

THE SYSTEMATIC ANNIHILATION
OF THE RIGHT TO VOTE
IN VENEZUELA

Venezolanos por la Transparencia Electoral

July 16, 2007

Contents

1	Principles that govern the right to vote	3
2	The loss of balance in the electoral power	4
3	The 2004 presidential recall referendum (RR 04)	5
4	The evaluation of the RR 04	8
5	The electoral events between RR 04 and 3D 06	12
6	Demographic distortion	12
7	The effect of the ‘new demography’ on surveys	14
8	The limitations of international observation	14
9	The 3D 06 presidential election	15
10	Final considerations	17
11	Conclusions and demands	18
11.1	Pertaining to the BALLOTING PROCEDURE	18
11.2	Pertaining to THE AUDITS	18
11.3	Pertaining to the OFFICIAL RESULTS	19
11.4	Pertaining to the TRANSMISSION of the VOTING RESULTS .	19

Summary

Millions of Venezuelans are convinced that their votes are being manipulated, that the official results of their elections do not reflect the will of the electorate and that they have voted but not elected. Ever since the Recall Referendum on August 15th 2004 (RR 04), an unceasing debate began, continuing with the presidential election of December 3rd 2006 (3D 06).

The National Electoral Council's (CNE) bias, the incorporation of challenged voting and identification technologies, the bloating of the electoral registry (REP), the millions of unrequested voter migrations, the announcement of incomplete and uncertified results and the refusal to give the opposition essential information about the electoral process are part of the evidence accumulated that questions the behavior of this electoral institution.

This document chronicles how the CNE's bias came about and the violation of the fundamental principles that define the right to vote (impartiality, transparency and confidence in the secrecy of the ballot), along with summaries of papers presented by distinguished professionals and scientists regarding the official electoral results and the REP since RR 04.

Finally we conclude that the official electoral results display critical irregularities and do not reflect the will of the people. If the total balance within the CNE is not restored to guarantee the right to integral supervision of elections, a new REP is not created and the essential information made available to all parties, the government will have closed off elections as the ideal medium through which to alternate our representatives and resolve our political conflicts.

Preliminary note

All analyses and conclusions presented here are based upon official data from the CNE and other government institutions, published in written reports or available on their websites. We must emphasize, however, that it has not been possible to gain access to **essential official documents** [1] despite them being public and are or should be available through the CNE. Due to this shortcoming, it was necessary to use advanced statistical and mathematical methods with analyses of interrelated databases to attain the conclusions reported at the end of this document.

1 Principles that govern the right to vote

The right to vote is a **human right** [2] and is governed by principles contained in various international treaties and pacts, which can be outlined as follows:

- a) **The principle of impartiality** imposes upon the referee a conduct of *bonus pater familiae*, because he must not become partial to any contender, as well as act in strict accordance with legal and sub-legal constitutional norms that oversee electoral matters;

- b) **The principle of transparency** affirms that all contenders must have access to all relevant information related to the electoral processes in order to exercise their right to monitor the entire electoral process; and
- c) **The principle of confidence** in suffrage secrecy, according to which, besides guaranteeing the inability to link voters to votes, citizens can cast their ballots with the intimate conviction that their votes will not be revealed.

Venezuela has exercised long experience with the practice and respect of these principles masterfully established in the Constitution of 1961, as follows:

Constitution of 1961

ARTICLE 113. The electoral legislation will **guarantee** the freedom and **secrecy of the ballot** as well as the proportional representation of minorities. **The electoral organizations shall be integrated in such a manner that no political party or group should prevail over any other** and its members shall enjoy all privileges established by law to ensure its independence during the execution of its functions. The attending political parties will have the right to monitor the electoral process. (Our bold type).

The different electoral laws that developed these principles contemplated the integration of plurality directives within the extinct Supreme Electoral Council (CSE), made up of representatives of the five most important political parties (determined according to votes obtained in the most recent parliamentary elections) and a number of independent members, which grew from four to six over time. The minority parties were also represented on the board with a voice but no vote. This diverse composition was implemented at all operative levels in such a way that the **right to monitor**, which held constitutional ranking, was totally guaranteed and satisfied.

2 The loss of balance in the electoral power

The new 1999 Constitution **banned political parties** from the CNE, for which it established a new procedure to elect its members [3]. This disposition, apparently convenient for the democratic evolution of the country, marked the beginning of the CNE's **bias**.

It all began on August 23rd 2003 when the Supreme Justice Tribunal (TSJ), presided by judge Iván Rincón Urdaneta, improperly took upon itself to choose the directors of the CNE invoking a 'legislative omission' of the National Assembly, whose task it was [4], appointing a group of 'independents' that public opinion and politicians did not hesitate to qualify as a '3 to 2' in favor of the government. It is no surprise today that the two former CNE presidents, one occupies the Vice Presidency of the Nation (designated by the president himself) and the other a Magistrature in the TSJ (named by the government majority in the National Assembly) or that the previous president of the TSJ is the Venezuelan Ambassador at the Vatican.

Finally, for the 3D 06 elections, the 100% government controlled National Assembly (the opposition refused to participate in the Assembly elections of 4D 05 for reasons we will mention later) appointed a new board for the CNE with a '4 to 1' distribution in favor of the government, specifically violating article 294 of the Constitution. The report on the presidential election of 3D 06 presented by the European Union's Electoral Observation Mission (MOE-UE) states: *Only one of those 5 directors is not considered partial to the government.* [5]

Thus, since 2003 the CNEs behavior has been characterized by its pro government bias, denaturing its justification: to act as an electoral arbiter and not as an interested party. This reality is so evident that opposition leaders inexcusably speak of 'negotiating' with the CNE board when their function is to arbitrate, not 'negotiate'.

