

## **OAS Electoral Mission will observe August elections and announces recommendations to be implemented ahead of the second round**

June 18, 2019

The Electoral Observation Mission of the Organization of American States (OAS/EOM) in Guatemala, led by former Costa Rican President Luis Guillermo Solís, salutes the people of Guatemala on the occasion of last Sunday's Election Day.

The Mission laments the incidents of violence that sought to tarnish the electoral process before, during, and after election day.

After two preliminary visits in April and May the Mission set up operations in the country on June 5. It deployed a total of 84 observers<sup>1</sup> and specialists with 23 nationalities in the 22 departments of Guatemala, as well as in two<sup>2</sup> of the four cities where, for the first time, Guatemalans voted abroad.

The OAS/EOM undertook a substantive analysis of the key aspects of the electoral process: electoral organization and technology, campaign finance, electoral justice, the political participation of women as well as indigenous and Afro-descendent peoples, electoral violence, the political party system, and voting abroad.

To accomplish this work the Mission met with electoral and government authorities, presidential/vice-presidential slates, representatives of civil society, and academics. These meetings provided valuable insight into the technical aspects of the electoral process and allowed the Mission to garner impressions from the different actors on the political context of the elections.

The June 16 elections were the first to be held under the 2016 political-electoral reforms, which include: a new general regime for political and media financing; implementation of voting abroad; the invalidation and repetition of the vote in those cases where the null votes obtain the absolute majority in a given election; establishing a fixed number of legislators (160)<sup>3</sup>; regulating the internal structure of the parties; and strengthening the oversight and sanction-imposing powers of the Supreme Electoral Tribunal (TSE) over the political parties.

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<sup>1</sup> The mission was made up of 39 women and 45 men.

<sup>2</sup> New York, NY and Silver Spring, MD.

<sup>3</sup> 128 departmental and 32 national.

## **PRE-ELECTORAL STAGE**

As regards the pre-electoral stage, the Mission wishes to emphasize three issues that had a determining impact on the process.

### **– Judicialization of politics**

From its first preliminary visit the Mission received repeated complaints with regard to the uncertainty as to which candidacies were authorized to participate. This situation was due to the large number of complaints lodged to challenge candidacies<sup>4</sup> and due to the long time it would take to resolve them; in many cases they began earlier in the campaigns, and in some cases very close to the date of the election. This scenario affected candidates for different levels of office, including five presidential/vice-presidential candidacies that were disqualified or prevented from registering. Among those cases, special mention should be made of the controversial decision to disqualify the presidential candidates Zury Ríos and Thelma Aldana, both of whom were doing well in the polls.

The Mission observed that there were two main requirements that resulted in the largest number of denials and revocations of registration of candidacies. The first is the need to present a certification of the non-existence of claims issued by the Office of the Comptroller General of Accounts for candidates who have handled or administered public funds.<sup>5</sup> The second establishes that one who wishes to aspire to public office must be a suitable and honorable person. These conditions, set forth at Article 113 of the Constitution, are not developed in the existing statutes and regulations.

In resolving some cases the courts considered that the existence of administrative or criminal investigations into one who either aspired to be or was a candidate was sufficient grounds to deny or revoke his or her registration at any point in the electoral process, even by the TSE on its own initiative. To these cases were added those in which the new provisions that criminalize the changing of parties by legislators after being elected or once they have taken office (*el transfuguismo*) were applied.<sup>6</sup> In this context, several actors told the Mission of their concern

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<sup>4</sup> The electoral justice system is made up of three decision-making bodies: the Supreme Electoral Tribunal (TSE: Tribunal Supremo Electoral), the Supreme Court of Justice, (CSJ: Corte Suprema de Justicia), and the Constitutional Court (CC: Corte de Constitucionalidad). One may file a motion for annulment (*recurso de nulidad*) before the first; a motion for protection (*amparo*) before the second, and a motion of appeal (*recurso de apelación*) before the third.

<sup>5</sup> Article 214(f), of the LEPP.

<sup>6</sup> Article 205 ter. On changing party affiliation after being elected to the legislature (*transfuguismo*). “*Transfuguismo* shall be understood to be the act by which a legislator leaves a political party, having been elected or while in office, by universal suffrage, for a period, and has been designated to one of the established organs, automatically ceases to be a member of the Congressional organ of which he or she is a member, the position being assumed by a legislator from the party represented; the legislator who steps down may not assume any other position in the

over the lack of uniformity in the interpretive criteria of the three institutions that impart electoral justice.

These situations, in addition to injecting uncertainty and tension into the campaign, raised questions about the electoral authority and created an excessive workload for it. Eight days before Election Day<sup>7</sup> the TSE had to reprint more than eight million ballots for the election for the Central American Parliament (Parlacen) and more than 224,000 ballots for members of Congress for the department of Chiquimula, due to changes in the candidates.

