

## **OAS Electoral Observation Mission in Colombia highlights successful second round of the presidential election**

June 18, 2018

The Electoral Observation Mission of the Organization of American States (EOM/OAS) deployed in Colombia underscores the successful completion of the second round of the presidential election yesterday and recognizes the efforts of the electoral organs and other parties involved in the organization of the elections to guarantee their timely and orderly process. It also welcomes the voter turnout of 53.04%,<sup>1</sup> which maintained the record high achieved in the May 27 elections.

As it did after the legislative elections and the first round of the presidential voting, the Mission wishes to emphasize the tranquility of election day this past Sunday, in which there were no incidents marring the public order. It was not necessary to move any polling stations for security reasons. The three elections held in 2018, the first ones after the Peace Accords, were the most orderly in several decades. This fact must be recognized and celebrated.

The Mission congratulates the winning team, Iván Duque and Marta Lucía Ramírez, and notes that Colombia will have a woman occupying the post of Vice President for the first time ever. It also congratulates the candidates of Colombia Humana, Gustavo Petro and Ángela María Robledo, and wishes them good luck in their future work in the Senate and Chamber of Deputies. The Mission considers that this new institutional mechanism to guarantee seats in the legislature for candidates in second place contributes to post-electoral stability and can serve as an example for other countries in the region.

Headed by former Costa Rican Vice President Kevin Casas Zamora, the Mission was made up of 32 experts and international observers from 12 nationalities, and by 8 persons who observed the voting abroad in 8 cities<sup>2</sup> in 7 countries. This is the third deployment of the OAS in Colombia this year, after the legislative elections of March 11 and the first round of the presidential balloting on May 27. In total the OAS deployed 139 experts and observers.

During these months the Mission analyzed key aspects of the electoral process, including electoral organization and technology, campaign financing, political participation of women, electoral justice, and electoral participation of indigenous peoples and Afro-descendants. The Mission met with authorities and officials of the National Registry of Civil Status and the National Electoral Council (CNE), government officials, campaign officials and candidates, the National Electoral Observation Mission (EOM), and other stakeholders in the process.

Yesterday the OAS observers visited 518 polling stations in 189 voting centers in 13 departments of the country and the Capital District. They also followed the tabulation of the results by the Centers for

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<sup>1</sup> Registrar's Office. Bulletin 41, as of 7:51 p.m., Sunday June 17.

<sup>2</sup> Buenos Aires, Mexico City, Lima, Madrid, New York, San José, Santiago, and Washington DC.

Consolidation and Dissemination at the national level. The Mission also had a permanent presence at the Unified Command Post of the Ministry of the Interior, where it learned that 234 polling stations had to be moved, all for weather reasons. Throughout election day, the Unit for Immediate Reception for Electoral Transparency (URIEL) received 522 complaints and denunciations of possible electoral irregularities and/or criminal acts, such as voter constraint, violation of electoral propaganda rules, and fraudulent voting,<sup>3</sup> which is significantly less than in previous elections.

When voting began, the OAS observers reported that the polling stations observed opened on time with nearly all officials present, and a significant participation of women. They also noted the presence of electoral witnesses at the polling stations and the security forces.

As reported in the first round of the presidential election and previous elections, the EOM noted that the design and placement of the panels at the polling stations did not guarantee secrecy of the vote. It also noted again electioneering at some polling stations, in addition to a case of vote-buying in Medellín and photographing of the voting in Antioquia, Santander, Cauca, Córdoba, and Bogotá.

At the close of the polling stations, the observers reported that the vote count was done in accordance with established procedures, and the witnesses were permitted to photograph the tally. Once again, the Registrar's Office provided the preliminary results very quickly. At 4:53 p.m. 98.20% of the results were released.<sup>4</sup> Soon afterward, the candidates made statements accepting the results.

In order to address several issues that have become evident in the Colombian electoral processes in recent years, and to contribute to strengthening them, the Electoral Observation Mission makes a series of observations and recommendations for the consideration of political authorities, electoral officials, civil society, and the general public. These supplement the preliminary reports made by the OAS for the legislative elections in March and the first round of the presidential election in May.

