



Venezuela and October 15: The difference between having and not having an independent electoral observation

The elections for governors held on October 15 in Venezuela, as is publicly known, lacked many of the guarantees needed for the results to be recognized as legitimate. This paper seeks to explain what would have been different if, on October 15 in Venezuela, there had been a high quality, independent international observation.

To conduct an audit of the elections for governors held on October 15 last in Venezuela, it would have to be confirmed first that the process was organized so that different credible alternatives were presented to the voters, and that voters had an equal right to vote, and second to show that the various stages of the process ensured that the voting and the vote count expressed the will of the voters on the options offered during the election.¹

This would require an individual audit of each of the procedures that are part of the electoral process.

This document tries to detail the different procedures that would need to be evaluated at each stage of the electoral process in order to conduct an audit. These are the procedures established in the Organic Law on Electoral Processes and thus are the basis on which an electoral process in Venezuela should be organized. The document has a separate section on the procedures that would need to be carried out in order to audit the information technology system used in the electoral process.

The large number of procedures making up each of the phases shows the difficulties that would arise in conducting a comprehensive audit properly and on time in the post-election phase, and the amount of human and financial resources that would be needed in order to do so.

PHASES AND PROCEDURES TO BE AUDITED

Calling elections and comprehensive schedule for the electoral process

Calling elections is a public act in which the National Electoral Council sets the date for the election to public office. At this stage, the purpose of the audit would be to determine whether the National Electoral Council's acts followed the rules established in the public administration for calling the election. This would require:

- Verifying that the calling of the election was in accordance with the timeframes for elective office established in the Constitution and in the law.
 - *The calling of the election did not respect the timeframes for elective office established in the Constitution and in the law.*

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- Checking that the election timetable was published in the call for the election. The timetable should set out the stages, acts and actions that would need to be complied with in order to guarantee the rights of all participants.
 - *The timetable for the elections on October 15 was published before a date was set for the elections and the elections were called.*
- Verifying that the call for elections was published in the Official Gazette and in the media.
 - *The call for elections was published in the Official Gazette.*
- Showing that changes in the dates in the election timetable were evaluated and executed in accordance with existing legislation.
 - *This cannot be verified due to the lack of timely information about the decision-making process and the actors involved in it.*

Acceptance, rejection, substitution and challenges to candidates

- Checking that the time periods for the presentation of candidacies are in the election timetable.
 - *The time periods for the registration, acceptance, rejection and substitution are set out in the election timetable.*
- Verifying that candidacies presented outside the time period specified in the election timetable were deemed to be out of time.
 - *This can be verified by means of a review of the files of candidacies accepted and rejected. This would require a significant number of experts and resources, as well as guarantees of access to the information.*
- Checking that the procedure for candidacies was carried out in accordance with existing legislation. In the case of Venezuela, the system for presenting candidates should be automated, except for entities for whom access to the system was difficult.
 - *This can be verified by means of a review of the files of candidates accepted and rejected. This would require a significant number of experts and resources, as well as guarantees of access to the information.*
- Checking that the extension of the time period for presenting candidacies was based on a well-founded decision, without affecting subsequent stages.
 - *This cannot be verified due to the lack of timely information on the decision-making process and the actors involved in it.*
- Verifying that the procedure for the creation and registering of political organizations and voter groups was issued by means of regulations from the National Electoral Council.
 - *This can be verified by means of a review of the rules issued by the CNE on the creation and registering of political organizations that were accepted and rejected. This would*

require a significant number of experts and resources, as well as guarantees of access to the information.

- Checking that the minimum number of signatures required for independent candidates was verified and certified.
 - *This cannot be verified, since the process is already over and it is materially impossible to evaluate the verification and certification.*

- Ascertaining that public officials who were candidates for election resigned temporarily from their positions on the day the election campaign began.
 - *Information exists on candidates who resigned their positions prior to becoming candidates. However, there is no information on whether or not they followed the procedure for resigning their positions that is established in the Public Service Statute of Venezuela.*

- Checking that the stage of presentation of candidates to the Committee on Political Participation and Financing was completed.
 - *This cannot be verified, since the process is now over, and it is materially impossible to evaluate how requests were dealt with. If consideration were given to conduct such a verification a posteriori, guarantees of access to the information would be needed.*