It can be correctly stated that the CNE is neither impartial nor transparent and does not guarantee confidence in ballot secrecy, and that contrary to the spirit of the constituent assembly that drafted the 1999 constitution, the selection of its directors was politicized and established with a governmental majority inflicting irreparable damage to the institution of voting.

In effect, since 2003 the CNE directors undertook to progressively dismantle the internal equilibrium that would guarantee the contenders' **right to monitor** by firing or forcibly retiring specialized and multiparty personnel trained in the CNE over an extended period of time. Thus advantages in favor of the government grew until they became **complete and definitive**.

At this juncture it becomes necessary to comment on the constant and unjust criticism received by the Venezuelan electoral system during the tenure of the old CSE when sporadic frauds using the '*acta mata voto*' procedure (roughly translatable as 'voting certificate beats votes'). This type of fraud **neither concerns nor incriminates the CSE** and is the due to negligence and lack of monitoring of the political actors at some electoral tables combined with illicit electoral actions of those present at the tables at the time of the vote. Briefly, they comprised **local manipulations** at tables where one or more parties did not exercise their **right to monitor**, something the CSE hardly could be blamed for. Today this not only persists but has been perfected and aided by the use of 'voting machines' that allow ballots to be manipulated, regardless of whether there are members or opposition witnesses at the voting tables. This practice is extremely grievous since it **does concern and incriminate the CNE**.

3 The 2004 presidential recall referendum (RR 04)

The directors appointed by the TSJ were in charge of processing the petition for the recall of the president. Their partiality in favor of the government was evident from the start. This was exhaustively documented in the video '**The**

List: A people under suspicion' [6] (in reference to the 'Tascón List'), as well as in the book by Ana Julia Jatar: *The Apartheid of the 21st Century* [7] (Computer Science at the Service of Political Discrimination in Venezuela').

The most salient irregularities the CNE was responsible for during the RR 04 were:

- 1) Dismissal of two separate attempts of the population to request consultative and recall referenda (the **Firmazo**, or big signing event) backed by millions of petitioners' signatures in each case.
- 2) Creation of norms to regulate recall referenda [8] full of feckless formalisms and binding the citizens participation to restrictive dates, schedules and locations. This process was popularly known as the **Reafirmazo** (re-affirmation of signatures) and was the **third attempt** to convene a recall referendum.
- 3) By presidential request, the CNE gave the list of petitioners to Luis Tascón, a National Assembly deputy. Thus the infamous 'Tascón List' was born, uploaded to a website and available to any citizen with Internet access, hailing the start of a process of political persecution and intimidation, stimulated by the president himself (who warned publicly that who signed against him would have to leave their names, fingerprints and id card numbers, while the slogan *Your vote is secret, your signature isn't* was frequently displayed). This perverse tool is still in use today and apart from violating human and political rights, **practically eliminates the possibility of ever requesting another recall referendum for fear of further reprisals.**
- 4) Despite all the setbacks, the conditions for the referendum request were met within the given time lapse. The CNE then proceeded to compose additional requirements. Amongst them was the **Reparo**, or reconfirmation of petitioner's signatures, an act which presumed bad faith on the part of the signatories and obliged more than a million people to reconfirm their request, while government officials (headed by deputy Luis Tascón) exerted constant ruthless pressure to force people to withdraw their signatures. This new obstacle was also overcome, heralding the **fourth attempt** by the citizens to activate the referendum.
- 5) The CNE abstained from naming a *Fiscal de Cedulación* (national identity card department supervising officer) that would guarantee the opposition its right to monitor the identity card emission process as well as the REP, infringing a healthy observance practiced since the creation of the identification department. Instead a pro-government officer was appointed, ending this respected tradition since the inception of this body.
- 6) After nullifying opposition control, the CNE embarked upon a massive identification, naturalization and electoral inscription program known as Misión Identidad, bloating the REP with respect to its historical and vegetative population growth rates as can be seen:

Electoral roll (REP) closing date	Registered voters	Annual increase
December 1998	10,792,668	
December 2000	11,730,018	488,675
September 2003	11,919,391	68,863
July 2004	14,245,615	2,791,468

Source: National Electoral Council (CNE).

On section 6 on page 12, we will see how between the RR 04 and the 3D 06, the REP was once again increased by 1,838,371 voters, an unprecedented event in Venezuelan electoral history.

- 7) Automated the voting and scrutiny using computers violating the public scrutiny dispositions provided by the Organic Law on Suffrage and Political Participation (LOSPP) [9].
- 8) Imposed, with government approval, a biometric identification procedure (fingerprint readers) against the will of the petitioners who presumed, with good reason [10], the breaching of ballot secrecy.

The constant impediments delayed the onset of the recall referendum to August 15th 2004, despite being requested on December 3rd 2003 and gave the government time to prepare for the electoral challenge.

- 9) On the actual voting day, the CNE put into effect generalized postponements contrary to the law, [11] giving extra ‘voting’ time for those supposedly delayed, when our electoral tradition is to vote early in the morning or at noon, except for rare cases in which, due to the sluggish process, some voters were still waiting at 4 pm.
- 10) The ‘hot audit’ that should have been done as soon as the voting was over was controlled by the CNE, limiting the samples to unrepresentative municipalities, choosing samples to be audited and creating last-minute *ad hoc* rules that in most cases did not allow monitoring to take place at all. The Carter Center [12], despite euphemistically characterizing their reports, detailed these facts with great clarity:

‘The Carter Center observers were able to be present at 6 auditing processes. In **only one of those six** were the voting vouchers actually counted.’ (...) In the rest of the observed locations, the auditors assigned by the CNE did not allow the opening of the boxes containing the vouchers alleging their instructions did not include counting the YES and NO votes of multiple machines.’ (...) The auditors, voting table members and military personnel, were not properly informed that the monitoring was going to take place and in addition did not clearly understand the procedure. The instructions did not establish explicitly that there would be a separate totalizing of YES and NO votes so in some centers the auditors counted only the total number of voters. The opposition and government observers did not have enough time

to prepare themselves (...) In the end, monitoring was very deficient.’ (Our bold type).

