

**WHAT IS THE VENEZUELAN
NATIONAL ELECTORAL COUNCIL
CONCEALING?
AND, WHY?**

Venezolanos por la Transparencia Electoral
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FEATURES OF THE VENEZUELAN ELECTORAL SYSTEM

The Venezuelan electoral system, as opposed to other systems the world over, is essentially different in that:

1. Its governing body, the Consejo Nacional Electoral (National Electoral Council) or **CNE**, is now an independent branch of government, equal in status to the other traditional Executive, Legislative and Judicial branches, and also to the recently constitutionally established Citizen branch.
2. Its electoral process' needlessly excessive degree of automation is unmatched by any other; predictably propitiating mistrust in the secrecy of the ballot.
3. In the process of executing electoral procedure, the **CNE** has systematically violated principles governing the right to vote, that affect impartiality, transparency and consequently confidence in the secrecy of the ballot.

It is essential to note that the 1999 Constitution of Venezuela created two new State branches of government: the Electoral branch (whose governing body is the **CNE**) and the Citizen branch (sub-branches of which are the offices of the Attorney General, the Comptroller General and the Ombudsman).

In 2003, on occasion of the people's initiative to petition for a presidential recall referendum, the **CNE** embarked upon an accelerated automation program of all its electoral activities. Without consultation, it proceeded to incorporate widely questioned voting, communication and summation technologies in tandem with an unproven biometric identification system using fingerprint scanners. The latter, although incapable of real-time detection of multiple voting attempts (sold with the slogan "one voter, one vote"), produced the effect of frightening away wary voters already teeming with reasons to suspect that ballot secrecy could be affected.

Several studies (habría que decir cuales al pie de pagina) have proven that the **CNE**, since 1993, has not been impartial, neither in its organizational structure nor in its performance, consequently not guaranteeing ballot secrecy. This presentation will present the core facts, attesting to the fact that the **CNE** does not act transparently, thus violating human rights essential for the peaceful coexistence of Venezuelan citizens.

Democracy is based upon trust; in lieu of it, democracy can hardly survive.

WHAT IS THE VENEZUELAN NATIONAL ELECTORAL COUNCIL CONCEALING? AND, WHY?

1 THE PRINCIPLE: TRANSPARENCY vs. CONCEALMENT

Electoral transparency is a universally accepted condition of democratic countries. The only admissible withholding of information, which must be protected is that of ballot secrecy, the choice an elector makes without coercing his right to vote. Similarly, in Venezuela, the obligation for transparent electoral procedure is established in the Constitution; its essential duties are to remain ever watchful that its acts not only be transparent, but are also perceived as such by the citizens. This principle is a condition for the celebration of any electoral process.

Despite this, the CNE's behavior has been characterized by breaching this mandate, due to its policy of concealment: hiding documents, acts, and procedures distorting, impeding or obstructing all audits in any phase of the electoral process. The CNE operates in a manner the elector or its representatives cannot scrutinize.

2 THE CLOAK OF CONCEALMENT

What does the CNE hide? Since the Presidential Recall Referendum of August 15th, 2004 (RR 04) through the presidential election of December 3rd, 2006 (3D 06), lack of transparency of CNE's electoral processes have raised well-founded suspicion. The CNE's behaviour has been condemned, as well as censured for legal transgressions (grave alterations and manipulations of the data and results of electoral processes) by an important sector of citizens. Some notorious elements of this systematic concealment, characteristic of the CNE, include:

- 2.1 It has tailored the makeup of its operating division personnel to belong to a single political partiality, the official party, thus eliminating the internal control that would be naturally exercised by the presence of political diversity.
- 2.2 It has refused to provide a copy of the electoral registry (Registro Electoral Permanente or **REP**), complete with the electors addresses, as was customary in previous processes, shielding itself behind a convenient but illegal interpretation of a Supreme Justice Tribunal sentence, as an excuse comply with Article 95 of the law governing suffrage and political participation (Ley Orgánica de Sufragio y Participación Política, or LOSPP).
- 2.3 It keeps the evidence of the following Electoral Registry transactions inaccessible:
 - 2.3.1 Incorporation of millions of new voters into the **REP**
 - 2.3.2 Unsolicited migrations of millions of voters
 - 2.3.3 Removal of deceased electors and contested entries
 - 2.3.4 Justification of new electoral centers and creation criteria
- 2.4 It denies access to the voting books, in which each voter must sign and place his/her fingerprint upon completion of the different electoral process.
- 2.5 It never gave the opposition the digital certificates of the vote tally, their sums or audits.
- 2.6 It directly assigned contracts for technology (voting machines and biometric identification systems) without complying with bidding norms, hence concealing the terms and parameters for choosing both technology and suppliers.
- 2.7 It did not permit the voting machines, the totalizing servers, the software or the data transmission network to be submitted to an independent audit.
- 2.8 It denied the opposition access to the communication traffic logs over the national telephone company's (CANTV) networks between the voting machines and the servers of the Totalization Center. This denial occurred in spite of a prior study on electronic voting by researchers from the Simón Bolívar University (USB), which demonstrated that serious irregularities of this type were incurred in the RR 04 process.