- Verifying whether the National Electoral Council ruled on the acceptance or rejection of candidacies. In the event it did not so rule, verifying that the candidacy was deemed accepted.
 - *This can be verified by means of a review of the files of candidates who were accepted and rejected. This would require guaranteed access to the information.*

- Ascertaining that the National Electoral Council carried out the substitution of candidates in those cases determined by law and that it took steps to inform voters in the district about the substitution that had been made.
 - *The National Electoral Council did not carry out the substitution of candidates in those cases determined by the Organic Law on Electoral Processes.*

Preparation of the ballot

The purpose of an audit of this phase would be to determine whether the ballot was prepared according to law and did not permit irregularities or duplicate registrations. The ballot should be drawn up according to the process stipulated in the Electoral Law. The audit should therefore:

- Show that a freeze was established for the data from the Electoral Register, and that the data were published within thirty days following the calling of elections.
 - *The elections timetable included the date of the freeze of the data from the Preliminary Electoral Register.*

- Verify that the requests for inclusion in the Preliminary Electoral Register were dealt with by the CNE within fifteen days following their publication.
 - *This cannot be verified since the process is now over, and it is materially impossible to evaluate how requests were dealt with. If consideration were given to conducting such a verification a posteriori, guarantees of access to the information would be needed.*

- Verify that the legal procedure for challenges to the Preliminary Electoral Register was based on the grounds provided for in the current law.
 - *This cannot be verified since the process is now over, and it is materially impossible to evaluate how requests were dealt with. If consideration were given to conducting such a verification a posteriori, guarantees of access to the information would be needed.*

- Verify that the updated Preliminary Electoral Register was the complete and entire Final Electoral Register.
 - *This cannot be verified since the process of revising the electoral rolls is now over, and it is materially impossible to assess the way they were updated. If consideration were given to conduct such a verification a posteriori, guarantees of access to the information on the electoral rolls would be needed.*

- Check that all Venezuelans who were properly registered in the Electoral Register were able to exercise their right to vote, always provided they were not politically disqualified, had had their civil rights suspended, or their identity card had been declared disqualified or null and void by the entity responsible for identification.
 - *This cannot be verified since the election process is now over. It would be necessary to review the complaints concerning obstacles to the exercise of the vote, but this would require guarantees of access to the information of the National Electoral Council.*

Proceedings for choosing the position on the ballot

The purpose of the audit at this stage is to determine whether the rules established by the CNE gave the same chance to all the different contenders. To do this, it would be necessary to:

- Verify that all political organizations were convened to choose the position on the election ballot, without exclusion of political actors registered in the election contest.
 - *This can be verified by means of a review of the files of the political organizations without exclusion of political actors registered in the election contest. This would require guaranteed access to the information.*

- Verify that the procedure was carried out in coordination with the leaders of national or regional political organizations, national voters groups, independent candidates and indigenous organizations.
 - *This cannot be verified since the proceedings for choosing the position on the ballot are now over.*
- Check that the procedure for determining the position of political organizations took into account the votes obtained in the last election.
 - *This cannot be verified since the proceedings for choosing the position on the ballot are now over.*

Setting up the polling stations

- Verify that the National Electoral Council selected citizens registered in the Electoral Register to perform election services as poll workers.
 - *This can be verified by means of a review of the list of those selected from the Electoral Register. This would require a significant number of experts and resources, as well as guarantees of access to the information.*
- Check that the National Electoral Council drew lots to select the poll workers for each election, based on the data from the preliminary election rolls. This drawing of lots should have been included in the election timetable.
- Ascertain that the National Electoral Council notified those citizens selected by lot to serve as poll workers, in order to ensure that they were properly trained.
 - *The National Electoral Council used no means of notification to inform citizens that they were selected as poll workers.*
- Verify that the National Electoral Council took steps to ensure proper training of those selected to perform mandatory electoral service.
 - *This cannot be verified since the training process is now over.*
- Show that the National Electoral Council guaranteed that the poll workers would have proper accreditation, to ensure their presence on election day.
 - *This can be verified by means of a review of the issuance of credentials by the CNE. This would require guarantees of access to reliable information.*
- Verify that the voters selected were guaranteed the possibility of making use of the procedure for exceptions to performing electoral functions, in those cases established in law.
 - *The procedure is established in the electoral timetable, but cannot be verified a posteriori.*