### **Electoral campaign**

The EOM deployed for the second round of the presidential election observed with satisfaction that the aggressive tone of the campaign decreased in comparison with the first round and that in general, presentation of proposals prevailed over personal attacks. However, it noted that on this occasion there were no debates, although there were more than 30 in the first round. There was apparently a lack of clear rules for debates. The Mission considers that it would have been helpful for the candidates to have been able to present their proposals and exchange views on their projects for the country, so the citizens could cast a more informed ballot. The EOM recommends that legislation on this subject be revised to clarify the status of presidential debates, and the rights and duties of the political campaigns with respect to them.

During this campaign false news again circulated on the social media, so the Registrar's Office had to address the question by issuing a video denying that voters who voted on May 27 would be automatically added to the count for the second round. The Mission calls for mechanisms to verify information published on the networks, to counteract dissemination of this type of news.

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<sup>3</sup> URIEL CONSOLIDATED REPORT, June 17 – Election Day

<sup>4</sup> Registrar's Office. Bulletin 10, issued at 4:53 p.m., Sunday, June 17.

## **Electoral organization and technology**

### **Voting officials**

In Colombia voting officials are selected from lists provided to the Registrar's Office by public and private corporations, educational institutions, and parties and political movements. The Mission noted that 59.3% of the officials chosen to staff polling stations in these presidential elections were from the private sector (33.7% from private corporations and 25.6% from private educational institutions), 39.1% were from the public sector (24.1% from public corporations and 15% from public educational institutions), and 1.6% from political campaigns.

Before the first round, some raised questions about this system, alleging bias in the selection of officials based on their political leanings, the creation of dummy corporations to control the selection of polling station officials, and the weakness of the verification model, based on comparison of the databases of the National Identity Archive (ANI) and the electoral census.

Taking into account the important role of the voting officials, who on election day exercise maximum public authority at the polling stations, the Mission suggests generating mechanisms to provide more transparency and plurality in their selection, and greater control of the process by political parties and other stakeholders.

### **Electoral witnesses**

The witnesses are the natural overseers of the electoral process, who have the legal mandate to represent the parties, movements, and significant blocs of citizens who register candidates for elections at the various levels. They play a key role in protecting the integrity of the vote.

For the 2018 elections, the Registrar's Office used an online platform to register witnesses of the polling stations and counting committees in order to facilitate the accreditation process. The Mission welcomes this new tool, which facilitated the work of the parties and campaigns in this matter. The National Electoral Council extended the deadline for registering witnesses to Saturday morning before the election in both the first and second rounds, to give more time to the campaigns to register witnesses. In addition, to give greater flexibility, it introduced the mechanism of the replacement witness, which permitted replacement of originally designated witnesses as a contingency to enable campaigns to cover polling stations where there were no witnesses.

These efforts overcame the problems with coverage by witnesses for the 2014 elections. However, the Mission noted that the presence of witnesses on election day remains low. It recommends continuing with initiatives to promote the role of electoral witnesses and facilitate their accreditation and training. At the same time, it issues a call to the parties, coalitions, movements, and major civic blocs to exercise a more active role in the timely inscription of sufficient witnesses under principles of co-responsibility.

### **Custody chain of electoral material**

The sending of tallies to the Counting Committees is a great logistical challenge in Colombia. It is also a demonstration of the high levels of interagency cooperation and commitment of the stakeholders and security forces of the state to the electoral process. The Mission suggests strengthening this process by incorporating mechanisms for follow-up, evaluation, and verification to ensure traceability of sensitive

electoral material and foster the controlled and coordinated delivery of electoral documentation. It also recommends following the decision of the Fifth Chamber of the Council of State for safeguarding sensitive material after the electoral process.

