



# EL SALVADOR

CAPITAL: San Salvador

POPULATION: 7.3 million

GNI PER CAPITA (PPP): \$6,670

<b>SCORES</b>	<b>2006</b>	<b>2010</b>
ACCOUNTABILITY AND PUBLIC VOICE:	N/A	3.99
CIVIL LIBERTIES:	N/A	4.08
RULE OF LAW:	N/A	3.54
ANTICORRUPTION AND TRANSPARENCY:	N/A	3.04

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

## David Holiday

### INTRODUCTION

On March 15, 2009, the longest-standing rule in Latin America by a single party—20 years by the conservative Nationalist Republican Alliance (ARENA)—came to an end as the leftist Farabundo Martí National Liberation Front (FMLN) won its first presidential election in El Salvador. From 1980 to 1992, El Salvador was immersed in civil war, and it remains to this day one of the most polarized political environments in Latin America. The 2009 election, in addition to being the first transition of power between parties since the 1992 peace accords, was also the first time in the country's history that a left-wing government had been elected to office.

With this recent election, El Salvador has passed one of the tests of the UN-brokered peace negotiations that brought an end to the 12-year war: the alternation in power of the two major political participants in the conflict. The legacy of the Salvadoran civil war—which left an estimated 70,000 dead, and millions of displaced to neighboring countries and especially the United States—has deep implications for the conditions of democratic governance. Yet despite fears in some quarters that El Salvador might follow the path of authoritarian populism, the current moment appears to offer real possibilities for consolidating gains in important democratic institutions that have floundered in recent years.

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Various factors led to ARENA's electoral loss. In the years leading up to the election, President Antonio Saca—easily elected in 2004 against the FMLN candidacy of celebrated former *comandante* Shafik Handal—held the presidency of the ARENA party while also governing from the executive office. Following ARENA's defeat, many observers (including within his own party) criticized this centralization of power as one of the reasons for popular discontent, but corruption, a battered economy, and rising crime were also key factors.

Unlike the 1999 and 2004 contests, the FMLN ran a candidate who came from outside the party: Mauricio Funes, an extremely popular television newsman who projected a moderate image and committed to a more judicious platform for change. In his acceptance speech, Funes called for national unity and a new social pact, as well as both increased public services and austerity in the form of better targeted subsidies, improved tax collection, reduced spending, and an end to public corruption. Reassurances that he would choose the path of Lula da Silva's Brazil over Hugo Chávez's Venezuela, along with a clear signal from the new U.S. administration that it would magnanimously accept the election results regardless of the winner, also contributed to the smooth transition.

The reality is that the FMLN's margin for radical change is significantly reduced in the current political and economic climate. The presidential victory by the FMLN was quite narrow at 51.3 percent to 48.7 percent, with a difference of just 69,412 votes. The FMLN's ability to impose its agenda will also be mitigated by a more pluralist 84-member Legislative Assembly elected in January 2009, in which no single party will dominate. The 32 deputies of the ARENA party, or the FMLN's 35 deputies (plus one from the Democratic Change party) will need to gain the support of some or all of the 5 legislators from the Christian Democrats (PDC) and 10 from the National Conciliation Party (PCN) if either group hopes to form a majority bloc. The challenge remains for Salvadorans to break the polarization that has characterized—and to some extent stunted—the political life of that country and find common ground around the resolution of fundamental issues of democratic governance.

## **ACCOUNTABILITY AND PUBLIC VOICE** **3.99**

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.00
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	2.50
CIVIC ENGAGEMENT AND CIVIC MONITORING	5.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.14

Since the end of the armed conflict in 1992, elections have been carried out with relatively strong guarantees against fraud and intimidation, and verified by domestic and international observers. The 2009 elections, in fact, enjoyed even greater observation than the transition elections of 1994, including over 4,000 domestic observers and numerous international delegations, including from the European Union (EU) and the Organization of American States. As in previous

elections, there was relatively little election-related violence, candidates were able to campaign freely, and people's political choices were free from influence by external forces.

Following the 1994 elections, in which the FMLN participated for the first time as a political party, all parties came together to agree on reforms to improve the process, including depoliticization of the staff of the Supreme Electoral Tribunal (TSE), which is divided among the three dominant political parties; institution of a single identity document for voting (and business matters); residential voting that would not require the need to travel long distances; and proportional representation in the 262 municipal councils (previously winner-take-all).<sup>1</sup> Of these agreed-upon reforms, only the single identity document has been fully implemented. Residential voting was carried out in 24 municipalities (less than 10 percent) in the 2009 elections; the aim is to institute it throughout the country for the 2012 municipal and legislative elections. At the same time, the absence of comprehensive reform is not considered to have affected subsequent electoral outcomes in any significant way. Nonetheless, implementation could prove important for improving citizen participation and confidence in the political process, while pluralistic councils might improve political tolerance and consensus-building at the local level.

The TSE has not always been able to fulfill its responsibility to ensure an even electoral playing field. There are informal, but real, advantages that accrue to the ruling party. For instance, according to press monitoring by the local Transparency International chapter, from April–November 2008—when campaigning was supposed to be prohibited—ARENA spent US\$5.8 million, representing 85 percent of all political party publicity, more than it spent in the entire 2004 presidential election period.<sup>2</sup> As the EU electoral observation group noted, this *de facto* prolonged campaign period clearly benefited the party with more economic resources.<sup>3</sup> In addition, the TSE decision (by a 3–2 vote) to split the legislative/municipal elections from the presidential contest extended the campaign period for two more months, allowing ARENA's PDC and PCN allies a greater chance of gaining congressional seats and municipal posts unaffected by the coattails of a possible Funes victory in the presidential race. In general, the lack of regulation of campaign donations or expenses (with the exception of the *deuda política*, which provides a certain amount to each party based on the number of votes received in the last election) also disadvantaged parties with fewer resources. Civic associations not registered as political parties carried out media campaigns associating the FMLN with Venezuela's Chávez in order to stir up support for ARENA. TSE oversight of such violations of the electoral code was notable by its absence.