Approval and publication of the directory of polling stations

The purpose of the audit at this stage would be to determine whether the rules governing the electoral map were applied in order to draw up the directory of polling stations. In the event of changes in the electoral map, it must be determined whether they were made transparently, using procedures established in advance. To do this, it would be necessary to:

- Verify that the polling stations were established in advance and authorized by the National Electoral Council. The election “tables” (*mesas electorales*) were to be set up in the polling stations so that voters could exercise their right to vote.
 - *Some polling stations that had been established and authorized by the CNE were relocated or cancelled for reasons of security or infrastructure defects.*
- Check that the polling stations had one or more voting tables.
 - *This can be verified by means of a review of the lists of polling stations and voters registered in each of them. This would require guaranteed access to reliable information.*
- Verify that the formation, consolidation, opening and closing, and the number of polling stations were established by regulations of the National Electoral Council.
 - *The National Electoral Council’s reports on the opening and closing of polling stations were by means of informal statements.*
- Check that highly populated polling districts were divided up, and that new polling stations were set up in mobile or fixed facilities, depending on the circumstances of each specific case.
 - *This can be verified by means of a review of the lists of polling stations and voters registered in each of them. This would require guaranteed access to reliable information.*
- Verify that requests by political organizations to set up new polling stations were decided on by the National Electoral Council.
 - *This cannot be verified since the process for requests is now over and it is materially impossible to evaluate it.*
- Confirm that no one was registered in more than one polling station.
 - *This can be verified by means of a review of the lists of polling stations and voters registered in each. This would require guaranteed access to information that has not been tampered with.*
- Ascertain that the changes in the electoral maps were made transparently, using processes established in advance.
 - *The National Electoral Council opened and closed polling stations 48 hours before the election. Assessing the decision-making process would require guaranteed access to information that has not been tampered with.*

Election campaigns

The purpose of the audit at this stage would be to assess whether the application of the rules on election monitoring allowed all candidates to have equal access to the media. It should also determine whether party financing rules ensured equitable access to sources of party financing. To do this, it would be necessary to:

- Ascertain that the National Electoral Council sanctioned election advertising produced outside the timeframe of the electoral campaign established by the National Electoral Council that attacked the honor, private life, privacy, image, confidentiality or reputation of individuals and that discouraged the exercise of the right to vote.
 - *This can be verified by means of a review of files on sanctions of the media. This would require guarantees of access to the information.*
- Verify that the prohibition on removal or total or partial destruction of any election advertising was honored, except as provided by the National Electoral Council.
 - *This cannot be verified since the request process is now over and it is materially impossible to evaluate it.*
- Check that the National Electoral Council financed, whether in part or in whole, the publication of election advertising in the print media, radio or television in accordance with the rules established for that purpose.
 - *This can be verified by means of a review of files on indirect financing. This would require guaranteed access to the information.*
- Check that public and private media and independent producers were not able, on their own, to publish or broadcast election advertising supporting any candidate, or encouraging or discouraging voting.
 - *This cannot be verified, since monitoring of the media would have been necessary during the election campaign.*
- Verify that the media did not refuse to disseminate election advertising. In any event, it was up to the National Electoral Council to determine whether the election advertising complied with the requirements set out in the rules.
 - *This cannot be verified, since monitoring of the media would have been necessary during the election campaign.*
- Check that the publication of surveys in any media or other form of publication was prohibited for a period of seven days prior to the voting.
 - *This cannot be verified, since monitoring of the media would have been necessary during the election campaign. Only three media outlets in the State of Lara were sanctioned for having published election surveys. The media outlets belong to the opposition candidate.*

- Verify that the dissemination by any media outlet of election results before the National Electoral Council issued its first official bulletin was sanctioned.
 - *There were no sanctions for having disseminated election results prior to the official bulletin.*