4 The evaluation of the RR 04

Despite the inability to gain access to the **essential official documents** mentioned in the preliminary note (see on page 3), various analyses were performed upon the official figures of the RR 04 published by the CNE. The methodologies used and the results of these investigations were reported in documents subjected to the scrutiny of reputed international institutions [13] recognized by the world scientific community. At this time, one of them has been published and others are in the final stages previous to publication [14]. All coincide that during the RR 04 there were massive irregularities and grave indications of result altering. A summary of the conclusions of the different studies follows:

- 1) **A Statistical Approach to Access Referendum Results: The Venezuelan Referendum 2004.** María Mercedes Febres-Cordero and Bernardo Márquez [15]:

The study subjects the official results to a four-phase analysis to determine the existence of election certificates with irregular results. For this purpose, the voting centers were placed in quasi-homogeneous clusters with similar electoral behavior in order to determine if within them there were certificates with irregular results, that is, with significant differences with respect to the statistically expected results. After a systematic analysis of the results the study concludes that:

‘The percentage of irregular voting certificates is between **22.2 and 26.5%** of the total number of votes; **18%** of voting centers show an irregular pattern in their voting certificates, there are **2,550,000** votes which present irregularities; the estimated result, utilizing unbiased votes as representative of the population of **YES** votes against president Chávez is **56.4%** as opposed to the official result of **41%**.’

- 2) **The Venezuelan Presidential Recall: Discrepancies Between Exit Polls and Official Results.** Raquel Prado y Bruno Sansó [16]:

This study observes that the discrepancies between the estimated YES votes in the exit polls and the results of the CNE are much too significant in at least 60% of the of the voting centers in all Venezuelan states, which makes it impossible to attribute to random causes. The conclusion of this article is that this discrepancy can only be explained in one of two ways: either the pollsters were predisposed towards a YES result or the CNE results were partial to a NO vote. The paper by Rodrigo Medina, mentioned below in item 5 on page 10, points towards the second option.

3) **The Newcomb-Benford Law and it's application to the Recall Referendum in Venezuela**, by Luis Raúl Pericchi y David Torres [17]:

The application of the Newcomb-Benford Law for the Second Digit for the purpose of detecting electoral fraud, originated in the present article in which Pericchi and Torres found that the official results for the automated centers, as opposed to those obtained for the manual centers, violate this law with a virtual probability of 1. Despite the fact that the two technicians the Carter Center assigned to evaluate this methodology (J. Taylor and H. Brady) dismissed the methodology, it has been guaranteed by, among others, a) Walter R. Mebane, professor at Cornell University [19], who directly refuted the arguments presented by the Carter Center technicians; b) by R. Mansilla, professor of the Autonomous University of Mexico (Universidad Autónoma de México) [20]; and c) by J. Torres, S. Fernández, A. Gamero and A. Sola, professors of the University of Córdoba, Spain, as can be deduced from their document **How do numbers begin?** published in the *European Journal of Physics* [21]. Today the use of this tool is becoming systematic. This law has been used to detect anomalies in the electoral processes of Bangladesh, USA and Mexico, where the Venezuelan experience is mentioned as follows:

‘The Benford Law and the detection of electoral fraud: One of the few tools that provide information about numerical alterations during the vote counting part of the electoral process, is known as the Benford Law. It uses a statistical distribution which describes with good precision, the probability of appearance of significant digits in the numbers of many natural processes. The Benford Law is a tool that is often used in financial audits in order to detect fraud in reports by taxpayers, gain reports in account balances as well as in numerical alterations in electoral vote counting. This tool has been used in the past in the analysis of presidential election in the United States in 2004 and **in the Presidential Referendum in Venezuela in 2004**’. [22]

The conclusion drawn from this report is the following:

‘We reviewed the Second Digit Law with respect to the number of voters for the manual ballot books as well as for the computerized ones. We found the law applied for the manual books but not for the computerized ones’, ‘the NO votes in the automated tables violate the Newcomb-Benford Law with a probability of virtually 1’, . . . ‘This suggests it is relevant to investigate intervention mechanisms that could have altered the automated votes, in such a way that the violate the Newcomb-Benford Law so clearly’.

4) **Analysis of the Presidential Recall Referendum of 2004 in Venezuela** Gustavo Delfino and Guillermo Salas [23]

Delfino-Salas analysed the official results and observed that between the official number of YES votes and the number of signatories of the referendum petitions registered in each of the computerized centers, in contrast to the

manual ones, there was an elevated linear correlation (that is, that the official number of YES votes was an almost perfect reflection of the number of signatories).

This behavior is anomalous, markedly different to the one observed in the manual centers and constitutes a strong indication of manipulation of the voting machines. The YES votes must not correlate to the signatures in the way they did because the motivation and possibility for voting YES was very different to that of signing. In fact:

- a) There were 2,676 signature recollection centers as opposed to 8,394 voting centers. Therefore people living a great distance from a signature recollection center may have abstained from signing even though they wanted to do so;
- b) There were many people that voted in the RR 04 despite not having signed the petition for fear of the presidential reprisal (see item 5 on page 6 above). The vote, because it is (or supposed to be) secret, did not pose a threat in that election.
- c) The CNE did not distribute the signature forms uniformly throughout the signature recollection centers. In those centers where the forms ran out the signing process was simply halted;
- d) Many forms containing signatures were misplaced.

The detailed Delfino-Salas study concluded:

There are well grounded reasons to doubt the veracity of the results of the computerized centers and the OAS as well as the Carter Center should revise the interpretation they give to the fact that there is an elevated linear correlation between the number of official YES votes and the number of signatories in these centers.

