



Plight with Panamanian Institutions: An Interview with Independent Presidential Hopeful Dr. Miguel Antonio Bernal

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Despite being ten months away, Panama's 2019 presidential election has already stirred up a compelling controversy. On May 5, 2019, the ballot will consist of contenders from established political parties as well as a few independent candidates. Law 29 of May 29, 2017, Article 246-A, passed by Panama's National Assembly, dictates, somewhat arbitrarily, that only three independents will appear on the ballot this coming May. With 15 unaffiliated Panamanians interested in the executive office, the presidential race for independent candidates comes down to a numbers game. The first hoop to jump through — to obtain 18,542 valid signatures, which represents 1 percent of votes cast in the 2014 presidential election — is a daunting endeavor. To obtain one of the three coveted independent spots on the ballot, the independent aspirer must have at least the third-most number of signatures. Beyond the controversy of a three



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independent candidate cut-off, the method of accepting and rejecting signatures, dictated by the Electoral Tribunal (TE), has attracted critical attention, especially from Dr. Miguel Antonio Bernal, independent presidential hopeful, lawyer and professor of constitutional law, and human right activist. In an interview with the Council on Hemispheric Affairs (COHA), Dr. Bernal discussed his plight with Panamanian institutions and the importance of citizen participation.

“Partyocracy”

Bernal has been vocal about his dissatisfaction with the TE’s ruling. After declaring his intention to run as an independent candidate for the presidency last August, Bernal stated that “Constitutionally, I do not agree that they [the TE] limit to three, however the ‘partyocracy,’ in its effort to follow, has decided that there are three parties,” and affirmed that the ‘partyocracy’ “has done a lot of damage to the country.” [i]

In a recent interview with COHA, Dr. Bernal explained that:

“When I talk or write about partyocracy that means, the political parties control the society. In Panama, we have what we call political parties, but in reality they are corporations because each party has its owners. And in the particular case of our country, these people have total control not only of the electoral system but also the economy and the institutions we have. The political parties, but particularly their leadership, were able during all these years to establish a lot of different rules that prevent people’s participation in all fields but also prevent us from having a real democratic system as we are shown now with all the rules that they established again to keep control over the National Assembly, the executive, and the judiciary. These three, in the Panamanian Republic or state, are totally corrupt. These actions are totally against the principal values of a democratic system and also the principal values of a republic.”

Although Bernal strongly opposes the new rule, he has complied with the TE’s rules and regulations. But much to his and other independent hopeful’s chagrin, the TE seems to be too liberally rejecting signatures. Of the seventeen legal reasons for signature disqualification, the most common are: signatures that do not match with I.D. signatures, signature names that do not match with the corresponding I.D., citizens that already have an accepted signature with the same candidate (double-signing), and citizens that already have an accepted signature with another candidate (each signatory may only sign with one candidate). [ii] However, the validity of signature disqualification justification is undermined by an unscientific and imprecise review process. For Dr. Bernal, “The ways it [the TE] uses to analyze signatures, are in my opinion not legal and it’s a violation of the dignity of the citizen that signs for you.”



An Independent Candidacy “Over His Dead Body”

When asked if he feels specifically targeted by the TE, Dr. Bernal stated:

“I am the candidate that proportionally receives more eliminations of signatures. And this is to prevent me becoming a candidate because they don’t want as a candidate someone that does not agree with the system and is able to reject the system. They move the situation currently away from the people that have any trajectory, any capacity, and they are promoting a scenario in which it is totally against the possibilities to be able to have a real independent candidate in this election. The candidates until today, they are going to be selected by the political parties, anyone with any influence on the population... the others, that the Electoral Tribunal in one way or another way has already selected, are people who are under the control of the people of the Electoral Tribunal. They are not independent even if they present themselves in front of the people as an independent.”

Beyond rejection numbers, Bernal holds that political forces are working against him. The presidential hopeful disclosed that:

“Mr. Eduardo Valdés [a TE magistrate] who has 28 years in this position, says that ‘over his dead body,’ I am going to become a candidate. And also, from another source, I learned that even President Varela [the current Panamanian President], said that ‘I cannot allow Bernal to become a candidate because it’s a danger for the system.’”

Accusations From Other Independents

Ana Matilde Gómez, a legislative representative and independent presidential prospect — after spending seven days examining how the TE verifies signatures—noted that there are “definitely” poorly-made signatures but, additionally, there are well-made signatures disqualified “without a good criterion.” Gómez also stated that the TE should change “some things.” [iii] Ricardo Lombana, a lawyer, and independent presidential contender believes that “A process does not exist. I consider that the TE, up to a certain point, is improvising.” Lombana has also boldly claimed that there are independent candidates who have a “factory of votes” (i.e. create fake signatures), receive illicit support from political parties (and are thus not true independent candidates), and “handle a checkbook in hand” (i.e. purchase signatures). [iv] A former independent candidate, anthropologist Ana Elena Porras — who suspended her campaign in early July — mirrored Lombana’s rhetoric, alleging that there are photos of front-runner Dimitri Flores gifting televisions, refrigerators, and supermarket products. In turn, Flores asserts that the



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photos were taken before he announced his candidacy and denies that there is an alliance between him and the TE. [v]