Vote count and declaration of results

The audit at this stage would examine whether the vote-counting process was able to ensure the absence of fraud in the vote-count, in other words, whether the final results declared to the people reflected the total number of results from each polling station. To do this, it would be necessary to:

- Verify that the vote count was automated and that the system processed all the records of the vote count.
 - *This cannot be verified since the request process is now over and it is materially impossible to evaluate it.*
- Verify that a teller committee was appointed in each electoral process, to be responsible for the organization, supervision, and control of the vote counting process.
 - *This cannot be verified since the process for requests is over and it is materially impossible to assess it.*
- Verify that the vote counting process was completed within a period of forty-eight hours. In the event the election boards did not conduct the count within the specified time period, the National Elections Board could conduct the tally.
 - *The vote count in Bolívar State was completed 72 hours after election day.*
- Verify that votes from the polling station records that did not use the vote counting format approved by the National Electoral Council were not tallied.
 - *This cannot be verified since the vote count is now over and it is materially impossible to evaluate it.*
- Verify that ballot tallies that were spoiled or mutilated to the point where the numerical vote count or the identification data could not be determine were not included in the total vote count
 - *This cannot be verified since the vote counting process is now over and it is materially impossible to evaluate it.*
- Check that in those cases in which the total number of vote tallies was not received, the electoral body that did the vote count took steps to obtain the backup copy from the National Electoral Council. If that were not possible, two copies of the poll watchers from political organizations could be accepted.
 - *This cannot be verified since the vote counting process is over and it is materially impossible to evaluate it.*

- Verify that once the vote count was completed, the offices (by name and by list) were declared filled, based on the electoral system specified in the present Law.
 - *The CNE issued an official communiqué on October 16 on filling of the offices of governor in the country's 23 states. As of the date of the communiqué, Bolívar State had not completed the vote count.*

- Verify that following the declaration of winners, the electoral bodies prepared minutes, as per the form and in the number of copies specified in the regulations, specifying the calculations used to declare the winners.
 - *A group of experts would be required in order to monitor the declaration of the governors who were elected.*

- Corroborate that the National Electoral Council, the National Elections Board and the corresponding Electoral Boards declared the elected candidates in accordance with the procedure for vote counting and declaration of winners, and gave them their corresponding credentials.
 - *A group of experts would be required to monitor the phase of declaration of the governors elected. The governors elected by the opposition have not been declared on account of not recognizing the legality of the National Constituent Assembly.*

AUDIT OF THE INFORMATION TECHNOLOGY SYSTEM

The introduction of new technologies into elections is an integral part of the modernization of electoral bodies in Latin America. In particular, the adoption of e-voting poses challenges to the success of its introduction into an electoral process, and is directly linked to citizens' confidence in their political and administrative systems.

One of the issues that citizens discuss and question the most is the security of the system. Voters are worried that their ballot may be altered or that the results of an election may be subsequently distorted. There are mechanisms that should demonstrate to voters and candidates that the system operates as expected.

Independent checks by qualified institutions enable politicians and voters to confirm that the e-voting systems are robust and trustworthy. The audits are a response to the need for an electoral body to demonstrate the correct functioning of an e-voting system and are a fundamental pillar of the ongoing evaluation of this technological tool.

Given that it is an IT process, the concept, design, development, production and implementation of the system should go hand in hand with rigorous controls to guarantee, *inter alia*, the integrity, confidentiality and availability of all of the information resources used.

The terminology used for these supervisions tends to be confusing, but in general, there are two forms of control: certification and audit. An audit consists of a set of logical, organized components

that vary according to the characteristics of each setting: functional testing (black box), partial or full end-to-end testing, parallel and continuous audits and tests, among others.

- **Certification and audit of e-voting in the pre-election phase**

Certification refers to the confirmation of proof of compliance with all the requirements of a given standard. Certification enables the institutional processes to conform to levels and standards defined internationally that substantially improve their productivity, efficiency, and efficacy.

The system used in Venezuela does not have a certification conforming to a given international standard, and it is therefore necessary to institute quality control in order to use these technologies. This warrants electoral reform to allow for such certification.