### **Pre-count and tallying**

The tallying is the final phase of the electoral process and is done at different successive stages. At the polling station the officials do the initial counting of the votes at the end of the day, after which the information is recorded on the E-14 tally sheets in their three parts: E-14 transmission, E-14 delegates, and E-14 coded. The three documents are used simultaneously. The first provides information for the preliminary count, the second is entered and posted on the website, and the third is transferred to the counting committees. This last one is the document for processing the official results of the elections at the various levels, to culminate in the declaration of the winner.

During the time before the legislative elections of March 11 and the first round of the presidential election on May 27, the Mission noted public complaints about the lack of guarantees of transparency and security provided by the counting software. This resulted in part from variations in the data generated between the preliminary and final counts, and the ruling of the Fifth Chamber of the Council of State that confirmed various irregularities in the 2014 legislative elections that cost the MIRA party three seats.

The EOM highlights initiatives adopted by the Registrar's Office to clarify doubts and provide greater confidence to the stakeholders in the process. It implemented procedures for custody of the software and password, observation by system auditors of the campaigns of the dry runs and simulations, data entry and visualization of the coded E-14, and delivery of the files with partial and final results to the parties, among other measures.

Notwithstanding the above, the EOM/OAS suggests that the Colombian authorities consider mechanisms to simplify the current layout of the tally sheets (E-14) to reduce the risks inherent in three separate sheets, which has contributed to undermine confidence in the electoral process in some sectors. The Mission recommends considering for the future the possibility of having a single document to serve as the source for providing preliminary counts, posting to the website, and with data for the counting committees. This would also prevent differences from human errors in the processing of the tally sheet. These changes could replace the telephone transmission of data provided for the preliminary count with a system based on the image of the tally, with optical character recognition. It is also suggested that witnesses at the polling station receive a copy of the tally sheet that supports their role as overseeing the counting committees.

With respect to the counting done by the counting committees, the Mission recommends the implementation of certain measures to provide greater security for the transcription and processing of the data at the various levels involved in the chain of consolidation of the results. Among these it is suggested to improve the security of the data transmission by incorporating a virtual private network. This would obviate the need for manual delivery of a CD to higher levels.

Taking into consideration the doubts expressed about the computer-related aspects, especially the counting software, the Mission recommends implementing a process of timely audits and tests, observed by the political parties and civil society. This would make it possible to evaluate the tools and

technological applications used to show third parties not involved in producing them that the system has the necessary guarantees for its implementation.

This process of audits and tests must be independent, external, and performed by qualified institutions, with a system of continuous evaluation. For this, it should be done at all phases of the electoral cycle.

The procedures of tests and audits should be defined and documented, with recording of the activities done, and have the ongoing participation of the responsible parties to define improvements based on lessons learned. In addition, there should be an atmosphere conducive to transparency and adequate control that is documented, communicated, and measured to ensure the success of any change.

### **Outsourcing of processes**

The preliminary counting is done by three different companies, two of them responsible for transmitting and rapidly processing the results from each polling station, and a third that consolidates and disseminates the election results at the national level. To process the information on the coded E-14s as part of the official counting process there are two software programs designed and implemented by two different companies, which do the same function in different regions of the country.

This situation, added to other components concerning the preparation and distribution of electoral material, shows the important role of the private sector in various activities in the Colombian elections. The efficiency and capacity that the companies can provide to support the electoral organization is positive, but there needs to be clear control mechanisms by the electoral authority and oversight by the stakeholders in the process, especially as regards data so important as the processing and consolidation of the results. On this matter, the Mission recommends that the electoral organization develop or purchase counting software as recommended by the Council of State in its recent ruling on the case of the MIRA party.<sup>5</sup>

### **Voting abroad**

The electoral census of Colombians abroad has grown by 97% in the past decade, compared with the national census of Colombians abroad, which has increased by 20%. The Mission highlights the strategic partnership of the Registrar's Office, the Foreign Ministry, and other institutions, which has resulted in the Office for Coordination of the Vote Abroad. This provides accompaniment, supervision, and comprehensive assistance for the exercise of the vote in Colombian consulates and embassies all over the world. The EOM/OAS is pleased that in the 2018 presidential elections 150,000 more Colombians voted than in 2014, thanks, among other things to the institutional effort to facilitate voting abroad.