ARENA also attempted to maintain its control of the executive branch through enormous publicity campaigns carried out by the incumbent government in the run-up to the election. The budget of the presidency's communications secretariat under Saca was 1,000 percent higher than that of his predecessor, Francisco Flores; even after the elections, Saca refused to disclose how those funds

had been spent.<sup>4</sup> The EU delegation, similar to the Transparency International monitors, found that “election news coverage was generally biased and did not meet international democratic standards, exacerbating the uneven playing field in favor of ARENA.”<sup>5</sup> Overall, a monitoring effort by the Salvadoran chapter of Transparency International, FUNDE, estimated that ARENA spent over twice as much as the FMLN in advertising (US\$12.9 million vs. US\$5.38 million), although for the last 12 days of the presidential campaign the FMLN was able to pull slightly ahead.<sup>6</sup> Anti-FMLN civic groups came in third place, with approximately US\$1.9 million spent, far ahead of the smaller political parties. FUNDE also estimated that central government expenditure on advertising from January 2008 to March 2009 was over US\$11 million. Although access to the media is, of course, only part of winning a political campaign, that the FMLN was able to secure an electoral win under these circumstances speaks volumes about both citizen discontent and the civic clamor for change.

El Salvador has a unicameral legislature chosen by closed-list proportional representation, which has traditionally resulted in the overrepresentation of smaller parties. In the 2009 elections, for example, based on the largest remainder system of seat allocation, the PCN was able to win the third seat out of three in the department of Chalatenango with only 11.4 percent of the popular vote.<sup>7</sup> Since the 2000 legislative elections, the number of seats held by the FMLN and ARENA in the Assembly has been more or less equal, but combined with the power of the presidency, ARENA has enjoyed overall dominance. ARENA has not held a simple majority in congress, however, so in order to pass legislation it has forged alliances with the PCN and, to a lesser extent, the PDC. Because of these alliances, it has been difficult for the FMLN to amass the two-thirds majority required to override a presidential veto. The result, over the past 20 years, has been a kind of implicit power sharing, with the PCN receiving control of certain government ministries (e.g., the Court of Accounts), or (in 2004) a seat on the TSE, even though it was decertified as a party for failing to get the requisite 3 percent of the popular presidential vote.<sup>8</sup> Since 2000, the PCN has negotiated for itself the presidency of the Legislative Assembly, a situation to which the FMLN was forced to concede even in the 2009–11 session. This politically negotiated composition of the congressional leadership has resulted in the body failing to provide an adequate check on executive power; the executive continues to set the agenda and originate most legislation. The judiciary also suffers from a deficit of independence that sometimes limits its ability to act as a strong check on the executive (see Rule of Law).

Historically, and especially during the 20 years of ARENA dominance, the civil service has functioned as a bastion of political patronage. It still operates based on laws written in the 1960s, and no real modernization efforts have been made. Minor reforms were made in mid-2009 to protect public employees, given the impending change of government. In December 2005, a municipal administrative career law was approved for the first time. But like the antiquated civil service law, according to civil society organizations, selection criteria for

employment continued to be based on subjective criteria rather than merit, and announcements for these jobs are rarely publicized.<sup>9</sup>

Civic engagement in the political process has generally taken a back seat to the political parties, in large part because the two major parties are widely seen as representative of real constituencies. Nongovernmental organizations (NGOs) have in recent years increasingly sought access to members of the Legislative Assembly to engage on policy issues, with a modicum of success. The landscape of civic organizations has changed little in the past decade, a fact largely attributable to the bureaucratic difficulty of registering new organizations (delay may sometimes be up to a year). Groups advocating for homosexual rights have not been granted legal status. According to the Ministry of the Interior, 1864 associations, 526 foundations, 145 international NGOs and 1042 churches are currently registered.<sup>10</sup>

El Salvador has a vibrant media environment and has enjoyed freedom of expression without censorship since well before the end of the war. However, the concentration of ownership of the media in the hands of a few influential families, which have generally been close to ARENA, has been a significant factor in distorting the playing field of electoral politics.<sup>11</sup> There have also been reports that advertising agencies responsible for the placement of government-funded public service announcements favored progovernment outlets. Nonetheless, direct censorship of the press does not occur, and the state does not regulate or interfere with the internet as a source of information.