An elections audit is a process of verification by an independent body to determine the extent or level of assurance and compliance with a given regulation to ensure that it is conforming. The audit typically examines the elections technology with a set of requirements that are defined and/or formulated by the regulatory authority, as well as relevant legal documents and/or international standards.

The methods used to check the system against these specifications vary depending on the component or process being evaluated. Instead of a yes/no decision that will say whether the system meets the requirements, the reviews (generally carried out by independent third parties) evaluate the associated vulnerabilities and risks depending on the current situation and the ideal state of compliance of the component being evaluated.²

Before the election, the electoral body must ensure that the political parties and relevant stakeholders work in coordination with the internal audits that the institution will conduct. This process will review in detail the voting software and hardware and technological infrastructure at all levels, as well as the security arrangements for the storage and transmission of data.

This work must be done professionally by an entity independent of the electoral body that is removed from particular pressures or concerns. Audits of e-voting should respond to the following questions, among others:

Is this voting system designed to be accessible to all citizens (particularly those who are handicapped or are not technologically skilled)? Is it possible that the system could, in error, choose a candidate when the votes are cast electronically? Do voters fully trust the e-voting system? Is the machine really counting the votes correctly and precisely? Is it possible to find out for whom a voter voted, thus violating the secrecy of the vote?

2. IDEA. Available at: <https://www.idea.int/publications/catalogue/certification-icts-elections>.

The following checks would need to be done by an independent body at all phases of the election cycle:

Functional testing: Functional or black box testing examines whether the voting system performs the functions for which it was designed. The activities to be verified are decided in advance, such as casting different votes, and then it is determined whether the machine did what it was asked to do. Functional testing does not include a final analysis of the system, that is, verification of the software or hardware. It is merely a case of supervising its external behavior. Functional testing may (and should) be managed by the project management team, but black box testing may also be considered and offered to outside actors to verify that the voting machine is functioning well. A number of interested parties, such as political parties, academics or civil society, are invited to freely operate the voting machine or e-voting system and check that it does what it was designed to do.

In the case of Venezuela, “*the audit of the voting software*” conducted by the electoral body, in the presence of representatives to the CNE of political organizations, does not guarantee that the software worked correctly. What must be made available to political organizations and other stakeholders involved in the election process is a laboratory to test the e-voting, in which accredited people, independent of the CNE, can ask for functional testing to look at scenarios that the CNE had not previously planned for or designed.

Full End-to-End (E2E) and partial testing: Complete End-to-End (E2E) testing provides the highest level of external, independent verification. This requires an exhaustive review of all processes, and a fully comprehensive testing of the design of the e-voting system. A model of an E2E testing should allow for complete verification of the procedure, both individually and as a whole. It may be used in traditional paper voting systems, as well as in e-voting, although in the latter, it has some specific characteristics. In particular, because it deals with IT components, an E2E model should be configured so that anyone can verify whether it is functioning correctly using his/her own means (*software independence*). The system should, therefore, produce sufficient evidence, often mathematical, to allow for this type of supervision.

Venezuela only conducts partial testing, selecting a particular area that the CNE decides is most important. This exercise does not involve evaluation by an external, independent entity that can, on the basis of a risk analysis, identify those information assets that are exposed, the probability that they will occur, and their impact, in order to determine the controls needed to accept, lessen, transfer, or avoid the occurrence of risk.

- **Audit of the IT component on election day**

Audits must be done on election day itself to verify that the system is operating as planned. In general, such checks are conducted randomly on the basis of a representative sample. This audit is conducted once the voting closes, confirming with the printed copy of the vote that the voter’s intention was recorded correctly and coincides with the results produced by the automated system.

The custody of the transfer, documentation, and security measures related to the e-voting booths is fundamental to this work.

In the case of Venezuela, conducting an audit of an electronic voting system without having been able to guarantee the physical security and chain of custody for the transfer of the electronic voting machines makes it impossible to guarantee the results of an IT inspection. Further, the computers are highly susceptible to tampering to the extent that the memory where the logs are stored could be compromised. Thus, confidence in the operations depends on the measures taken by the CNE to this end. Apart from the information safeguard procedures by the CNE, *the memory audit* backs up election data only for the possibility of an eventual revision of the outcomes and then, the memories of the machines are wiped clean so there can be no possibility of correlating voters with the result, thus maintaining the secrecy of the vote.