To increase suspicion even more, Delfino and Salas point out that the ‘hot audit’ agreed upon before RR 04 was selectively suspended in centers with few voters, precisely where there were more indications of manipulation. As a consequence of this, the auditing, instead of dissipating doubts, increased them by not permitting ‘live’ proof of the trustworthiness of the electronic voting system.

Finally, the study demonstrates that the mathematical argument (elevated linear correlation) with which the OAS and the Carter Center defended the effectiveness of the *auditoría en frío*, (performed three days after the RR 04) is precisely what makes the results so questionable.

5) **Proof of the Delfino and Salas Hypothesis** by Rodrigo Medina [24]:

Medina evaluated the Delfino-Salas proposal which maintains that in the computerized centers the official results were forced into maintaining a linear

relation to the signatures, using various methodologies, such as ‘the asymmetry test’ and the analysis of ‘systematic errors of the exit polls’. The final conclusions are:

... We demonstrated that the cause that determined in which of the 195 centers originally selected the ‘hot audit’ was performed is related to the number of signatures collected at that center, which indicates fraudulent behavior of the CNE. (...)
Our results complement those of Delfino-Salas and are also compatible with those of the group from the USB that studied the communications between the voting machines and the CNE. Also this article completes the work by Prado-Sansó in the sense that it proved that the ‘systematic errors’ of the exit polls can only be explained if the official results of the computerized centers were altered in a way related to the signatures.

These five studies use the tools of mathematics and statistics and are absolutely consistent and complementary.

From them it can be concluded that the alteration of results was only possible insofar as the voting machines could be intervened on the day of the elections during and after the voting process.

- 6) **Electronic voting in Venezuela** (group of researchers coordinated by professor Freddy Malpica, ex-president of the Simón Bolívar University [25]):

Based upon the study of the data transmission logs for the RR 04 between voting machines and totalizing servers, the use of two different data transmission programs, whose geographic locations were previously planned, was corroborated. A larger flow of information was detected from the totalizing servers to the voting machines as was the transmission of the votes individually in 70% of the machines thus violating the electoral norm which only contemplates the transmission of the certificates with the total results for each machine at the end of the session.

This research revealed the manner of electoral manipulation (the creation of virtual votes and the limitation of YES votes at automated tables, abnormally correlating them to the signatures of the petitioners that requested the recall referendum) which accounts for all the anomalies observed in the official results at the automated centers. They also reveal the way the intervention took place: through the controlled of results to and from the computers used as voting machines.

5 The electoral events between RR 04 and 3D 06

October 30th, 2004

Election of state governors and mayors. The doubts created by the CNE and the erratic behavior of the leaders of the organizations that opposed the government frustrated the citizens. Abstention grew amongst the opposition which was only able to elect two governors (in Zulia and Nueva Esparta states) and a few mayors. Despite this, it is interesting to note that, despite adverse electoral results and a smaller participation the number of opposition votes grew in those centers in which there were few referendum requesting signatures, **which allowed the corroboration of the Delfino-Salas hypothesis on nonlinear correlation between signatures and votes.**

August 7th, 2005

Election of councilmen and deputies to the Legislative Assembly. Once again abstention increased and the opposition lost more political spaces.

December 4th, 2005

Election of deputies to the National Assembly. Finally, the lack of trust and rejection towards the electoral arbiter moved beyond the average citizen into the realm of the political leadership which, convinced the secrecy of the vote could be violated with the technology of the CNE, decided **unanimously** not to participate in that decisive electoral process. The result was that the National Assembly lost all opposition representation. Abstention exceeded 75%.

It is of the utmost importance to highlight that to this date the CNE has only revealed preliminary results for the 7A 05 and 4D 05 elections, which increased doubts and mistrust.

Also, regardless of whether the lack of confidence in the electoral system was being promoted by the CNE itself in order to stimulate abstention within the opposition, the fact of the matter is that it aided unquestionably in guaranteeing the government absolute control of all branches of government: The National Assembly, the TSJ and the very new Electoral and Moral republican powers.

6 Demographic distortion

The presentation of the aforementioned internationally recognized studies did not find the same acceptance among the opposition leadership and were disregarded, underestimated or eluded by international observers unqualified to initiate an in-depth investigation into the matter (see section 8 on page 14). The government, on the other hand, seemed to take them very seriously. This is why, for the 3D 06 presidential election, the CNE changed the data transmission

procedures and audit protocols, concentrating its attention in massive, selective and unauthorized voter migrations and in the addition of 1,838,371 new voters without any kind of independent control to certify legal compliance. This number padded the abrupt growth of 2003 and the only way left to prove whether these voters were real, was through an essential piece of information which was repeatedly requested by the opposition and was in concordance with article 95 of the LOSPP: **the address of each voter**. Said article states:

ARTICLE 95 In the electoral registry the following information must appear:

- 1) The name, address, identity document (*cédula*) number, gender, date of birth, nationality, profession and physical impediments of the citizens who have a right to vote, in accordance to the Constitution or the Republic and this law;
- 2) The indication whether the citizen can read and write;
- 3) **The address of the voter with all details of his exact location, including voting district, municipality and federal entity;**
- 4) The voting center and table at which the voter will cast his ballot;
- 5) The qualities necessary for a voter to be eligible to be selected as a member of the electoral organisms, in accordance to Title VII of this law, as well as the detailed identification of the place where he realizes the activities that make him eligible; and
- 6) The conditions for suspension and their motives if this were the case.

Single paragraph: The data indicated in this article must be included in the copy of the voters lists which are given to the different political parties or voter groups when requested. (Our bold type).

What is symptomatic about this distortion is that voter growth was larger in the areas where the government had the largest number of partisans, whereas in areas where the opposition was prevalent natural growth was maintained. This is how national demography was altered and the weights of these neighborhoods.

