understandable. Nevertheless, several parties have instituted their own training programs. Given the generally low education levels in the country, a mandatory, standardized program of instruction might be preferable.

III. THE ADMINISTRATIVE PROCESS

In light of the CCE reorganization mandated by the Electoral Code reforms and the CCE's increasing reliance on sophisticated technology, it is not surprising that some administrative problems have arisen. Minor complaints were raised about such issues as the CCE's failure to provide sufficient notice to parties of the lottery to determine ballot position, and the disappearance of certain election-related documents that had been sent by parties to the CCE for processing. Overall, though, all parties praised the CCE for its general performance under present circumstances.

The most serious complaints about the administrative process concerned the issuance of voting cards. The 1988 Electoral Code requires prospective voters to first register with the CCE and then obtain a special voting card that must be presented at the polls on election day. The voting card requirement was designed to prevent multiple voting by providing an extra check on voter identity. To apply for this card, a Salvadoran must first establish his/her identity at a local registration office. This is usually accomplished by presenting a national identity card (cedula de identidad), other identity documents, or two qualified witnesses who can corroborate an applicant's identity.

Once accepted, the application is sent to the CCE where it is checked against information in the agency's central data bank (including the electoral register). If the application

meets the CCE's criteria, a voting card is issued, usually two weeks after the beginning of the process. As mentioned previously, the January 1989 Electoral Code reforms, and the subsequent Legislative Assembly compromise, set the deadline for delivery of the voting cards 30 days prior to the election.

Several parties claimed that rival parties had attempted to manipulate this system. For example, PDC representatives complained that lower level functionaries in ARENA-controlled municipalities (ARENA won 200 of the country's 244 mayoral seats in the 1988 municipal elections) had thwarted efforts by PDC supporters to apply for voting cards by "misplacing papers and refusing to accept valid identity forms." ARENA representatives, on the other hand, charged the PDC government with removing the names of ARENA supporters from the CCE data bank and authorizing the Ministry of Education to instruct public school teachers to register PDC supporters under the legal voting age of 18. In addition, both parties complained that an indeterminate number of their supporters would be unable to vote because the FMLN had allegedly destroyed large quantities of cards and municipal identity records in conflictive areas.

Notwithstanding these reports, none of the party officials interviewed claimed that the alleged fraud had invalidated the electoral process. However, given that all parties reported some problem with the processing of voting cards, an analysis of the electoral results might detect whether or not there had been any systematic attempt to disenfranchise certain voters.

The aforementioned allegations--together with administrative delays in the processing of voting cards caused by computer and human error, the delivery of voting cards to an applicant's place of birth instead of residence, and tardiness on the part of prospective applicants--were cited as major reasons that approximately 350,000 applicants had not received their voting cards by the February 19 cutoff day. While all parties maintained that some of their supporters had been deprived voting cards, CD representatives claimed that, as a result of the party's late entry in the presidential race, most of the unprocessed voting cards belonged to CD supporters who were among the last to submit applications.

Some questioned, however, whether the 350,000 applicants were all eligible to receive voting cards. According to ARENA representatives, many among the 350,000 had allegedly attempted to apply for voting cards even though they had already received cards prior to the 1988 elections that could be used for this election.

According to the CCE, which denied that any single party had been discriminated against, approximately 1.95 million voters out of a voting age population of 2.6 million had received their cards (75 percent). Most party officials, however, doubted that the voting age population was as high as 2.6 million. As a result of the war, it was argued, accurate records were not being kept of the numbers of deaths or of those who had emigrated. The Electoral Code also prohibits some citizens, such as felons and the mentally disturbed, from

voting. Given these factors, the more accepted estimate of eligible voters was in the 2.3 million range (thus, raising the percentage of voting card recipients to 85).

Particular problems in obtaining voting cards were also reported among returning refugees and Salvadorans displaced from conflictive areas. CEE members admitted that an indeterminate number of people in these groups were unable to obtain their voting cards because they could not prove their identities. Reasons cited for this problem ranged from destruction of birth records in conflictive areas to an inability to find qualified witnesses to corroborate a person's identity. The administrative problems in the processing of voting cards described above also appeared to have a magnified effect on the displaced. A Catholic Church representative added that a "climate of fear" prevented many otherwise qualified people in these groups from applying for their voting cards.