In addition, it is impossible to do parallel testing simultaneously with the rollout and startup of the electronic voting machines. At that point, a random selection is made of a limited number of e-voting machines, which are removed (and replaced) from the voting process. A simulated (independent) vote is conducted with these machines, in which the votes cast are recorded and the correct functioning of the machines is then verified. This measure is a positive one, although its effects are limited since it is difficult to reproduce the same sequence of votes as in a real voting process.

- **Post-election IT audit**

A fundamental aspect of the audit must be to verify that the program used during the election is a faithful copy of the one that was certified and signed on the day prior to the elections. Even when a copy of the executable file and of the source code was retained, along with the source code and its encryptions (or mathematical algorithm), the audit records must be audited in all cases, even when the components of the system appeared to function well during the election.

These records include the audit records of servers, security arrangements, and the records of the electronic voting machines that do not store sensitive items (such as the sequence of voting, which could adversely affect the secrecy of the vote, among other things), but that do record events.

In the case of Venezuela, since the chain of custody of the electronic voting machines and other IT components could not be guaranteed, it is impossible weeks after the election to guarantee that the collection of evidence and audit logs can represent a trustworthy record of earlier events and automated diagnostics.

Ideally, audits should be conducted on an ongoing basis, and seen as a sustainable activity and not as a quick fix for an isolated problem. Some basic conditions must be present so that this ongoing improvement can be sustained:

- Both the system and the process must be defined and documented.
- The activities carried out must be recorded.
- Those in charge must participate on an ongoing basis in order to decide on improvements based on lessons learned.

- It is advisable to create an atmosphere that promotes transparency and that enables recommendations for improvement to be made.
- There must be agreed-on controls that are documented, communicated, and measured in order to assure the success of any change (change management).

There is a need for active, direct participation by the political parties and movements in order to ensure the transparency of the elections and to generate confidence during the time the evaluations and audits are conducted.

The activities described in the table/schedule of audits conducted by the CNE in Venezuela for the regional elections³ largely describe a process of minimal verifications, with participation by political actors to confirm compliance with what was established by the CNE.

CONCLUSION

This paper has listed the many procedures that need to be evaluated if a comprehensive audit is to be performed of the elections for governors held last October 15 in Venezuela. As noted, many of these procedures cannot be audited, making it not feasible to conduct a comprehensive audit of the electoral process.

The difficulties in auditing the various procedures are different in nature. On the one hand, there are procedures that must be audited in parallel to their being carried out, which make it impossible to conduct an audit in the current post-election phase. Secondly, in order to audit some of the procedures that can be evaluated a posteriori, access to a great deal of information would be required, and it would be necessary to have the commitment of the CNE to make its processes transparent and offer this documentation to the auditors. However, even if such openness were to exist, some documents no longer exist, since they were not kept and/or classified, or may even have been changed. Lastly, performing an audit of some of the processes would require a significant amount of time and human and financial resources. Given these factors, we may anticipate that it would be materially impossible to verify some of these procedures.

An audit of this nature is not only technically unfeasible, but would also produce results that are already known to everyone: that the Venezuelan electoral process was clearly riddled with irregularities that restricted the political rights of its citizens and prevented the results published by the National Electoral Council (CNE) from reflecting the will of the Venezuelan people.

Constitutional precepts about public office and the powers of the State were systematically violated during the electoral process, as were the stages and timeframes stipulated in the Organic Law on Electoral Processes.

The principle of regular elections for high national office was attacked in Venezuela when the governors' term of office was extended without argument, the competition among political parties and candidates was undermined when they were not permitted to stand for public office, and the electoral options were manipulated to the detriment of the integrity of voter preferences. The

3. Schedule of audits of the CNE. Annex II.

universal vote was curtailed by the modification of the rules of the electoral process in order to impede voting.

These irregularities, which were observed within the country and outside, produced a climate of mistrust and uncertainty about the transparency and validity of the elections.

This highlights the importance of an impartial international electoral observation that observes and analyzes election processes in due time and proper form by deploying observers and specialists to gather information on the various topics and phases of the electoral cycle.