- 2.9 It denied the opposition access to visit alternate summation centers to verify their number, nature, location, function, and conditions and how they were interconnected.
- 2.10 It systematically opposed manual vote counting, despite the manifest distrust expressed by large numbers of citizens.
- 2.11 It did not follow a formal, transparent, supervised and independent procedure to select members to manage the voting tables, which explains many of the irregularities detected post electoral process.
- 2.12 During the totalization of the votes on the night of August 15th, 2004, the CNE denied two its five directors, who were not explicitly pro government (Ezequiel Zamora, its vice president, and Sobella Mejías), as well as the representative of the Carter Center, access to the Summation Center.
- 2.13 To date, the CNE has only published preliminary bulletins for the results of the election of Councilmen to the Municipal Councils and Deputies to the State Legislative Assemblies (August 7th, 2005) and the election of Deputies to the National Assembly (December 4th, 2005).
- 2.14 The CNE authorized, upon the President's request, and as part of the Plan República, the active participation of the Reserva (Armed Force Reserve) to control the entire electoral process, spanning the days prior to, during and subsequent to the election. (NB: The Reserva is a new military institution composed of militarily armed, uniformed pro government civilians, whose ideological commitment to the government is notorious) The scope of the Reserva's electoral mission encompasses: presence within voting centers, safekeeping of electoral materials, voting machinery, full ballot boxes, and all other documentation pertaining to the electoral process. In practice, this brought about, amongst other consequences: blocking the opposition's witnesses' free access to many of the activities inherent to the voting process, audits and totalization, which would have permitted the citizens to ascertain that fundamental elements in this process were not being manipulated or altered. These functions assigned by the CNE to the Reserva have no legal grounds whatsoever. In essence, the Reserva became the government's de facto "electoral control." Its financing by the State (via the CNE) generated an inadmissibly unfair advantage, compared to the enormous and costly effort for the opposition to try to place witnesses in every electoral center without access to the public funding. It should be noted that previously (according to the 1961 Constitution), the electoral referee was obliged to underwrite public funding for every political party.

3 REGARDING THE AUDITS

The accumulation of these irregularities would have been made more evident if the electoral process had been submitted to proper audits. It's important to emphasize that the extent that the automation of the electoral process has reached, unheard of in any other country, in itself justifies an extensive and demanding audit system, as a means to generating and preserving voter confidence. However, the CNE, instead of increasing the auditing mechanisms, has opted to restrict and even block them so as to render them useless for the purpose for which they were created. Ç The CNE's restriction and blockage of audit mechanisms is crucial to understand the extent of irregularities, and for this reason, deserves a chapter of its own.

A universal principle, never respected by the CNE is that the auditing party, not the audited party, will select the samples and establish the procedure.

EFFECTIVELY, FOR THE RR 04:

- 3.1. The CNE organized a "hot audit" to be carried out immediately after the voting had been concluded and the voting machines had printed the result certificates. This audit was tainted, obstructed and even impeded in the following manner:
 - 3.1.1 The CNE arbitrarily restricted the audit to 20 municipalities, thus discarding 316.
 - 3.1.2 Despite the fact that the sample included 199 machines, the audit was only carried out on 27 machines in 26 electoral centers.
 - 3.1.3 In many of these 26 electoral centers the audits were not even carried out. The Carter Center report, which as we know, backed the official results, registers these irregularities in this manner: ... *"Carter Center observers were able to witness six auditing processes. In only one of the six auditing sites observed by The Carter Center did the paper ballot receipt counting actually occur. ... In the rest of the sites observed, the auditor appointed by the CNE did not allow the opening of the ballot box, explaining his/her instructions did not include the counting of the Yes and No ballots from multiple machines. ... The CNE provided The Carter Center with copies of the audit reports of 25 centers. It was clear from the forms that the audit was not carried out in many places."*

- 3.2 Three days after the election, a “cold audit” was carried out, which uncovered the following vices, rendering it less than useful, and demonstrating the **CNE**'s policy of concealment:
- 3.2.1 The **CNE** itself selected the centers to be audited and carried out this audit with its own personnel, using **CNE** hardware and software.
 - 3.2.2 While the state television station was present, the viewers were not shown how the sample was selected, nor were the results of the sampling lottery ever provided. Was it not the objective of the TV transmission to demonstrate the transparency of the drawing?
 - 3.2.3 During this audit, neither the members of the voting table nor the witnesses that signed the ballot box seals were present. Moreover, the original witnesses' signatures were not compared with facsimiles provided by the signatories, in spite of the fact that this was the only mechanism implemented to guarantee that the ballot boxes could not be switched. The only aspect that The Carter Center verified was the “physical integrity” of the ballot box, as they stated in their report.

