

Chance for Legal Solution Narrows in Mexican Election

By Laura Carlsen | September 1, 2006

By throwing out most of the opposition's challenges to the July 2 elections on the grounds of filing errors, the Mexican Electoral Tribunal has closed another door to a legal solution and set the nation on a likely collision course.

The tribunal's decision to discard the challenges inflamed the opposition led by center-left candidate Andrés Manuel López Obrador. The center-left candidate has called for a full recount of the votes.

With few institutional options left, his coalition is now preparing to establish a parallel government or a nationwide civil resistance movement.

The court's ruling was based on a very narrow and peculiar interpretation of the law. Faced with a widespread popular demand for a recount, accusations of fraud against the conservative National Action Party (PAN), and indications that the Federal Electoral Institute had failed to act impartially, the tribunal agreed to carry out a partial recount involving only 9% of polling places.

Instead of releasing the full results of this exercise, the tribunal announced the nullification of 237,736 votes based on "irregularities." The irregularities noted were mainly due to differences between the number of ballots physically accounted for after voting and the number delivered according to the voter list for each polling place. More ballots than delivered could be an indication of ballot stuffing—a time-honored practice in Mexico's long history of electoral fraud—and fewer could indicate illegal destruction of votes.

Data released by López Obrador's Party of the Democratic Revolution (PRD) shows that the recount revealed discrepancies in 65% of the polling places reviewed. The PRD claims that the pattern of errors heavily tended to favor the conservative candidate.

The high number of votes nullified in the review is also cause for concern. If extrapolated to the full vote, it could easily change the results in a race that ended up with a difference of only 239,751 votes. It also means that over

a million voters were effectively disenfranchised by supposed technical errors—an historical record.

By assessing complaints based on technical criteria and attributing anomalies to counting problems, the court abdicated its responsibility to investigate and rule on electoral fraud. The judges defended their decision stating, "(Fraud) cannot be presumed, it must be proved ... The presumption exists that the polling place officials acted in good faith and by the law."

The presumption of a large part of the population, however, was that the electoral tribunal would investigate the possibility of fraud, rather than falling back on the tautology that "fraud requires proof of fraud." By relying on legal technicalities instead of dealing with core issues, the court has rubber-stamped a process that continues to be steeped in doubt and raised questions about its own impartiality.

Mexico now has only two legally recognized options: to nullify the 2006 presidential election completely or to officially declare Calderón as the victor. The first would require that Congress appoint an interim president and new elections be held within 18 months. Given the tribunal's position on its first ruling, there seems to be little possibility of this happening, although recently some sectors of Mexican society have been pushing for nullification as the only path to reconciliation.

For López Obrador and millions of followers, the "9% solution" is no solution at all. If Felipe Calderón is named president amid doubts that the electoral institutions have failed to dispel, consequences for the nation are grave and difficult to foresee. Calderón would be a weak president, with an even weaker mandate.

López Obrador has called for a massive National Democratic Convention on September 16 to decide on



the opposition's next step. Uncertainty and indignation on both sides has been mounting, but so far not led to violence. PRD supporters have raised the level of rhetorical confrontation, calling the elections a virtual coup d'état, while on the other side demands to remove protesters from encampments in Mexico City have increased in volume.

But forced eviction could ignite widespread violence that serves no interest. The army, suffering its own version of the "Viet Nam syndrome" since its involvement in the student massacre of 1968, is loathe to repress its own people and President Fox would undoubtedly prefer to serve out his term without staining his reputation in a bloody showdown. López Obrador has insisted on nonviolent civil disobedience and so far controlled a multitude of supporters that contains elements prepared to go further.

In the Mexican elections the choice is not between maintaining the rule of law and appeasing a minority opposition. A full recount was within the possible interpretations of the law, just as nullification continues to be a legally sanctioned option. Whether or not the opposition is a minority lies at the crux of the conflict and is a question that has still not been satisfactorily resolved.

In any political system, when given a choice between credibility and fundamentalist legal interpretations, the former should prevail. When given a choice between

restoring public confidence and a narrow judicial perspective, interpretation of the law should serve society and not vice versa.

With its recent decision, the Elections Tribunal has led the nation one step further along the road of irreconcilable differences. The decision to discard the legal recourse of a full recount has further eroded the credibility of the vote and of the electoral institutions.

Now Mexico braces for a winter of discontent. Some schools have suspended field trips, the atmosphere is tense amid speculation and tirades from both sides, and the economy has begun to feel the effects of instability. On September 1,

President Fox presents his state of the union address to a nation seriously worried about the state it's in.

The Tribunal has until September 6 to declare the president elect or nullify the presidential elections. New elections would be expensive, complicated, and controversial. But the alternative—the imposition of a weak president on a divided populace—could be much worse.

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