In general, journalists can operate without interference from the authorities, but the Salvadoran Association of Journalists (APES) has noted occasional physical and verbal attacks against journalists covering political demonstrations.<sup>12</sup> The 2006 Special Law against Acts of Terrorism (see Civil Liberties) was employed in July 2007 against freelance journalist María Haydeé Chicas, along with 13 other demonstrators, after her arrest while reporting on a demonstration against government plans to privatize water distribution in Suchitoto. Chicas was charged with committing “acts of terrorism,” although she was conditionally released later that month.<sup>13</sup> Contrary to widespread reports about the decriminalization of defamation in the Salvadoran penal code, defamation continues to be criminalized, although there are no recent cases of its application against journalists.<sup>14</sup>

The Committee to Protect Journalists notes that one of the greatest threats to journalists today in El Salvador derives from the dire crime situation and street gangs in particular; there are isolated cases of harassment and threats against journalists believed to be linked to their coverage of government policies.<sup>15</sup> Two journalists were killed in recent years for reporting on abuses committed by criminal gangs. In September 2007, radio journalist Salvador Sánchez Roque was murdered by gunmen, and in September 2009, Christian Gregorio Poveda Ruiz, a French freelance journalist who filmed a documentary about the street gang Mara 18, was shot and killed.<sup>16</sup> On May 12, 2008, three gang members were convicted of aggravated homicide for Roque’s murder.

**CIVIL LIBERTIES****4.08**

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.88
GENDER EQUITY	3.33
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.00
FREEDOM OF CONSCIENCE AND BELIEF	6.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	4.50

The evolution of Salvadoran civil liberties in recent years is best illustrated by the failed application of a set of policies known as *mano dura* (“iron fist”) that carry harsh sentences for a broad swath of offenses, which were first introduced in 2003 and then updated in 2005 and 2006. The *mano dura* laws were meant to protect against gang violence, which the government alleges to be responsible for the majority of homicides in the country. However, homicide statistics are poorly maintained, which inhibits a more substantive analysis about either the victims or the circumstances of their deaths. Currently, these hard-line policies are widely seen as having been ineffective, if not counterproductive. The citizen security situation continues to be dire, with intentional homicide rates for 2005 and 2006 calculated at 56 and 58 per 100,000 persons, respectively, one of the highest rates in the world.<sup>17</sup> Although the numbers appeared to have declined somewhat in 2007 and 2008, the trend in 2009 suggests that even the 2006 rate may be exceeded.

Due to increased detentions related to the *mano dura* laws, the prison population increased from 7,280 in December 2000 to over 20,000 currently—almost a 20 percent annual increase since 2005. This has resulted in enormous overcrowding, as the capacity of the 19 prisons is 8,110. Overcrowding seriously threatens prisoners’ health and well-being; riots and violence are frequent. Although gangs are separated from other prisoners in some facilities, nonviolent offenders (including those in pretrial detention) are also mixed in. There are numerous reports that gangs continue to direct operations from the prisons with the collusion of police and prison authorities. Approximately 35 percent of the 20,000 prisoners are in pretrial detention, in part due to extreme court overload.<sup>18</sup> The Human Rights Ombudsman’s office (PDDH) continues to report cases of torture and abuse by police officers, with little evidence of prosecution when official wrongdoing occurs.<sup>19</sup>

There are very few cases of state persecution of political opponents (essentially members of the FMLN party in recent years), but there are also minimal investigations into cases where political opposition members are the victim. Human rights activists have not suffered generalized persecution in recent years. However, since 2007, antimining activists and a community radio station in the department of Cabañas have been the targets of numerous threats and attacks, including the much-publicized murder of community activist Marcelo Rivera in July 2009.<sup>20</sup> While police have provided protection to those threatened in

recent cases, community groups accuse the attorney general's office of failing to carry out a full investigation of the Rivera case, having dismissed it as common crime related to gang activity. The most notorious case of police overreach was the above-mentioned 2007 incident when demonstrators in Suchitoto, after blocking roads and throwing rocks at police, were jailed under charges of terrorism under the Special Law against Acts of Terrorism, which imposes prison sentences of up to 10 years on anyone who publicly justifies terrorism, yet notably fails to include a definition of terrorism. The demonstrators were eventually released, and the government has backed away from further such applications of the law. For the period under review, political demonstrations and marches have been common, and the Suchitoto case was the exception rather than the norm with respect to protection of activists.

Salvadoran gangs, known as *maras*, are the primary nonstate actors involved in violence, although whether they are primarily responsible for the high homicide rate is a matter of debate. Estimates as to their size also vary from 8,000 to the official estimate of 12,000–13,000. Approximately a third of El Salvador's prison population is said to be comprised of gang members, with several prisons effectively run by either the MS-13 or the Mara 18 gangs. The Saca administration's reputed success against the *mareros*, including keeping gang leaders locked up, only exacerbated the problem, with confinement sparking cooperation as well as conflict among rival gangs, the development of more hierarchical structures, and requirements for increased income—obtained via robbery and other crimes—for protection against police persecution. Individual gang members are increasingly used by drug traffickers as local vendors and hitmen.<sup>21</sup> Crime prevention programs have begun in recent years but have yet to make a major impact.

The PDDH is not taken seriously by state officials, yet this is the most independent and reliable repository of information on rights violations and the best source of redress for victims. The PDDH's recommendations are non-binding, however, and for judicial redress the attorney general's office has to initiate action. There are no effective complaints mechanisms in the National Civil Police (PNC), where most of the abuses occur. Observations by the Committee on the Elimination of Discrimination against Women (CEDAW) from October 2008 indicate that the government has taken various measures to prevent human trafficking, but notes that investigations into child trafficking are minimal and prosecutions rare. It also notes that there are few centers for attending to victims of trafficking.<sup>22</sup>