FOR THE 3D 06:

- 3.3 The Central University of Venezuela (UCV), the Andrés Bello Catholic University (UCAB) and the Simón Bolívar University (USB) submitted a proposal to the **CNE** to audit the electoral registry (**REP**) employing expert technicians and statisticians. The **CNE** denied the **REP** data requested to build the models, determine the samples and validate the data. Instead, It demanded that their computers, operating systems, programs and operators be used. These conditions were found to be inadmissible by the universities.
- 3.4 A few months later, the **CNE** initiated its own **REP** audit using personnel from six recently created universities, all pro government, as well as the IVIC, which is dependent of the Ministry of Science and Technology. Despite the **CNE** being the “audited” party, it imposed the conditions for carrying out the audit, as well as selecting the data samples to be audited.
- 3.5 All these situations, suspicions, and irregularities motivated a group of technicians and auditors from the opposition candidate's campaign staff to carry out audits of different aspects of the **REP**, which were

only partially completed. In spite of working under the **CNE's** extremely controlled conditions, this group demonstrated the existence of significant anomalies, weaknesses and inconsistencies in the way the **REP** was managed and controlled. Even though these findings were documented, and repeatedly reported in writing by the opposition staff, with copies remitted to the **CNE** president and Vicente Díaz (one **CNE** rector considered to be impartial), the correspondence claims remained unanswered. Inexplicably, the opposition leaders failed to pursue the claims, thus wasting the technician's professional work. This information was buried in a deluge of paperwork, filed away, later to be ignored.

- 3.6 In this context, the **CNE's** surprising announcement of auditing by physical count an exaggerated sample of 54% of the voting tables immediately after the automated vote count, provokes keen attention. Said audit, quantitatively excessive, would be qualitatively useless as it was not to be binding. If any discrepancies arose between the physical count and the automated count, the latter results would prevail. A small (1 to 3% of the voting centers) and truly random sample would have been perfectly acceptable had it strictly conformed to the rules of statistics: that the lottery drawing of ballot boxes to be counted, as well as the audit itself would be carried out without the interference of external factors (such as the Reserva, the majority placement of pro government witnesses and especially of the presidents of the voting center's first table, whose responsibility was to carry out the lottery selection of the ballot boxes (voting tables) to be counted.

Months before the election day, the million forced migrations of voters to other voting centers, and the incorporation of millions of new voters into the **REP**, leading to the arbitrary non-random restructuring of more than 1,600 voting centers where the homogeneity of the electoral neighborhoods was not respected, were documented and disclosed. It was also disclosed that simultaneously, new voting tables had been created and that previously existing tables had been altered; both of these processes affecting table constitution were characterized by distorting the natural and unbiased composition of the table's electors by introducing voter preference bias favoring the government, the bias being derived from previous electoral results and the pre-existing Tascón or Maisanta lists. The disclosure of this new significant distortion motivated the Opposition's repeated request to manually tally the votes of each table, which the **CNE** obstinately refused to allow. In fact, the majority of the audits to the 54% of the voting tables' ballot boxes never

materialized, either because they were ignored, sabotaged, or left unfinished. Moreover, despite their full understanding of the situation that had motivated their previous unanswered correspondence from the CNE, the opposition campaign directors hurriedly and blithely accepted the results as soon as they were divulged by the CNE. This surprising behavior on the part of the opposition campaign directors is still unexplained, to the dissatisfaction of a large sector of society.

2.4 CONCLUSIONS

Instead of fulfilling its obligation to uphold the principle of transparency, the CNE has systematically adopted a generalized contrarian behavior, obliging the obvious question: What is the CNE hiding from the rest of the country? And why? Could it be that the well-known legal and scientific studies are accurate and convincingly provide disqualifying evidence regarding the results of the RR 04 and the 3D 06, thus raising serious doubts as to the legitimacy of origin of the presidency and other elected branches of government? Perhaps the CNE is afraid that this accumulated evidence will be confirmed and become proof of malfeasance, such as the manipulation of the REP and the electoral results (electoral crimes). Could it be that the CNE is conscious of the points raised in the report: The Systematic Annihilation of the Right to Vote in Venezuela, that proves the violation of a fundamental human rights and international law, which according to international law do not prescribe? If the CNE's directors are not guilty, they have nothing to fear.