Whatever the reasons for Salvadorans being unable to obtain their voting cards, it appears that a further extension of the deadline for voting card delivery would have allowed some of the 350,000 unprocessed applicants to vote.

The argument that the current deadline is necessary to discourage the production of some bogus voting cards does not appear to be compelling enough to have warranted the change from previous practice. Given the general confidence expressed in the CCE, other safeguards might have been employed to minimize such fraud. The very fact that all

parties cited varying degrees of problems in the processing and delivery of the voting cards indicates that more time was needed to insure the fullest participation in the election.

Despite the administrative problems outlined above, none of the party representatives interviewed claimed that the basic integrity of the electoral process had been undermined nor that the voting card requirement itself should be abolished. While some suggested that the party-based nature of the CCE made it vulnerable to partisan politics, all agreed that the agency had, by and large, carried out its legal mandate in an efficient and impartial manner and that voting cards helped discourage multiple voting on election day.

The National of Union of Peasants and Workers (UNOC), and other civic groups, sought to educate the electorate about registration and voting card procedures, hoping to increase public participation in the election. The CCE itself maintained a 24-hour hotline in San Salvador to answer registration inquiries. Given the conflictive environment in much of El Salvador and the inherent difficulty of implementing a complex electoral system under the best of circumstances, such efforts in support of the electoral system can be highly beneficial and should be expanded.

IV. THE CAMPAIGN CLIMATE

A. Effects of Violence and Intimidation

Not surprisingly, the civil war and the escalating cycle of violence have had a negative effect on the electoral process. Among other consequences, presidential candidates and their entourages must take extraordinary measures to ensure their security. Indeed, during the delegation's visit, the sound of exploding bombs and gunfire was a graphic reminder of the perils faced by all Salvadorans in these troubled times. In light of these conditions, it is a testament to the courage and resiliency of the population that the electoral process has progressed as far as it has.

The delegation was presented with several reports of intimidation and other forms of violence against citizens involved in the electoral process. ARENA representatives cited the FMLN's assassination of 10 ARENA mayors as the most extreme example of violence directed toward their party. They also claimed that some of their supporters in rural areas had been threatened by elements of the FMLN and had been told that a failure to vote for the CD would result in reprisals against certain communities. A representative of Tutela Legal, the human rights monitoring organization of the Archdiocese of San Salvador, recounted the murder last year of a PDC campaign worker.

CD representatives reported more subtle forms of intimidation. They confirmed that five CD campaign workers in Santa Rosa de Lima had been detained for hours by police, and

described how a campaign rally in another town had been surrounded by military jeeps. They also alleged that the word "terrorists" had been affixed to a poster of CD presidential candidate Guillermo Ungo and party leader Ruben Zamora on display at the headquarters of the army's 1st Brigade.

It is difficult for most Salvadorans suffering in a violent society to distinguish between abuses specifically associated with the electoral campaign and those that are part of the more general environment. A Tutela Legal representative termed the latter "structural violence" and said that it is by far the more prevalent problem. She acknowledged, for example, that her organization had not received any reports of violence against those attempting to obtain a voting card. However, there has been an increasing number of deaths (seemingly unrelated to the campaign) attributable to both right-wing death squads and the FMLN reported in recent months. During the delegation's visit, bombings at an office of the FMLN-backed FINASTRAS labor union and at the headquarters of the army's 1st Brigade resulted in multiple casualties.

The clouded distinction between "structural" and election-related violence was underscored by a CD representative. He recounted that, while CD members had not been subject to any physical abuse during the campaign, the military commander of the La Union district had warned recently that if Ruben Zamora were to visit, he would be "carried out in a box."