The Mission is pleased that in the second round there was better control of the leaks to the media and social networks of images of the tally sheets from the foreign voting. This was due in part to the work of dialogue and awareness building done by representatives of the political campaigns and by the resolution of the National Electoral Council that provided the conditions for ending it.

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<sup>5</sup> In the accumulated acts 11001-03-28-00-2014-00117-00 and 11001-03-28-00-2014-00109-00.

## **Electoral financing**

Although the political-electoral financing system in Colombia is mixed, for the presidential campaigns the law provides that they will be financed “primarily by the State.”<sup>6</sup> However, the EOM/OAS observed that in practice the presidential campaign was financed primarily with private resources, which resulted in an uneven competition between the large parties with more resources and the smaller, new parties with less financial security.

Direct public financing in Colombia occurs through a system of an allotment for expenses before the election and reimbursement of expenses after the election. The amount of the reimbursement per valid vote varied depending on whether they opted for advances of the state’s contribution, and it was significantly greater if they did not get the advance (\$5,625 pesos) than if they got it (\$2,760 first round and \$1,378 in the second round).<sup>7</sup> According to data reported in the application *Cuentas Claras [Clear Accounts]*, only two of the six candidates (30%) who contested in the first round and one of the two who passed to the second round requested and received advances. As it did in 2014, the Mission recommends generating incentives of the use of advance public financing and suggests establishing a single value for reimbursement per valid vote to discourage political parties from using advances from public finances to finance their campaigns.

With respect to private financing, the Mission is pleased that for the presidential election, unlike the legislative elections, the legislation has some restrictions, including the ban on corporate contributions for the presidential campaigns<sup>8</sup> and from other sources of financing such as anonymous donations or donations from abroad, and the limit on individual donations by persons and the restrictions on the support for the candidate and his or her family members.<sup>9</sup> It also establishes maximum campaign expenses at \$24,235,554,964<sup>10</sup> Colombian pesos per presidential candidate in the first round and \$11,335,756,166<sup>11</sup> Colombian pesos in the second round,<sup>12</sup> and sets the maximum length of the presidential campaign at four months.<sup>13</sup>

These restrictions seek to control the origin of the funds and limit total campaign costs, which can unbalance the electoral playing field. However, in practice, despite the obligation of the parties to report donations on the application *Cuentas Claras*, it’s hard to know the real cost of the electoral campaign and ensure compliance with the electoral ceiling because the political parties do not always present complete information on the income and expenditures, and the CNE does not have the ability to check the information reported. The Mission recommends strengthening the human and financial capacity of the CNE to dedicate more resources to the monitoring of the financial reports.

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<sup>6</sup> Law 996 of 2005, Article 11

<sup>7</sup> Resolution No. 2586 of October 18, 2017 of the CNE

<sup>8</sup> By ruling of the Constitutional Court C-1153 of 2005

<sup>9</sup> Law 996 of 2005, **Article 14. Maximum amount of contributions or donations by private parties.** Twenty percent (20%) of the ceiling of the expenses in the presidential campaigns may be financed by individual persons or private law entities; however, presidential campaigns shall not receive contributions or donations from individuals of more than two percent (2%) of the amount set for the campaign ceiling, nor from corporations of more than (4%) of the same ceiling. Contributions and donations from corporations belonging to the same business group shall not exceed five percent (5%) of the amount set as a ceiling.

Contributions of candidates and their family members to the fourth degree of relationship, second degree of affinity, or first in civil relationship shall not contribute together more than four percent (4%) of the ceiling set by the National Electoral Council.

<sup>10</sup> This amount is approximately US\$8,371,360.

<sup>11</sup> This amount is approximately US\$3,915,763.

<sup>12</sup> Resolution No. 2586 of October 18, 2017 of the CNE

<sup>13</sup> Law 996 of 2005, Article 2.