Unquestionably, the electoral authorities have systematically concealed their acts and disallowed access to official documents, which are essential to exercise the right to supervise. By concealing electoral documentation and procedures from the voters who wish to express their will peacefully at the ballot box, running roughshod over principles and human rights, the CNE has become responsible for blocking the electoral route, the only democratic and peaceful way to reconcile political conflicts. To ensure peaceful coexistence, the Venezuelan citizen is, by law, guaranteed access to all requests for the release of information concealed in the last electoral processes. This continued behavior has not only damaged, but unbalanced Venezuelan society. In this regard, **it is imperative to ensure that the conduct exercised by electoral authorities is never repeated in any future electoral processes**; and that the perverted and opaque Venezuelan electoral system is not exported as a maddening "franchise", affecting the stability of the greater region.

In order to rescue the voter's credibility and confidence in the CNE, it is necessary that:

- 4.1 Both the **CNE** as well as the pro government phone company, CANTV should place at the citizen's disposal all the official documents, as well as other essential information, previously concealed such as:
 - 4.1.1 Each voting center's registry of electors who voted.
 - 4.1.2 ONIDEX (National Identification Bureau) files.
 - 4.1.3 Physical evidence of all the transactions (new registers, updates and corrections) supporting the data base of the electoral registry (**REP**).
 - 4.1.4 The definitive electoral registry (**REP**) including voters addresses.
 - 4.2.5 Totalization Voting Center Acts, and scanned audit reports.
 - 4.1.6 Certified transmission logs of the votes and certificates between the voting machines and totalization centers.
- 4.2 The national and international observers that played the role of guarantors of the official results in the RR 04 and 3D 06, should re-evaluate the accumulated evidence presented in various public documents, employing a technical team of suitable expertise.
- 4.3 Appointment of a **CNE** board strictly according to law, worthy of the complete trust of the citizens.
- 4.4 Reestablishment of equilibrium within the different **CNE** operating units, so that the main political tendencies can internally carry out supervisory functions of mutual vigilance.
- 4.5 Naming of the National Identification Controller by the opposition, of proven independence, to supervise with complete autonomy all processes related to identification.
- 4.6 Build a new electoral registry (**REP**) with ample citizen participation.
- 4.7 Submit processing and transmission technologies to a complete, independent technical audit.
- 4.8 Carry out audits of each of the electoral processes in accordance to universal norms, incorporating the latest information technology and indispensable observations regarding automated voting.
- 4.9 Eliminate the gross government advantages based on the illegal generalized incorporation of the Armed Forces Reserve and the Plan República

the election processes, and the abusive use of public resources, not only material but financial.

It is also imperative to regulate the government presence in the media, not only in the innumerable state-owned TV channels and radio stations but also in the few independent media still remaining. This applies particularly to the abusive “cadenas” imposing an obligation on every TV and radio station to simultaneously transmit presidential speeches and propaganda (at unspecified moments and without previous warning, that at times have exceeded eight continuous hours), and with the pretension to extend this to subscription TV (cable and satellite). The written press is inundated at election time with pro government advertisements placed by different agencies of the executive branch and state companies, which represent a tool with which to coerce and influence editorial policies to the point of self-censorship.

Only by out carrying measures such as these can the necessary electoral avenue be reopened.

**In the title of this essay two questions were formulated:
What does the CNE conceal? and Why?**

The previous paragraphs will answer the first question, it is up to the reader to answer the second.

5. REFERENCES

- 5.1 Norms that define the principles that govern the right to vote:
 - 5.1.1 The Constitution (1999): Art. 63
 - 5.1.2 The Organic Law on Suffrage and Political Participation or Ley Orgánica del Sufragio y Participación Política (1998): Art. 1
 - 5.1.3 The Organic Law of the Electoral Power or Ley Orgánica del Poder Electoral (2002): Art. 4

- 5.2 <http://esdata.info> La Sistemática Aniquilación del Derecho a Elegir en Venezuela, where we can find the links with further information on the important assertions made herein.

- 5.3 The TASCAN LIST or MAISANTA LIST:
<http://video.google.com/videoplay?docid=-8187459075291793700>

- 5.4 New study on auditing an automated electoral system: Post Election Audits: Restoring Trust in Elections – Brennan Center for Justice at the New York University School of Law and the Samuelson Law, Technology & Public Policy Clinic at the University of California, Berkeley School of Law (2007).
http://brennancenter.org/dynamic/subpages/download_file_50089.pdf