B. Media Access

All parties maintained that there are no legal impediments to their access to the media. CCE members explained that the State-owned television station was obliged to give every party free and equal time for political advertising during the campaign. There are no such requirements, however, for privately-owned media (which abound), nor are there any restrictions on the level of private campaign financing.

As is true in other countries, political advertising costs are high in El Salvador. The two parties with the greatest financial resources, ARENA and the PDC, therefore have more extensive political advertising campaigns than the other smaller, less affluent parties. ARENA and PDC ads appear regularly on television, while ads for the smaller parties are more often heard on radio, a less expensive medium.

Some parties, such as the CD, have been unable to place ads in most of the mainstream press because of alleged opposition from conservative newspaper owners, who are under no legal obligation to accept such ads. Such de facto obstacles to media access are mitigated somewhat by the CD's ability to advertise in the independent daily, El Mundo, and the frequent appearances by CD spokespersons on the country's many television interview and news programs.

ARENA representatives complained that some ostensibly neutral reports on government activities were, in fact, PDC political advertising. Such reporting presumably violated the obligation of the government bureaucracy, including most

importantly the government-controlled media, to remain neutral in the election campaign. While such behavior is one of the traditional advantages of incumbency, it can have a detrimental effect on the overall electoral process. Nonetheless, from the delegation's perspective, the use of the media in support of the PDC did not seem to be distorting the process in a major way.

C. Summary

By mid-February, with less than a month to go before the election, campaign activity had reached a fevered pitch. Campaign rallies were a daily affair and candidates were making frequent appearances on television. Freedom of expression had reached the point where the campaign had become, in the words of one UP representative, "a real dirty affair" in which candidates "could even call each other murderer" with seemingly reckless abandon.

Despite the extraordinary circumstances under which this election will take place, representatives of the contending parties are generally satisfied with the commitment on the part of the CCE to a fair and open electoral process. While it is apparent that an ideal campaign climate will never exist in the midst of a war, the parties appear to be making the best of a very difficult situation. Furthermore, none of the party officials interviewed suggested that present conditions created insurmountable obstacles to their participation. On this score, however, CD representatives contended that--as the

only avowedly leftist party in the race--the CD would continue to work within the system, irrespective of the less-than-ideal conditions, primarily out of a desire to demonstrate their "democratic resolve" and to "educate the people."

V. FMLN PROPOSALS

At the core of the FMLN proposals is a call for the presidential election to be postponed until September 15. The FMLN contends that such a postponement is necessary to allow sufficient time for it to be incorporated into the political process. In exchange for an agreement on postponement and certain other conditions, the FMLN promised, inter alia, that it would declare a limited cease-fire and accept the legitimacy of the election.

The constitutional basis for such a postponement is a matter of considerable debate. Several suggestions for accomplishing this end legally have been presented, including one in which the scheduled election would not occur because all candidates would withdraw from the race. Some groups, such as the Salvadoran Lawyers Federation, cautioned that any scheme to postpone the election runs the risk of violating the constitution--creating a dangerous precedent. Still others suggested that the election could be postponed legally, but only by several weeks. Regardless of the date, all agreed, including the military, that President Duarte must step down from office by June 1.

It is not within the scope of this report to analyze the legal arguments for or against postponement of the election. The fact that some Salvadorans describe their relatively new Constitution as "both rigid and flexible at the same time," indicates that a definitive judgment on this issue is better left to the experts. However, even the staunchest critics of

postponement acknowledge that political considerations might, in the end, take precedence over legal appeals. A general theme running through discussion of this issue is that a compromise may be possible if all the major actors--the parties, the president, the legislature, and the military--have, in the words of a representative of the Catholic Church, "the political will to make a change."

Concerning the specific aspects of the FMLN proposals relating to the electoral process, the following observations are offered:

1. Extending the franchise to Salvadorans living outside the country. An estimated one million Salvadorans have left their country during the past 10 years. While some have resettled in other countries in a seemingly permanent manner, many others still live as refugees, and presumably, if the war ceased, would seek to return home. The FMLN justifies this proposal as a mechanism for enfranchising the Salvadoran exile community. However, according to many neutral observers, it also is prompted by partisan interests--many of those living abroad, it is assumed, would support the parties of the left.