After the 2004 referendum the CNE ‘migrated’ more than two million voters without authorization, from ‘mother centers’ to nearby ‘daughter centers’ (called satellites) in the same parish using the following pattern: a) ‘mother centers’ mostly pro-government; and b) in a selective fashion by lots that contain only certain ID card termination numbers.

What is unjustifiable about this practice is that the only **legal** reasons to ‘relocate’ or ‘move’ a voter are: a) voter initiative through his own registration at another voting center (relocation); and b) by CNE initiative if and only if the center is for some reason eliminated for some justifiable reason (move). The consequence of this **illegal** and **arbitrary** procedure was that both the centers from which the voter was removed as well as the center to which he

was assigned ended up with a distorted distribution and two types of tables: a) pro-government tables (inter-parish moves); and b) the initially ‘empty’ tables to which ‘non verifiable’ (new and migrated) voters were added. **All these peoples’ addresses are unknown and in the case of those newly registered, there is no way to determine whether or not they are eligible for addition to the REP as voters.**

7 The effect of the ‘new demography’ on surveys

The effect of the distortion of the REP on surveys is demonstrated by the following example:

Let’s say that A and B neighborhoods have 100,000 voters each. Neighborhood A is pro-government (60–40) and neighborhood B is pro opposition (40–60). Since both have the same weight (10,000 voters) surveys should be weighted as equal. Now, if the population of neighborhood A is doubled the weighting will not be equal: the surveyed in A will weigh twice as much as those in B.

In the analyses of 3D 06 concluded to date an anomalous increase has been detected in pro-government neighborhoods chosen at random, in amounts that some times double those registered in 2003.

<p>The demographic distortion at a national level (alteration of weights of electoral neighborhoods) added to the ‘fear factor’ that affects those interviewed (especially if the interview is done in their homes), alter the results of the opinion studies which end up strongly biased towards pro-government sectors. This has caused prestigious firms to say that these polls are not useful for measuring voting intent of the voters until said distortions can be corrected.</p>

8 The limitations of international observation

An electoral system with technologies for identification (fingerprint readers), voting (computers used as voting machines), scrutiny and totalizing require a *sui generis* international observation, composed of two watch groups: a classical one, dedicated to supervise the compliance with the electoral rules, propaganda and participant behavior among other tasks; and another, highly specialized technical one, qualified to evaluate in-depth the newest technological elements, before, during and after the voting process.

Febres-Cordero, a researcher and co-author of the paper about the RR 04 mentioned above (item 1 on page 8), questions the capacity of international observation because they do not take into account these new realities. This view was expressed in an interview [26] on March 18th, 2007:

Traditional observers alone are no longer useful. They only evaluate whether there is freedom of the press, if the centers are functioning, amongst other important things, but do not have the expertise for the other type of auditing that has now become necessary.

Electronic electoral processes are a new global phenomenon. According to Febres-Cordero, only a dozen countries have automated elections, which has led to a gap insofar as the necessary knowledge required to guarantee a fair and clean process.

Democratic processes are now legitimized by info-elections or electoral processes associated to computer technology, which can be highly vulnerable. The problem is that there are no citizens, within or outside our borders who can truly assume the new responsibility, and even though the political establishment has tried to have the elections monitored, it is not possible to have clean elections with a system based on electronic processes that are not subject to any controls.

Febres-Cordero insists on the need to bring the observation process up to date by adding a **technical mission** to the political observation.

This accurate affirmation explains the ambiguity of the international observer's reports when they refer to the technological area as well as the insistent justification of the electoral process by invoking the 'acceptance' of the results of an opposition circumscribed to the 'opposing camp headquarters'.

9 The 3D 06 presidential election

For the 3D 06 presidential election the peoples disposition to vote was still diminished until a 'national unity candidate' emerged, who promised to 'win and collect' [27]. This awoke in the democratic population the illusion that the CNE would be neutralized and took, once again, to the electoral path to get out of the political crisis. The mistrust in the CNE continued exacerbated but the hope of 'collecting' attenuated its effect.

Before the elections new studies began to warn of irregularities with the voting machines and the distortion in the REP.

Ana Mercedes Díaz, a lawyer and former Director General of political parties of the CNE denounced the acquisition of 5,540 voting machines which, due to time limitations, would not be audited by the opposition. The details of this accusation have been published in a book called *Win and Collect* [28]. In this way, the auditing process, in itself superficial, did not include a great number of machines which remained removed from opposition control.

On the other hand, a computer specialist from Uruguay called Adolfo Fabregat, who was undertaking a study for non-electoral purposes (insurance companies), detected many of the irregularities in the REP [30]. In his conclusion Fabregat states:

This exercise, done by a person working with a laptop computer in his kitchen, only skims the surface of what could be found if true professionals looked into all the REP, including addresses, and this is the reason why they (the CNE) will never release them.

In fact, the CNE refused to hand over the address data (although it happily did so to deputy Luis Tascón when the president asked them to).

Inspired by Fabregat's work, the ex-vice president of the Central University of Venezuela, professor Genaro Mosquera, developed research that, prior to the 3D 06 elections, sounded all alarms about unacceptable manipulations of the electoral registry [31].