The constitution grants men and women equal rights. The penal code establishes sentences of one to three years in jail for public officials who deny a person's civil rights based on gender, but there are no known cases of this punishment being meted out. According to the PDDH, the Law against Intrafamily Violence, first enacted in 1996, has not been effectively implemented, and the state does not promote increased awareness about gender rights among functionaries. A PDDH survey of government entities found that 42 percent of all

employees knew of cases of sexual harassment.<sup>23</sup> The penal code also has a sentence of six months to two years for employers who discriminate against women in labor relations, but there are few cases brought and no effective mechanisms for redress. In February 2008, in order to comply with labor conditions under the Central American free-trade agreement (CAFTA-DR), a law was passed criminalizing the practice of asking women to take a pregnancy test as a condition of employment. A 1999 law criminalized abortion under all circumstances. An early study indicated that the prosecution of women for illegal abortions, which carries a sentence of two to eight years, doubled following implementation of the law.<sup>24</sup> Another 2006 medical journal report indicated that 32 women were prosecuted from 2000 to 2003 (although 283 criminal investigations were initiated);<sup>25</sup> more recent data is not available.

With respect to discrimination against other groups, CEDAW has commented that the state does not make a great effort to recognize indigenous populations in El Salvador, but there is little information available regarding discrimination against these groups. The 2007 census revealed that 0.2 percent of the population is indigenous and 0.1 percent is black, although the census methodology was criticized by indigenous groups because the categories used were self-chosen by participants. A 2000 law requires that 4 percent of positions in the public and private sectors should be filled by the disabled, but this is rarely enforced. In 2007, El Salvador ratified the UN Convention on the Rights of Persons with Disabilities, as well as its Optional Protocol. The 2007 census notes that 4.1 percent of the population lives with a disability, although the PDDH suggests that the number may be as high as 10 percent.<sup>26</sup>

El Salvador features full freedom of religion, with no reported abuses in a country with one of Latin America's more diverse mixes of Protestant and Catholic citizens. Freedoms of association and assembly are also well protected and reinforced by government discourse. However, the International Labor Organization Committee on Freedom of Association notes that there are excessive formalities in forming trade unions, which are fewer in number and weaker in political influence in the postwar period, while the state does nothing to stop occasional dismissals of labor activists or require their reinstatement. There are some charges of the use of blacklists of union members by employers.

## **RULE OF LAW**

**3.54**

INDEPENDENT JUDICIARY	3.20
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY	
TO CIVILIAN AUTHORITIES	3.75
PROTECTION OF PROPERTY RIGHTS	4.00

The Salvadoran judiciary is neither independent nor impartial, a situation rooted partly in the above-mentioned partisan deal making within the



Legislative Assembly. The selection process, which occurs every three years, is fair; the National Judiciary Council (CNJ) presents half the slate of eligible candidates to the Assembly, and lawyers associations present the other half. Out of a total of 30 candidates, three justices are elected to serve a nine-year term. However, since 1994, when a clean sweep of the Supreme Court took place following the recommendations of the Truth Commission, the nomination of magistrates to the court has become increasingly politicized, with political parties represented in the Legislative Assembly dividing appointments according to their electoral strength rather than selecting justices based on merit or honor. Perhaps a greater threat to judicial independence comes from the structure of centralized control maintained by the Supreme Court.<sup>27</sup> Among its functions, the Court retains the power to appoint, remove, and discipline lower-court judges, controls their budgets, and holds the power to license lawyers and notaries. Despite these deficiencies, judicial decisions are generally followed by legislative, executive, and other government entities, and the courts do rule against the government on occasion.

Some observers argue for the need to separate the administrative functions of the Supreme Court from its jurisprudential ones. A key element of reform in this direction was the strengthening in 2002 of the CNJ, a pluralist body elected by the Legislative Assembly from slates proposed by different entities, including lawyers associations and universities, and charged with evaluating and training lower-court judges. In theory, the evaluations carried out by the CNJ should guide the Supreme Court's promotions of or disciplinary actions against sitting judges, but in practice the court is free to ignore them. The Judicial Training School, an underresourced institution supervised by the CNJ, is also charged with training prosecutors, public defenders, and other justice system personnel.

Perceptions among both citizens and judges about the efficacy of the justice system are affected by these factors. According to a 2008 poll, just 7.9 percent of Salvadorans have "much trust" in the Supreme Court, while 9.2 percent feel the same way about the attorney general's office (municipal offices receive the highest rating for a governmental entity at 21.5 percent).<sup>28</sup> Crimes committed by public officials are rarely prosecuted. Judges surveyed for a study by the University of Salamanca indicated that the principal obstacles to the investigation and sanction of crimes committed by officials included "the intentional obstruction of investigations by State authorities themselves" and the "investigative passivity" exhibited by representatives of the attorney general's office. Forty percent of all judges interviewed said they had received threats or offers of bribes from litigating attorneys.<sup>29</sup>

In recent years, the attorney general's office has accused numerous judges of incompetence and corruption and pursued them in the courts as well as the media. According to a study by the Due Process of Law Foundation, some of these efforts were likely used to deflect attention from the government's responsibility for the increasingly dire security situation.<sup>30</sup> Indeed, the attorney general's office is widely perceived as highly partisan to the interests of the ARENA

party. Interviews carried out by researchers for a study on public sector accountability found that the office's weaknesses included a failure to initiate investigations of public officials or cases involving powerful economic and political interests.<sup>31</sup> This perception is also shared by individual testimonies of citizens given to the Institute of Human Rights of the Central American University between October and December 2008: 15.8 percent described the attorney general's work as "inoperative," 24.6 percent as "insufficient," and 13.5 percent as "very inoperative," compared to 1.1 percent who qualified its work as "very satisfactory" and 12.9 percent as "satisfactory."<sup>32</sup>