Other parties, not including the CD, believe that any attempt to extend the vote to Salvadorans living outside the country would present enormous administrative difficulties. An ARENA representative pointed out that it had taken the CCE almost four years to register almost two million Salvadorans within the country. He argued that a registration drive among the estimated one million Salvadorans in other countries,

primarily the U.S., would take many more years. A PDC representative echoed this sentiment, adding that many undocumented Salvadorans living illegally in the U.S. would be unwilling to risk deportation by becoming involved in such a public effort.

While absentee voting by citizens living abroad is permitted in some democratic systems, the fact that approximately one-sixth of the Salvadoran population has left the country presents a unique problem for El Salvador. Thus, for the short-term, this proposal does not appear practical.

2. Expansion of the CCE to include representation by the CD.

As explained previously, the CCE is composed of party representatives of the top three vote-getters in the previous presidential election. It is the supreme authority on electoral matters and designates and supervises electoral administrators at all levels. As a member of the CCE, a CD representative would have direct input on decisions affecting the administration and conduct of the election. Given the CD's political alliance with the FMLN, it is assumed that it could represent the interests of the FMLN and its supporters on this important body.

PDC party representatives commented that an expanded CCE was, in theory, a worthy goal. However, they cautioned that permitting only the CD to join would create problems with the 11 other parties that could also make their own cases for membership. ARENA representatives argued that the CD already has sufficient influence on the CCE through its membership on the

"vigilance board" that oversees the agency's work. Representatives of the Salvadoran Federation of Lawyers pointed out that the Constitution clearly defines the composition of the CCE and the process for selecting its members. Any change, they explained, would require submitting the issue to a lengthy constitutional amendment process.

Discussion of this proposal invariably raised questions about the party-based nature of the CCE itself. Some Salvadorans believed that as the country's democracy matures, so too should the CCE. They envision a nonpartisan CCE similar to the Costa Rican model (although some questioned how any Salvadoran institution could be truly nonpartisan). However, given that there are many acceptable types of election administering agencies in the democratic world, both party-based and otherwise, the structure of the Salvadoran CCE is well within international norms. Thus, a decision to change its composition should be based on political and practical considerations, and not on an a priori belief in the virtues of a particular system.

3. The requirement that the armed forces remain in their barracks on election day and have no role in the event.

Article 211 of the Constitution provides that the armed forces are established "to maintain peace, tranquility, guarantee constitutional rights, and insure that the principle that the president of the republic does not succeed himself is not violated." They are further characterized, in Article 212, as a "permanent, obedient, and essentially non-political institution."

The history of modern El Salvador is in many ways the history of how these and similar articles in previous constitutions have been applied and misapplied. It is no secret that the military has for many years been the ultimate arbiter of power in El Salvador. Since 1980, it has been fighting a war against the FMLN guerrillas. In the process of preventing the fall of the government, elements of the military have perpetrated human rights abuses.

According to Ministry of Defense representatives, the armed forces will defend any government that wins a free and fair election. To underscore the military's "non-political nature," soldiers are required, per the Electoral Code, to cast their ballots in their home towns, instead of voting in their barracks as they had in the 1984 presidential election. Since a soldier on duty cannot leave his post, this requirement effectively disenfranchises a large percentage of the military. Such a development is welcomed by representatives of the Ministry of Defense who contend that the armed forces have little interest in the electoral process and politics in general. They insist that the military's primary responsibility on election day will be maintaining public order and protecting citizens exercising their right to vote.

Under present circumstances and in the context of recent Salvadoran history, the confinement of the armed forces to their barracks on election day would appear to present risks for prospective voters. On the other hand, if there is a

credible cease-fire, some modification in the military's election day posture might be warranted. Under such circumstances, the international community could support both the cease-fire and the efficacy of the elections by providing a multi-national force that would monitor cease-fire violations. There is ample precedent for such an effort in the context of resolving a civil war.