Legal Actions

Bernal's accusations are of the same nature as Gómez, Lombana, and Porras. Beyond sparring words, Bernal submitted a complaint against three TE magistrates — Eduardo Valdés Escoffery, Heriberto Araúz, and Alfredo Juncá —, to Panama's Supreme Court of Justice (CSJ) on May 10, 2018. [vi] The complaint regarded the elimination of more than 300 signatures at the time. The CSJ referred the complaint to the Public Prosecutor's Office, which finally admitted the case. According to the complaint document, "the magistrates would have caused Bernal injury by ordering that signatures be removed from the registration books of adherent signatures of support for his candidacy." [vii] In an opinion piece for *El Siglo*, Bernal critically wrote that "the notorious and public persecution has been ordered to eliminate me ...the collection of signatures, that should have been respected as a mechanism of citizen participation, has been adulterated and contaminated by the undemocratic conduct of the defendants today [Valdés, Araúz, and Juncá], that have not known or wanted to behave as guardians of citizen signatures and have preferred to be their executioner." [viii]

Bernal views the arbitrary and unscientific disqualifications of signatures as a violation of citizens' liberty and rights. The TE's, perhaps excessive, involvement in citizens' electoral participation potentially constitutes a human rights violation. Thus, on March 27, 2017 Bernal's team submitted a complaint to the Inter-American Commission on Human Rights (ICHR) concerning the potential unconstitutionality of Article 246-A of Law 29 of May 29, 2017. The complaint is founded on similar decisions that the ICHR made regarding electoral cases in Peru, Mexico, and Nicaragua. Dr. Bernal is still waiting on a finalized decision.

The independent presidential hopeful's latest legal maneuver was a claim in front of the Autonomous Office of the three magistrates of the TE. Dr. Bernal explained:

"I was forced to wait 45 days for my claim be administered from the Autonomous Office, and now, three weeks [as of August 14] later, they do not move and they don't do anything because the last answer that I received last Friday was that they cannot act against the magistrates of the Electoral Tribunal because they have what we call *fuero*, that means that they have immunity, you cannot act against them under the law that they make for that purpose. That means that they are closing all the windows, all the doors to any claims that you can make for this particular situation that we have."

Campaign Finance and Human Rights



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In 2016, a study by Freedom House reported that, in regard to the electoral process, “Both the OAS and IRI [International Republican Institute] also noted that campaign financing is poorly regulated, with no limits on campaigns donations or expenses.” [ix] The IRI specifically recommended in a review of Panama’s 2014 election that “The incoming administration and Congress should promote a series of electoral reforms, such as a campaign finance law to disclose the origin of contributions and prevent the use of public funding to produce partisan propaganda. A clarification is needed on rules governing the participation of a sitting president and other public officials in political campaigns and clarification concerning family members as candidates for succeeding office. In addition, laws against vote buying should be strengthened and more effectively enforced.” [x] The way that campaigns are financed undoubtedly can influence electoral results. As mentioned before, “vote buying” and “factories of votes” are serious concerns among independent candidates, whose candidacies depend on competitive signature numbers. Following each election, electoral reforms are systematically implemented in Panama. However, Bernal believes that the most recent campaign finance reforms are unsatisfactory.

When interviewed by COHA, Dr. Bernal elaborated that:

“My personal opinion, this [unscientific signature disqualification and a three-independent-candidate limit] is a violation of the human rights. First of all, because the citizens have the right to make the decision from the list of people that want to become a candidate after they fulfill the 1% of the electorate, as what was established originally in the law. They say this, and the moment that they established that only three, means that you are never going to be able to finish collecting signatures because you don’t know how many signatures the other [candidate] has and this move transforms the dynamic of an independent candidate, or *libre postulacion*, into some kind of *concurso*, context where the people who have more money are able to collect more signatures, because in the meantime as the electoral tribunal does not establish any sanctions against the people who are giving money to some citizens to sign their book of signatures. This is also a violation of human rights because they do not respect one of the principles of the rule of the state, which means that all citizens are equal in front of the law, and that’s why I presented this at the human rights commission of the Organization of American States in Washington [ICHR] and requested an injunctive relief. And in this paper that I presented to them a few months ago, I call to them to call the attention to the Panamanian authorities that they are violating the laws.”

Moving Forward

May 5, 2019, will be the sixth election in Panama since the end of the dictatorship. The plight of independent candidates is a fight against a new kind of corruption. Instead of charismatic men in



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military green rallying the grassroots, corruptors wear suits and hold powerful offices—like former Panamanian President Ricardo Martinelli, who is in pre-trial detention for political espionage charges (illegal wiretapping), is suspected of embezzlement, and alleged to be a part of the blackmailing of a CSJ magistrate. [xi] Corruption is institutionalized. Dr. Miguel Antonio Bernal continues, through all legal means, to confront Panamanian institutions. Whether or not he receives a coveted independent spot on the presidential ballot next May, for him, is less important than advocating for the rights and participation of Panamanian citizens.

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<https://www.facebook.com/MiguelABernalV/photos/rpp.1958203111061785/2164505220431572/?type=3&theater>

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Plight with Panamanian Institutions: An Interview with Independent Presidential Hopeful Dr. Miguel Antonio Bernal: *by* Rachel Rosenberg

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