Moreover, the Mission observed that the rules that regulate electoral financing of the Significant Citizen Groups (GSC), a political participation mechanism to register candidates by the collection of signatures, is less restrictive than that applied to political campaigns. This process of gathering signatures, in which the GSCs carry on recruitment activities, with collection and expenditure of funds, begins six months before the formal kickoff of the campaign. In this stage the rules for campaign spending are not applied even though the months of collection of signatures give public visibility to the candidate and allow him or her to collect funds. Among other things, they are not prohibited from receiving corporate donations, caps on campaign expenses do not apply, and they are not required to report expenses made in this stage. The Mission also noted that the *Cuentas Claras* application does not provide for reporting the financing of the GSCs.

The Mission considers that the rules applied to the GSCs during the stage of signature collection could result in a lack of fairness in the electoral competition, putting at a disadvantage those candidates who did not start their campaign with this mechanism. This is especially important because nearly half of the contenders for president and vice president began as candidates with signatures. The Mission recommends reviewing regulations for the electoral financing of the GSCs in order to include mechanisms for transparency of the spending of these groups and create a level playing field.

### **Electoral legislation and justice**

Colombia has a great variety of regulations on elections, with rules in several legal codes. Since the promulgation of the Electoral Code in 1986, there have been several reforms and laws that have not been organized, just accumulated over time. The Electoral Code itself predates the Constitution of 1991. Sometimes this makes it hard to understand the different provisions because they are regulated in different bodies of law. An example is the rules on electronic voting, when have not been applied.

The OAS Electoral Observation Mission reiterates the need to update and organize electoral legislation to facilitate understanding of the applicable rules by the candidates, political parties, media, and the general public. An effort to systematize is also a good time to revise, reform, and update elements of the electoral process that have been discussed.

Dispersion of regulations also has an impact on electoral justice. Colombia has a dual system, which consists of complaints to the administrative authority, the National Electoral Council, and means for challenging the jurisdictional authority, the Council of State, through electoral nullity and motions for nullity of administrative acts. In addition, Colombia's Constitution recognizes everyone's right to seek injunctive relief from judges at any time or place by means of a preferential and expeditious proceeding when they consider that their rights have been violated, or for acts or omission by any public authority.

What occurred to the MIRA party, in which a ruling by the Council of State gave it back three seats in the Senate three years after the 2014 election, is evidence of the importance of electoral justice to redress the violation of the right to elect and be elected. However, the time elapsed makes it extremely cumbersome to exercise political rights. There should be a major revision that provides flexible and speedy deadlines and permits resolution of these situations at lower levels.

## **Conclusions**

The legislative and presidential elections of 2018 are an opportunity to strengthen Colombia's electoral processes. The Electoral Observation Mission of the Organization of American States hopes that this report can be a technical instrument for discussion, analysis, and improvement of the issues addressed.

Implementation of the Mission's observations and recommendations requires an effort of systematization and reforms of the electoral legislation, as well as changes in technical and administrative components to strengthen the transparency, security, and reliability of and participation in the elections. To this end it is important to provide opportunities for dialogue that facilitate open and transparent debate involving diverse sectors of society.

In this spirit, the EOM/OAS welcomes the work of the National Commission for Coordination and Monitoring of Elections, and suggests that it be formally established as a forum that is also an opportunity for dialogue after the elections. This mechanism can afford the various stakeholders that participated in the elections the opportunity to analyze the strengths and weaknesses of the electoral process that took place, identify the lessons learned, suggest reforms, and build consensus around them, as part of a process of ongoing improvement.

The Mission considers that in addition to what was mentioned above, the mechanism should evaluate the risks to the Colombian electoral system resulting from the brief period of three weeks that between the first and second round of the presidential election, an aspect that was mentioned to us by several stakeholders. The possibility that the results of the first round of the election could be close may make it difficult to declare a winner and hold the second round at the specified time. The delay that could be experienced by the vote counting because of challenges, and the effective span of two weeks between one election and the other because voting abroad begins one week early, are two factors that could be put intolerable pressure on the electoral organization to perform all the required activities.

## **Acknowledgements**

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