Weeks before the 3D 06 and faced with such grave evidence, the possibility of 'collecting' was being threatened. Those who had worked in the studies for the RR 04 focused their attention on the risks that stood in the way of the promise of 'collecting' promoted by the opposition candidate. The CNE not only persisted in its lack of transparency but increased its partial behavior with the following decisions:

- 1) It impeded the presence of the opposition in the different work areas of the CNE, violating the principles of transparency and impartiality.
- 2) It continued supporting the massive government civil identification programs and later inclusion in the REP, without opposition control, despite the enormous increases suffered by the REP for the RR 04 and yet again between this date and the 3D 06, as previously mentioned (see item 6 on page 6).
- 3) Since the RR 04 until the 3D 06 2,723 new voting centers were created under the guise of increasing citizen participation. This superstructure of new centers allowed unauthorized migrations of millions of voters [32], in a biased way, altering both national demographic and statistical qualitative and quantitative homogeneity expected at the voting tables and electoral neighborhoods.
- 4) It refused to submit the REP to an independent audit when it denied a group formed by the Central University, Simón Bolívar University and Andrés Bello Catholic University access to the data necessary to perform it. In its place, it promoted an audit where it chose the auditors from government dependent public universities and established the audit procedure, going against the universally accepted principles of external audit where the auditor, not the audited party, selects the samples and establishes the procedures.
- 5) It ignored the insistence on eliminating the fingerprint readers, despite that it was well known that they served to psychologically coerce an important number of opposition voters, besides not being able to achieve their oft stated purpose of making 'one voter vote once' since they were only installed in 8 out of 24 states.
- 6) It repeatedly refused to do a public scrutiny. Instead it performed a 'public audit' on 54% of the voting tables using an *ad hoc* method. This audit

was only assigned a non-binding ‘statistical’ value, so that if there was any discrepancy between the audit and that printed by the voting machine, the machine’s data would prevail. Besides, the incomprehensibly hasty acceptance of defeat of the opposition (even before starting or finishing the hot audit monitoring) scared away the witnesses that could have had access to the audit process.

- 7) For the 3D 06, the use of indelible ink was the only mechanism used by the CNE to avoid ‘multiple voters’, since the biometric method could not guarantee ‘one voter, one vote’. However, it was proved that the ink would vanish completely when put in contact with household bleach. The 3D 06 report of the MOE-UE expresses it as follows: *The MOE-UE also observed that the indelible ink did not function correctly since it could be easily eliminated.* [33]
- 8) The Plan República [34] was redesigned and, for the first time, used members of the Reserves, made up of civilians with scant military training, followers of the ‘revolutionary process’ for the custody of the electoral material. In this manner, the government guaranteed its presence in all centers, using the resources and organizational skills of the Armed Forces, intimidating opposition witnesses, many of whom abstained from performing their jobs, leaving the road open to the execution of a modern form of *acta mata voto*.

The analysis of the 3D 04 elections still continues, but with the discoveries made so far there is the conviction that the results don’t reflect the true will of the people and that, as was the case in the RR 04, the opposition could have emerged victorious on 3D 06, if the conditions of transparency, impartiality and confidence in ballot secrecy had been given.

10 Final considerations

Before the conclusions it is necessary to emphasize some extremely important facts:

- 1) The CNE dismissed the petitions for proper conditions in order to participate in the RR 04 and for the 3D 06 elections.
- 2) The ambiguity and condescension of the MOE-UE report were based on the belief that ‘the opposition’ accepted the electoral conditions and results. This is inexcusable for two reasons: a) **the opposition is not limited to its political representatives**. There were numerous political organizations whose opinions were ignored by the MOE-UE, who spoke to the international observers and warned them of the irregularities; and b) in the improbable case that all the ‘opposition’ would have accepted both the conditions and electoral results, this does not excuse the international observation of the responsibility to make pertinent criticism to a manifestly obscure and partial

electoral system that does not guarantee confidence in the secrecy of the ballot.

The fact that on 3D 06 the leaders of the opposition accepted to go to elections under the banner of ‘collecting’ does not relieve the CNE of its constitutional responsibility to be impartial, transparent and to guarantee ballot secrecy. It does not relieve the opposition leadership of its political responsibility to defend the will of the electorate, nor does it relieve the national and international observers of their moral responsibility to denounce the irregularities incurred by the CNE.

- 3) In elections where the principles of transparency (independent audit of the REP and access to *all pertinent official documents* in order to exercise the **right to monitor**) are respected, that has an effective system to impede multiple voting, where the security of the opposition witnesses is guaranteed on each and every table and where votes are counted publicly (as established by law), it would be difficult to alter millions of votes. **But this principle of transparency was absent during RR 04 and 3D 06.**

11 Conclusions and demands

- 1) The Venezuelan electoral system violates the principles of transparency, impartiality and confidence in ballot secrecy. This is the largest obstacle to rescue citizen participation in electoral events.
- 2) In both the RR 04 and 3D 06 the pro-government victories were tied to anomalies made evident in the official results and were directly tied to the areas in which the CNE acted with less transparency. **In the RR 04 it was the electronic balloting and in the 3D 06 it was the REP.**
- 3) The **anomalies** in the RR 04 were detected and quantified thanks to various studies that are commented in section 4 on page 8. Among them we note:

11.1 Pertaining to the BALLOTING PROCEDURE

- All voting machines, moments before counting the votes and printing the certificates with the results were connected to a server in charge of totalizing votes (through the CANTV data network) and only after they were disconnected, the results were printed on paper.

11.2 Pertaining to THE AUDITS

- The ‘hot audits’ audits planned for the computerized centers were selectively suspended at the last moment. This is recognized by Carter Center in its report (see page 10).

- In the audit that took place three days after the Referendum, the only mechanism that would have guaranteed the fidelity of results was not used, which was the presence of those who signed the ballot box seals, together with those who sealed the envelopes containing the ballot certificates at the closing of the election to corroborate that the boxes and their contents had not been changed, was not used.