VI. CONCLUSION

El Salvador's electoral system is a product of the country's developing democracy. Still young and largely untested, its deficiencies are well known to those familiar with it. However, as described in this report, the system, by and large, has proven responsive to the basic needs of the political parties and the electorate. Thus, the potential exists for a free and fair presidential election. Although a free and fair election can play a vital role in promoting a stable and democratic transfer of power, post-election developments will ultimately determine whether Salvadoran democracy can be sustained.

It is hoped that this report will assist prospective election observers by shedding light on certain aspects of the electoral process. Such information can help provide a basis for evaluating the legitimacy of the election. The final judgment, however, must be made by the Salvadoran people who will live with its consequences.



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Appendix A

El Salvador Electoral Study
February 18-23, 1989

Delegation Members

Jorge Mario Garcia LaGuardia
Alternate Magistrate of the Constitutional Tribunal
Former Director of CAPEL
and Professor at the National University of Mexico
Guatemala

Eva Loser
Research Associate
Latin American Studies
Center for Strategic International Studies (CSIS)
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Samuel Quinones
Director
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State Election Commission
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Enrique Raven
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NDI Program Coordinator

Michael Stoddard
NDI Program Assistant

NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (NDI)

EL SALVADOR ELECTORAL STUDY

San Salvador, El Salvador
February 18 - 23, 1989

Schedule of Meetings

<u>Saturday, February 18</u>	<u>Location</u>
15:00 Arrival of Delegation	
<u>Sunday, February 19</u>	
18:00 Introductions/Mission Briefing	Camino Real Hotel
20:00 Welcome Dinner	El Escorial Restaurant
<u>Monday, February 20</u>	
10:00 Members of the Consejo Central de Elecciones (CCE) Ing. Jose Ricardo Perdomo, President Ing. Jorge Alberto Diaz, Vice-President Ing. Juan José Binilla, Vice-President Lic. Gérman Flamenco, Alternate Dr. Igor Rubio Moran, Alternate	Consejo Central de Elecciones
12:30 Lunch with Ricardo Stein Political Analyst	El Escorial Restaurant
15:00 Partido Movimiento Autentico Cristiano (MAC) Lic. Julio Adolfo Rey Prendes - (Cancelled)	Hotel Camino Real
17:00 Executive Committee of Workers and Peasants (UNOC) Amanda Claribel Villatoro	"
<u>Tuesday, February 21</u>	
8:00 Tutela Legal Maria Julia Hernandez, Director	Offices of the Archbishop
8:30 Monseñor Gregorio Rosa Chavez	"
9:30 Supreme Court Dr. Francisco Jose Guerrero, President	Supreme Court
11:30 Federation of Lawyers of El Salvador Dr. Francisco Rafael Guerrero, Secretary General Dr. Jorge Efraim Campos Dr. Augustin Garcia Calderon	Hotel Camino Real

Tuesday - continued

13:00	Lunch	
15:00	Partido Liberación (of the Union Popular Alliance (UP)) Lic. Luis G. Cardenal Lic. Mauricio Avilar	Hotel Camino Real
16:00	Partido de Conciliación Nacional (PCN) Lic. Hugo Carrillo - (Cancelled)	"
16:00	Stan Greenberg, Pollster (Vickers only)	
17:00	National Unity of Salvadoran Workers (UNIS) (Quiñones only)	
20:00	Dinner with Dr. Alvaro Magaña Former President of El Salvador	Residence of Dr. Magaña

Wednesday, February 22

9:00	Alianza Republicana Nacional (Arena) Lic. Alfredo Cristiani Candidate for President	Arena Party Headquarters
11:00	Partido Demócrata Cristiano (PDC) Messrs. Hernandez, Alvarez and Posada Dr. Edgard H. Varela	CENITEC Offices
15:00	Minister of Defense Carlos Eugenio Vides Casanova Army Chief of Staff Rene Emilio Ponce	
16:00	Convergencia Democratica (CD) Dr. Mario René Roldan Candidate for Vice President	CD Headquarters
18:00	Drafting of Consensus Statement	Hotel

Thursday, February 23, 1989

Departure of Delegation

Appendix C

TO: EL SALVADOR ELECTORAL SURVEY MISSION
FROM: J. BRIAN ATWOOD, NDI PRESIDENT
SUBJ: TERMS OF REFERENCE
DATE: FEBRUARY 10, 1989

The National Democratic Institute for International Affairs (NDI) is organizing a 10-person international survey mission to study the electoral process in El Salvador.