Individuals brought up on criminal charges are afforded the presumption of innocence, but justice may be neither swift nor fair. The courts are often overworked, and although the state provides counsel to anyone in need, public defenders' excessive workload affects the quality of defense provided. Particularly in juvenile courts, defendants may be provided with different lawyers at different phases of the trial. There have been only a few high-profile cases of public officials brought up on corruption or other criminal charges; even those often occur only after being brought to public attention by the media. An example is the Saca administration's minister of health, who was found to have misused government resources. He was given a written warning by the Government Ethics Tribunal—but remained in office—only after the daily newspaper *La Prensa Gráfica* uncovered the story.<sup>33</sup> In April 2009, the online publication *El Faro* published a story revealing that the San Salvador Department director of the ARENA party, Adolfo Torrez, had offered to help PCN deputy Roberto Carlos Silva, imprisoned in the US for money laundering, evade justice in El Salvador in exchange for US\$500,000.<sup>34</sup> *El Faro* revealed that the U.S. Federal Bureau of Investigations had turned over evidence of the offer to the Salvadoran attorney general in April 2008, but only after *El Faro* broke the story was any investigation initiated. Weeks later, Torrez died in an apparent suicide, but the attorney general's failed efforts had already damaged his bid for reelection.

Since the 1992 peace accords, and to some degree before, the Salvadoran military has been subject to civilian control, although throughout the Saca administration the position of defense minister was held by a retired or active duty military officer. As the military plays no role in the political process, and only a minor role in the internal security matters, it has earned increasing public approval. The National Civilian Police has undergone a much more thorough process of civilianization, and several PNC chiefs have been appointed by the president from outside the force. Horizontal controls are less consolidated, however, as the legislative branch exercises little oversight. One recent report references a member of the Defense and Public Security Committee of the Legislative Assembly stating that, given the levels of violence in El Salvador, "one would think that this would be the committee that worked the most, but it's the committee that meets the least."<sup>35</sup> For its part, the judiciary affords "unequal application of the law" to law enforcement officials as compared to

leftist political suspects, according to a recent study published by the Brookings Institution.<sup>36</sup> On a positive note, an explicit attempt in late 2008 by the ARENA presidential candidate to enlist the Salvadoran Armed Forces—defined in the constitution as “apolitical”—in efforts to stop the “communists” of the FMLN from coming to power through elections were quickly and publicly rebuffed by the defense minister.<sup>37</sup>

Respect for human rights and accountability for abuses by the PNC are sorely lacking. A 2007 report by the PDDH found that the internal and external control mechanisms of the police “have been highly deficient, favoring impunity of those responsible for serious violations.”<sup>38</sup> In particular, the role of the inspector general includes simply “receiving complaints, distributing them to the competent disciplinary sections, infrequently and insufficiently monitoring the progress of investigations,” with the office taking their conclusions at face value despite the inherent failures of the process.<sup>39</sup> Suspicions of police involvement in social cleansing, especially of gang members, are rife but difficult to verify due to the lack of prosecutions. There are no known cases of prosecutions of military officers for corruption, and any such cases would be handled internally with little public scrutiny. The amnesty law passed following the 1992 peace accords has limited the prosecution of military or security forces for past rights abuses, although several cases have been filed and occasionally won in U.S. and Spanish courts.

Property rights in El Salvador are guaranteed by the constitution and in numerous secondary laws but are considered only “moderately well protected,” according to the 2009 Index of Economic Freedom.<sup>40</sup> According to the report, enforcement of these rights is inconsistent due to the inefficiencies of the judicial system, which is “subject to manipulation by private interests, and final rulings may not be enforced.” In general, the state protects citizens from arbitrary deprivation of property. One area of controversy in recent years has been the mining sector. The Saca administration provided exploration rights to mining companies, which have been criticized for planning projects that would undermine environmental protections and public health. Shortly before the March 2009 presidential elections, however, Saca announced that he would rather go to arbitration and pay heavy fines than grant actual operating permits to the companies; claiming all environmental standards had been met, at least one company publicly vowed to pursue legal action against the government.<sup>41</sup>

<b>ANTICORRUPTION AND TRANSPARENCY</b>	<b>3.04</b>
ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.00
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	2.75
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	3.25
GOVERNMENTAL TRANSPARENCY	3.17

After 20 years of government dominated by a single political party, it is unsurprising that corruption and transparency issues have finally moved to the forefront of public attention. Although the press enjoys relatively unrestricted freedom to investigate and denounce cases, the government has no overall policy or legislation in place to provide citizens access to key public information. The few graft cases that come to light are revealed through leaked documents to the press, and there are no functional legal or institutional protections for individuals who might be in a position to expose instances of governmental corruption. Despite this situation, a promising recent development is the emergence of a civic movement in favor of enacting comprehensive access to information legislation. For example, the Salvadoran Foundation for Social and Economic Development (FUSADES), together with the Ibero-American Law Institute, drafted an access to information law that was supported by other civil society institutions and universities. A second proposed law, drafted by the FMLN, was later merged with this proposal and is currently under consideration in the Legislative Assembly, backed by a wide range of organizations, including press, NGOs, lawyers, private companies, and think tanks.

The privatization of pension administration, banks, telecommunications firms, and other state-held enterprises in the 1990s—although not always carried out in a fully transparent manner at the time—has significantly minimized opportunities for state corruption. Despite further efforts toward state modernization, petty corruption continues to afflict citizen interactions with the state, although very little is documented largely due to the weakness of state institutions in identifying and prosecuting corruption.