11.3 Pertaining to the OFFICIAL RESULTS

- 18% of electoral centers display an irregular voting pattern in their election certificates. The number of votes corresponding to these irregularities is 2,550,000 (see item 1 on page 8).
- The NO votes and the total number of voters contained in the voting machine certificates violate the Newcomb-Benford Law (Pericchi-Torres article, see item 3 on page 9).
- The relationship between the official YES vote count and the number of signers in the computerized voting centers, was very different than that observed in the manual centers (see Delfino-Salas, item 4 on page 9 and Medina, item 5 on page 10).
- The ‘hot audits’ were suspended in the computerized centers where indications of result manipulation were higher (see Delfino-Salas, item 4 on page 9 and Medina, item 5 on page 10).
- The algorithm that reproduces the relationships between the YES votes and the signatures, that occurred in the automated centers does not correspond to the fact that the conditions present at the time of signing were very different to those for voting YES (see Delfino-Salas, item 4 on page 9 and Medina, item 5 on page 10).

The ‘systematic errors’ of the exit polls are highly correlated to the number of voters that signed the petitions for the recall referendum in each of the centers polled (article by Prado-Sansó, see item 2 on page 8 and Medina, item 5 on page 10).

11.4 Pertaining to the TRANSMISSION of the VOTING RESULTS

- The amount of data exchanged between the voting machines and the totalizing servers was far superior to that required for the transmission of the electoral certificates. In 70% of the voting machines the number of bytes received correlates to the number of voters (see work by Freddy Malpica, item 6 on page 11).

It is to be expected that in a process without irregularities, none of these anomalies should be present. This is why it is so difficult to justify that in

five of the six audits in which the Carter Center was present, the auditors designated by the CNE refused to open the ballot boxes and suspended the counting of ballots.

In other words, the probability that all of these anomalies would occur in a voting process without irregularities is almost non-existent.

Therefore, the fact that these anomalies became manifest can only be explained by the presence of massive fraud in the RR 04 by manipulating the voting machines so that they did two things: a) incorporate virtual votes and b) force a linear correlation between the number of YES votes and the number of signers.

- 4) In the RR 04 and 3D 06 there are other indications of irregularities and manipulation, amongst them: a) anomalous increment in the REP; b) unauthorized, biased and massive unauthorized voter migrations; and c) biased behavior of the 'Plan República' (military security plan for the elections by the government), particularly by the Reserves.

<p>This accumulation of facts and evidence disqualify the official results of the RR 04 and the 3D 06 elections and question the legitimacy of the Presidency of the Republic and other public powers. Besides, the 'accumulation of evidence' is sufficient to presume the perpetration of a punishable deed, as is the case of the alteration of the REP and the electoral results (electoral crimes). A way to find out what really happened (irrespective of measures and sanctions to be imposed for the infringements perpetrated) is to gain access to the information that has been concealed. The only way to stay this from happening again is to fully reestablish the right to supervision.</p>
--

It is imperative, therefore, **in view of the past:**

- 1) That the CNE, the CANTV and all public and private entities associated with these two events, place all the information pertaining to RR 04 and 3D 06 **that has been concealed** in the hands of the citizens; and
- 2) That the national and international organizations that have backed the official results of the RR 04 and 3D 06 elections with their reports, evaluate with an appropriate technical team the '**accumulation of evidence**' that places reasonable doubts upon the official results.

And **in view of the future:**

- 1) Name a board of for the CNE, abiding strictly by the rule of law that can earn the trust of **every political sector in the country**;
- 2) Reestablish the balance in every operational unit within the CNE with a view to allowing all contenders to exercise the **right to supervision**.

- 3) Adapt the rules that govern the electoral processes to the spirit, purpose and reason of the Law and the Constitution;
- 4) Establish a new REP, with ample citizen participation, allowing an exhaustive control since its creation;
- 5) Name a **national identity card department supervising officer**, from a candidate postulated by the opposition in order to supervise the civil identification process with total autonomy to name his personnel without fear of sanctions.
- 6) Make the **essential official documents** available to all contenders:
 - i) Voting books before and after voting
 - ii) Access to the ONIDEX (National Identity and Immigration Office) files in order to make selective revisions of the identity documents that make up REP;
 - iii) The physical backups of the updates and corrections of the REP;
 - iv) The definitive REP with voter's addresses;
 - v) Electoral certificates, totalizations and digital audits.
 - vi) Certified voting machine data transmission logs.
- 7) Subject the data processing technologies used in the voting, counting, data transmission and totalizing processes to an independent and integral audit encompassing all seven OSI layers and not restricted to the application layer, as was the case in the RR 04 and 3D 06 elections. [28].

<p>If these measures are not implemented, the electoral route will remain closed off as the only ideal and democratic method to alternate our rulers and solve political conflicts.</p>
--

References

[1] Amongst others, the essential official documents we refer to in this report are: the REP including voter's addresses; the documents that back up all REP inscriptions, migrations and corrections; the voting books before and after each election; access to the physical files of the ONIDEX to make selective verifications; voting machine transmission logs and digitized copies of the voting certificates and audits.

[2] Some dispositions regarding rights to suffrage, collected from declarations and international treaties are:

Universal Declaration of Human Rights

ARTICLE 21

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

International Covenant on Civil and Political Rights

ARTICLE 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

American Convention on Human Rights 'Pact of San José Costa Rica'

ARTICLE 23 Right to Participate in Government

- 1) Every citizen shall enjoy the following rights and opportunities:
...
 - b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; ...

[3] **Constitution of 1999**

Regarding the Electoral Power

ARTICLE 296 The National Electoral Council (CNE) will be composed of five persons unconnected to political organizations; three candidates will be put forward by civil society, one by the faculties of juridical and political science from our universities and one by the Citizen's Power.