The mission will focus particular attention on the changes in the electoral system and the administrative preparations for the elections. To accomplish this task, the mission will meet with representatives of the Electoral Council, the government, the political parties, the Supreme Court, the National Assembly, the Church, and other relevant Salvadoran institutions.

The mission is technical in nature; its members are electoral experts and specialists on El Salvador from Guatemala, Costa Rica, Venezuela and the U.S., including Puerto Rico. In organizing this mission, NDI does not presume to interfere in internal Salvadoran affairs.

A final report will describe the mission's findings and will help the international community to better understand the March 19 elections. The report will rely on the observations of the mission and on other credible sources.

If deemed appropriate, the team will issue a press statement in San Salvador at the end of the mission and selected members will conduct interviews with the media. Due to the sensitive nature of the mission and the political environment in El Salvador, NDI requests that individual members of the mission not make any comments to the media regarding personal observations on the electoral system until after our consensus statement has been prepared.

Members of the mission should keep the following questions in mind when assessing the current political environment and fairness of the electoral system.

I. THE ELECTORAL CODE

- A. Who authored the currently applicable electoral code?
- B. When, and by whom was it passed and/or signed?
- C. What were the reasons for modifying the code?
- D. What are the most significant changes?
- E. How might these changes directly or indirectly effect the upcoming elections?
- F. Are there any objections to these changes?

II. THE ELECTORAL COUNCIL

- A. How are Council members selected?
- B. What powers belong to the Council?
- C. Are the structure and powers of the Council insulated against:
 - 1. partisan administration of elections?
 - 2. intimidation from the security forces or guerrillas?
 - 3. partisan judgment on election disputes?
- D. What is the Council's proposed timeline for counting and announcing the vote results?
- E. What is the procedure for handling disputes?
- F. Are there any electoral disputes currently under review?
- G. What is the status of logistical arrangements for election day?
- H. Are there any actual or potential obstacles to the Council's objective performance of its job?

III. THE CAMPAIGN

- A. Are there any limitations on:
 - 1. access to the media?
 - 2. public advertising? (What are approximate spending differentials between the parties?)
- B. Are meetings or rallies disrupted by security forces or competing parties?
- C. Have there been other credible reports of intimidation committed by the security forces, guerrillas or others? What impact is this having on the process?

IV. THE PARTIES (and other organizations)

- A. How much confidence is there in the electoral system as it presently exists?
- B. Are there any major complaints?
- C. What are proposed improvements to the system?
- D. Have poll watchers been organized for the elections?
- E. Have independent vote counting systems been organized?
- F. What is the status of party relations with the military?

V. ADMINISTRATION OF THE PROCESS

- A. What are the requirements for voting?
- B. How have the electoral registers been developed?
- C. How many voters are listed as being registered? (How does this compare to 1988? To 1984?)
- D. Have the parties had an opportunity to review the registration lists?
- E. When will the ballots be distributed?
- F. What devices are being used to prevent against double-voting?
- G. Will the military be permitted to vote? And what role will it play in the election system?

VI. MONITORING THE PROCESS

- A. Who will be permitted access to the polling sites?
- B. How will the parties collect, tabulate and report the results?
- C. What program does the Electoral Tribunal have in place for international observers? Who is paying for the program?

VII. OTHER FACTORS

- A. Are any civic education programs in place to prepare the population for elections?
- B. Are there assurances that individuals are not subject to intimidation or other improper pressures?
- C. What is the perceived attitude toward foreign influences on the elections and the process?
- D. What effect has the FMLN proposal had on the electoral process and the political climate surrounding the elections?
- E. What is the reaction of the major actors in the electoral process to the proposal?