According to the Salvadoran constitution, the Court of Accounts is the government body responsible for assessing expenditures from the public treasury, including the budget. However, this key institution has long been politicized, for over two decades remaining under the control of politicians from the PCN as part of an implicit deal brokered with ARENA. The ineffectiveness and negligence demonstrated by the Court of Accounts over the years has been, in the opinion of most observers, perhaps the most significant obstacle to effective government oversight of public activities.<sup>42</sup> Critics have emerged publicly within the ranks of the PCN; following the party's poor showing in the 2009 legislative elections, two deputies publicly remarked about corruption in the court and its collusion with mayors who enter office poor and leave wealthy.<sup>43</sup> The Court of Accounts is responsible for administrative sanctions related to corruption, whereas criminal cases are passed to the attorney general's office. In 2002, the law governing the Court of Accounts was reformed to ensure that its reports would have a "public character," but in practice this rarely happens.<sup>44</sup> On occasion, the press will report on corruption cases based on Court of Account reports, but such piecemeal leaking of information is insufficient as a model for evaluating the court's impact on the management of public funds. The 2002 reform also led to the opening of a citizen participation unit in which

individuals could report cases of fraud, but only a tiny fraction of cases have moved forward, and the results are unknown. By way of contrast, since 2001, the Ministry of Finance has benefited from improved and computerized audit capabilities, with audits based on objective criteria and a random selection system, thus preventing the use of tax audits as a weapon to target specific individuals.

All procurement contracts carried out by the central government, autonomous agencies, and municipalities are regulated by the 2001 Acquisition and Purchasing Law, which requires that bid announcements and relevant legislation be published online by the Treasury Ministry.<sup>45</sup> This law establishes policies for three levels, with purchases worth more than US\$108,000 requiring public notice and subject to open bidding. Despite the intention to make government purchases more transparent, its implementation is unwieldy (especially at the municipal level) and subject to abuse. The existence of a clause for “emergency” or “urgent” procurements, which may be sole-sourced, has sometimes aroused charges of nepotism. A 2005 survey of businesspeople indicated that while 40 percent felt that corruption had decreased following the implementation of the law, 40 percent also said that the level of graft was the same, while 15 percent felt that it was worse.<sup>46</sup>

The Probity Section of the Supreme Court, created by the peace accords in 1992, is the entity responsible for reviewing the financial disclosures of all public officials. According to the constitution, the court reviews the veracity of these statements, but they are not made public. In 2005, the section’s head resigned following the unwillingness of two Salvadoran banks to turn over information requested about 13 high-level officials in the administration of Francisco Flores (including the former president himself) and the unwillingness of the court to back his request. Since that time, the section has remained dormant, although in March 2009 there was renewed discussion about the need to reactivate the body.<sup>47</sup> The private sector think tank FUSADES, noting that El Salvador was out of step with the region on this issue, argued for a constitutional reform that would permit publication of these disclosures.<sup>48</sup>

In November 2006, a Government Ethics Tribunal was created with responsibility for resolving cases of conflict of interest—which are widespread and underreported—misuse of government property, nepotism, and public employee noncompliance in performing duties and responsibilities. The tribunal has set up and trained 72 commissions within government entities, but without much reach beyond San Salvador. The head of the tribunal has requested the ability to investigate officials on its own initiative without first receiving a complaint, as well as greater leeway for sanctioning officials beyond mere dismissal.<sup>49</sup> In practice, the Government Ethics Tribunal has powers similar to the PDDH—the ability to offer moral sanctions for abuses but little or no ability to carry through with punishment. In short, citizens seeking to pursue cases of corruption are met with unresponsive or ineffective institutions.

After many years of ad hoc municipal and civil society efforts to improve transparency and accountability at the local level, the Municipal Code was amended in 2006 to include a clear policy on access to information as well as mechanisms for restricting the use of municipal goods and services by political parties. However, there were no provisions made for supporting the implementation of these measures, nor are there any sanctions for failure to comply.<sup>50</sup> In the sphere of education, the state does not directly provide protections from graft, but it is not thought to be widespread. The stringent conditions attached to foreign assistance since well before the peace accords are mostly effective in preventing diversion of such aid for personal enrichment.

In terms of budget transparency, the 2008 Open Budget Index awarded a score of 37 percent to El Salvador, placing it in the category of states that provide minimal information to the public about budget procedures and documents.<sup>51</sup> Similarly, a 2007 review by the Regional Alliance for Freedom of Expression and Information of governmental entities' websites in El Salvador, Panama, Nicaragua, and Honduras ranked the average functionality of Salvadoran ministry websites last in terms of ease of access and availability of information.<sup>52</sup> Notably, the Public Works Ministry scored positively on only 1 of 12 indicators, while the presidency, the Ministry of Defense, the Supreme Court, and the National Academy for Public Security scored positively on only three indicators. Likewise, a global study on e-government carried out by Brown University found that El Salvador moved from 120th in 2006 to 152nd out of 198 governments reviewed in 2007.<sup>53</sup>

## RECOMMENDATIONS

- Reform the electoral system, including through the establishment of proportional representation in municipal council contests, the depoliticization of the Supreme Electoral Tribunal, and the separation of the tribunal's administrative functions from its role in overseeing electoral disputes.
- Pass a political party law that regulates campaign finance and access to the media, rules for internal party governance, public access to data regarding party affiliation, and transparency in party financing.
- Improve the selection process for the attorney general and magistrates of the Supreme Court through a more transparent process that emphasizes merit over political patronage.<sup>54</sup>
- Depoliticize and redefine the functions of the Court of Accounts to ensure improved leadership, including the imposition of safeguards to prevent domination by particular partisan interests.
- Approve and enact a comprehensive Law on Transparency and Access to Information.

## NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at <http://freedomhouse.org/template.cfm?page=139&edition=8>.

- <sup>1</sup> Charles T. Call, "Assessing El Salvador's Transition from Civil War to Peace," in *Ending Civil Wars*, ed. Stephen John Stedman, Donald Rothchild, and Elisabeth Cousens (Boulder, Colo.: Lynne Rienner Press, 2002). The Supreme Court, in a highly controversial 2004 ruling, allowed for the recognition of the PCN and PDC parties despite their failing to achieve a 3 percent minimum of the popular vote. In 2008, this threshold was modified.
- <sup>2</sup> Fundacion Nacional para el Desarrollo (Funde) and Transparency International, *Observatorio de Gastos de Campaña Publicitaria Electoral: Primer Informe, Abril–Noviembre 2008* (San Salvador/Berlin: Funde and Transparency International, 2008).
- <sup>3</sup> European Election Observation Mission El Salvador, "Preliminary Statement: Legislative, Municipal and PARLACEN Elections–2009," January 20, 2009.
- <sup>4</sup> Daniel Valencia, "Presidencia No Revelará los Gastos de Publicidad del Quinquenio Saca," Elecciones 2009, May 17, 2009.
- <sup>5</sup> European Union Election Observation Mission El Salvador, "Preliminary Statement: Presidential Elections 2009," March 17, 2009.
- <sup>6</sup> Daniel Valencia, "Funde Estima en \$19.2 Millones el Valor de Campaña Electoral en Medios," Elecciones 2009, June 21, 2009.
- <sup>7</sup> For a good discussion of the implication of this allocation system, see "Salvadoran Results," Fruits & Votes blog, January 27, 2009.
- <sup>8</sup> La Fundación Salvadoreña para el Desarrollo Económico y Social (FUSADES), "Recientes sentencias en materia constitucional," *Boletín de Estudios Legales* 49 (January 2005).
- <sup>9</sup> Funde, Fundación de Estudios para la Aplicación del Derecho (FESPAD), Iniciativa Social para la Democracia (ISD), and Instituto Universitario de Opinión Pública (IUDOP), *Informe Independiente sobre la Implementación de la Convención Interamericana contra la Corrupción en El Salvador, Mayo del 2007* (San Salvador: Funde, FESPAD, ISD, IUDOP, May 2007).
- <sup>10</sup> FUSADES, personal communication, November 3, 2009.
- <sup>11</sup> Rick Rockwell and Noreene Janus, *Media Power in Central America* (Urbana-Champaign: University of Illinois Press, 2003), 45, 135.
- <sup>12</sup> Asociación de Periodistas de El Salvador, "APES Presenta Informe en Día de Libertad de Prensa," news release, May 5, 2009.
- <sup>13</sup> Reporters Without Borders (RSF), "Journalist Accused of 'Terrorism' Conditionally Released," news release, July 24, 2007.
- <sup>14</sup> Art. 178, Criminal Code.
- <sup>15</sup> Carlos Lauria, "Drug Trade, Violent Gangs Pose Grave Danger," Committee to Protect Journalists (CPJ), February 10, 2009; CPJ, "Attacks on the Press in 2008: Americas Developments," February 10, 2009.
- <sup>16</sup> CPJ, "Filmmaker Who Documented Salvadoran Gang Is Slain," news release, September 3, 2009.
- <sup>17</sup> United Nations Office on Drugs and Crime (UNODC), *The Tenth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (Tenth CTS, 2005–2006)* (Vienna: UNODC, 2007).
- <sup>18</sup> Instituto de Derechos Humanos de la Universidad Centroamericana (IDHUCA), *Balance de Derechos Humanos 2008* (San Salvador: IDHUCA, 2009), 17.