- [4] Supreme Justice Tribunal (TSJ), file 03–1254.
infovenezuela.org/attachments-spanish/T1%20ST03%20N4y5%20Designaci%F3n%20del%20CNE%20a%F1o%202003.pdf
- [5] MOE-UE Report, p. 13.
www.eueomvenezuela.org/pdf/MOE.UE.Venezuela.2006.final.eng.pdf#page=13
- [6] *La Lista: Un pueblo bajo sospecha* (The List: A people under suspicion, a video on the Tascón list).
video.google.com/videoplay?docid=-8187459075291793700
- [7] Jatar, Ana Julia, *El Apartheid del Siglo XXI (The Apartheid of the 21st Century)*
www.anajuliajatar.com/apartheid/
- [8] National Electoral Council (CNE), Rules governing recall referenda.
www.cne.gov.ve/documentos/reg_referenda01.php
- [9] **Ley Orgánica del Sufragio y Participación Política**
ARTICLE 169 Acts of vote counting shall be public. (...). The electoral and military authorities shall be charged with fulfilling this disposition.
- [10] It is possible to ascertain the voting intentions of an elector with his prior identification (in real time, using the fingerprint reader connected via a lap-top satellite net connection to the CNE) and comparison with the Tascón list. Venezuela is the only country in the world to use a biometric system to identify an elector. Other countries limit their use to civil identification, granting of passports and migration control, precisely because one can register who and when a citizen requests these documents, enters or leaves the country. In an election, these readers can be used to know who and when votes are cast.
- [11] **Ley Orgánica del Sufragio y Participación Política**
ARTICLE 158 At 05:30 am on the day selected for voting, the table will be constituted (...); and they shall act without interruption until 04:00 pm of the voting day, but will continue after this time while there are still electors present.
- [12] THE CARTER CENTER (2005–02–25). *Observing the Venezuela Presidential Recall Referendum: Comprehensive Report*
www.cartercenter.com/documents/2020.pdf
- [13] Such is the case of the International Statistical Institute and the Institute of Mathematical Statistics.
- [14] Research is only considered valid for publication in an arbitrated journal after a rigorous process of peer review undertaken by various specialists. This is the procedure to validate a written document and measure its quality and scientific rigor.

- [15] Febres-Cordero, María M. and Márquez, Bernardo (2006) *A Statistical Approach to Assess Referendum Results: the Venezuelan Recall Referendum 2004* International Statistical Review 74 (3), 379-389.
www.blackwell-synergy.com/doi/pdf/10.1111/j.1751-5823.2006.tb00301.x
- [16] Prado, Raquel and Sansó, Bruno in: *The Venezuelan Presidential Recall: Discrepancies Between Exit Poll and Official Results*.
www.ams.ucsc.edu/reports/trview.php?content=view&name=ams200406
- [17] Pericchi and Torres, in: *The Newcomb-Benford Law and its application to the Recall Referendum in Venezuela*.
www.gentederedes.org/referendum/otros/techrepNewcombenford.pdf
- [18] Taylor, Jonathan in: *Too many ties? An empirical analysis of the Venezuelan recall referendum counts*
www-stat.stanford.edu/~jtaylo/papers/ties.ps
- [19] Mebane, Walter R.,
www.macht.arts.cornell.edu/wrm1/pm06.pdf
- [20] Mansilla, R., *Análisis de los resultados electorales a partir de la Ley de Benford*.
www.fisica.unam.mx/octavio/Analisis%20de%20los%20resultados%20electorales.pdf
- [21] Torres, Fernández, *et al.*: How do numbers begin? (The first digit law).
www.iop.org/EJ/abstract/0143-0807/28/3/N04
- [22] Análisis Forense de Procesos Electorales, Anomalías Numéricas (Forensic Analysis of Electoral Results, Numerical Anomalies).
www.fisica.unam.mx/octavio/
- [23] Delfino, Gustavo and Salas, Guillermo, ‘*Analysis of the Venezuelan Presidential Recall Referendum of 2004 and the Relationship between the Official Results and the Signatures Requesting it in Computerized Centers*’, in the final stages of the process of evaluation for publication in *Statistical Science*.
www.gentederedes.org/delfino-salas.pdf
- [24] Medina, Rodrigo, in: *Comprobación de la Hipótesis de Delfino y Salas* (Proof of Delfino and Salas’ hypothesis).
www.gentederedes.org/referendum/medina-es.pdf
- [25] Electronic Voting, three part video collection:
- a) Electoral Fraud—Recall Referendum I.
www.youtube.com/watch?v=gp9v_054i84
 - b) Electoral Fraud—Recall Referendum II.
www.youtube.com/watch?v=Qg1C825oQmQ

- c) Electoral Fraud—Recall Referendum III.
www.youtube.com/watch?v=xiQS0w3P2pw
- [26] García, Isabel, interview in: *El Universal*. ‘Máquinas Dudosas’ (Doubtful Machines), p. 1–19.
- [27] ‘Collecting’ is to be understood as demanding and obtaining a fair result, not necessarily winning, because in the event of losing, it is not the same to represent 48% of the population than a scant 38%.
- [28] Book in which the author presents authenticated documents.
- [29] The audit was limited to the application layer, one of the seven layers composing the OSI (Open System Interconnection) model: physical layer, data link layer, network layer, transport layer, session layer, presentation layer and application layer. (cf. en.wikipedia.org/wiki/Osi_model).
- [30] Fabregat, Adolfo: Red Flags on Venezuela’s Electoral Roll.
www.vcrisis.com/index.php?content=letters/200604251640
- [31] Mosquera, Genaro, REP curiosities.
www.11abril.com/index/articulos/CuriosidadesREP/REPGenaroMosquera0630.pdf
- [32] An elector can be migrated to a different voting center by: a) by his own will, when changing address; and b) by initiative of the CNE, when the voting center ceases to exist (relocation). In these processes, millions of voters were relocated without their voting centers being eliminated.
- [33] MOE-UE report, p. 26.
www.eueomvenezuela.org/pdf/MOE.UE.Venezuela.2006.final.eng.pdf#page=26
- [34] The Plan República is a special activity by the Armed Forces where the mission, exclusive and excluding, is to protect the electoral material and to maintain public order before, during and after the elections.