- <sup>19</sup> Procuraduría para la Defensa de los Derechos Humanos, *Violaciones a los Derechos Humanos por Responsabilidad de la Policía Nacional Civil de El Salvador* (San Salvador: Procuraduría para la Defensa de los Derechos Humanos, July 2007), 6.
- <sup>20</sup> Rodrigo Baires Quezada, "Atentan contra un Cuarto Ambientalista en Cabañas," *El Faro*, August 13, 2009.
- <sup>21</sup> Field research and interviews carried out in July 2009 by David Dye.
- <sup>22</sup> Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), *Concluding Observations: Seventh Periodic Report of El Salvador* (New York: CEDAW, October 31, 2008).
- <sup>23</sup> IDHUCA, *Balance de Derechos Humanos 2008*.
- <sup>24</sup> Center for Reproductive Law and Policy, *Persecuted: Political Process and Abortion Legislation in El Salvador: A Human Rights Analysis* (New York: Center for Reproductive Law and Policy, September 16, 2001).
- <sup>25</sup> Heather Luz McNaughton et al., "Patient Privacy and Conflicting Legal and Ethical Obligations in El Salvador: Reporting of Unlawful Abortions," *American Journal of Public Health* 96, no. 11 (November 2006).
- <sup>26</sup> Larissa Hotra, "A Recent History of the Disability Rights Movement in El Salvador," *Upside Down World*, July 18, 2008.
- <sup>27</sup> Fátima García Díez et al., "El Poder Judicial," in *Las Instituciones Democráticas en El Salvador: Valoración de Rendimientos y Plan de Fortalecimiento* (Salamanca/San Salvador: Universidad de Salamanca and FUSADES, January 27, 2009), 42.
- <sup>28</sup> IUDOP, "Los Salvadoreños y Salvadoreñas Evalúan la Situación del País a Finales de 2008 y Opinan sobre las Elecciones Legislativas y Municipales de 2009," *Boletín de Prensa*, no. 4 (2008).
- <sup>29</sup> García Díaz et al., "El Poder Judicial."
- <sup>30</sup> Due Process of Law Foundation, *Evaluation of Judicial Corruption in Central America and Panama and the Mechanisms to Combat It* (Washington, D.C.: Due Process of Law Foundation, 2007), 31; For an example of the government campaign against judges, see "CSJ Protégé a Jueces Corruptos en El Salvador," *La Gente*, February 15, 2008.
- <sup>31</sup> Álvaro Artiga González et al., *Propuesta de Mejora de la Rendición de Cuentas en el Sector Público de El Salvador: Informe Final* (Washington, D.C.: USAID, March 2008), 33.
- <sup>32</sup> IDHUCA, *Balance de Derechos Humanos 2008*, 15.
- <sup>33</sup> Nestor Ríos, "Ministerio de Salud y Asistencia Social Intenta 'Desparecer' Medicinas Vencidas," *Diario Co Latino*, May 29, 2009.
- <sup>34</sup> Rodrigo Quezada and Carlos Martínez, "Adolfo Torrez Pidió Medio Millón a Roberto Silva para Liberarlo de Cargos en El Salvador," *El Faro*, April 15, 2009.
- <sup>35</sup> Washington Office on Latin America (WOLA), *Protect and Serve? The Status of Police Reform in Central America* (Washington, D.C.: WOLA, July 7, 2009), 29.
- <sup>36</sup> Diana Villiers Negroponte, *The Merida Initiative and Central America: The Challenges of Containing Public Insecurity and Criminal Violence*, Working Paper No. 3 (Washington, D.C.: Brookings Institution, 2009), 50.
- <sup>37</sup> Carlos Martínez, "No Hay que Confundir a la Fuerza Armada con Algunas Organizaciones," *El Faro*, September 15, 2008.
- <sup>38</sup> Procuraduría para la Defensa de los Derechos Humanos, *Violaciones a los Derechos Humanos por Responsabilidad de la Policía Nacional Civil en El Salvador* (San Salvador: Procuraduría para la Defensa de los Derechos Humanos, July 2009), 6.
- <sup>39</sup> *Ibid.*, 125.
- <sup>40</sup> The Heritage Foundation and *Wall Street Journal* (WSJ), "El Salvador," in *2009 Index of Economic Freedom* (Washington, D.C./New York: The Heritage Foundation and WSJ, 2009).



- <sup>41</sup> Keny López Piche, “No a la Minería: Saca Cierra Puertas a Explotación de Metales,” *La Prensa Gráfica*, February 26, 2009.
- <sup>42</sup> Fátima García Díez et al., “Reforma Institucional y Control de los Fondos Públicos,” in *Las Instituciones Democráticas en El Salvador: Valoración de Rendimientos y Plan de Fortalecimiento*.
- <sup>43</sup> Edith Portillo and Jimena Aguilar, “Surgen en el PCN Sospechas de Corrupción en la Corte de Cuentas,” *El Faro*, March 2, 2009.
- <sup>44</sup> Asociación Probidad, *Tercer Índice Latinoamericano de Transparencia Presupuestaria* (San Salvador: Asociación Probidad, November 2005).
- <sup>45</sup> Republic of El Salvador, Ley de Adquisiciones y Contrataciones de la Administración Pública; Bid announcements are published at [www.comprasal.gob.sv](http://www.comprasal.gob.sv).
- <sup>46</sup> IUDOP, “La Transparencia en el Estado Salvadoreño,” *Boletín de Prensa*, no. 1 (2005).
- <sup>47</sup> Suchit Chávez, “Critican Inactividad de Probidad CSJ,” *La Prensa Gráfica*, February 12, 2009.
- <sup>48</sup> Karla Ramos, “FUSADES Pide Reactivar la Sección de Probidad,” *La Prensa Gráfica*, March 25, 2009.
- <sup>49</sup> Carlos Dada, “Necesitamos Actuar de Oficio,” *El Faro*, November 26, 2007.
- <sup>50</sup> USAID, *Construyendo Transparencia en los Municipios: Diagnósticos y Líneas Programáticas para Promover la Transparencia en El Salvador* (Washington, D.C.: USAID, March 2007).
- <sup>51</sup> Open Budget Initiative, “El Salvador,” in *Open Budget Index 2008* (Washington, D.C.: Open Budget Initiative, 2009).
- <sup>52</sup> Sandra Crucianelli, “Los Sitios Web Gubernamentales como Herramientas del Control Social y el Periodismo Investigativo,” *Sala de Prensa* 4, no. 108 (October 2008).
- <sup>53</sup> Brown University, “South Korea Continues to Lead World in Global e-Government,” press release, July 24, 2007.
- <sup>54</sup> FUSADES, “Lecciones Aprendidas en el Proceso de Elección de Magistrados de la Corte Suprema de Justicia,” *Posición Institucional*, no. 18 (July 2009).