The Mission noted that the institutional design, which makes it possible to file complaints against candidacies so close to the elections, impacted delivery of the different stages of the electoral calendar. It also led the electoral authority to make mistakes in printing some of the ballots, omitting names of candidates who were properly registered, or including the name of one person who was nominated but not registered for the elective office.<sup>8</sup>

The Mission wishes to highlight that the multiplicity of judicial bodies for resolving disputes is a positive and necessary aspect of an electoral system, so long as they are not used as tools in the service of political strategies. Having clear and uniform criteria, as well as finality in the stages, endows the electoral process with legal certainty and juridical security, while at the same time helping to ensure a fair contest.

## – **Pre-electoral violence**<sup>9</sup>

Several actors told the Mission of their concern over the context of violence in which the electoral process has unfolded. Through reports by national observer groups and public sources<sup>10</sup>, the Mission identified four violent attacks<sup>11</sup> that had a negative impact on candidates and acting mayors, as well as the assassination of nine political actors<sup>12</sup> during the pre-electoral stage. In

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organs of the Congress of the Republic. Political organizations and legislative groups in the Congress of the Republic must not receive or incorporate legislators who have been elected by another political organization.”

<sup>7</sup> The Mission found that the reprinting of ballot for elections to the Central America Parliament began on Sunday, June 9, 2019.

<sup>8</sup> Supreme Electoral Tribunal. Decision number 337-2019. June 13, 2019.

<sup>9</sup> For the purposes of this Mission, electoral violence is defined as “any form of intimidation or physical violence directed against those interested in the electoral process, its interruption, or causing harm to materials in order to affect the electoral process or influence its outcome.”

<sup>10</sup> Guatemalan institutions do not have a homogeneous methodology for counting and identifying threats or violent events aimed at actors in the electoral process and/or journalists and human rights defenders.

<sup>11</sup> Two against acting mayors and two against candidates for mayor.

<sup>12</sup> Five candidates, one mayor, one member of a Municipal Executive Committee and one human rights defender.

addition, former military officers of Guatemala publicly threatened a possible boycott of the elections, which the Mission strongly rejected.<sup>13</sup>

Representatives of political parties and journalists reported having received threats and having been victims of hate speech that incited violence.<sup>14</sup> This situation was further aggravated in the case of women candidates and women political officeholders, who in several meetings told the Mission they had been targets of attacks, both in person and through social networks in which messages were put out, some with a racist and discriminatory tone.

In addition, a few days before the election, Attorney General María Consuelo Porras informed the citizenry that the head of the Office of the Prosecutor for Electoral Crimes (Fiscalía de Delitos Electorales), Óscar Schaad, had left the country as the result of direct threats that endangered his and his family's security. The Mission considered this situation to be unacceptable and spoke of the importance of ensuring that all officials have the guarantees they need to do their jobs.

#### – **Electoral organization and technology**

The resolution of several candidacies just days before the poll exerted major pressure on the organization of the elections and affected the distribution of materials in several departments. Despite the delays and errors in printing tally sheets and ballots, the Mission wishes to acknowledge the hard work of the Elections Bureau (Dirección Electoral) of the TSE and its staff members, who redoubled their efforts to ensure that the materials were at each polling station on time.

During the visits to the Parque de la Industria, the Mission observed with satisfaction the collaboration between the Benemérito Comité Pro Ciegos y Sordos de Guatemala to produce the ballots in braille. It also notes the support of the National Civilian Police in keeping custody of these materials while they were being distributed.

The TSE developed the Integrated System for Transmitting the Preliminary Election Results (SITREP: Sistema Integrado de Transmisión de Resultados Electorales Preliminares) in order to report in a timely fashion to the political parties, media outlets, and citizenry. This was the first time the TSE had 100% coverage of the polling stations with data transmission equipment, via laptops or smart phones.

The Mission observed that the activities necessary for setting up the TSE's center for tallying and national consolidation of results were performed with very little lead time ahead of Election Day. General tests of the system's functionality were only performed days prior to the vote, using a

<sup>13</sup> [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-034/19](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-034/19)

<sup>14</sup> <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1142&IID=1>

small number of polling stations. No representatives of political parties were present either for the activities to set up the technological infrastructure or for the tests that were performed.

## **ELECTION DAY**

On Election Day OAS observers visited 1,132 polling stations in the 22 departments of Guatemala. The EOM was present from the setup and opening of the polling stations to the vote count and the transmission of results. At the beginning of the day they found that most of the polling stations observed were fully staffed, opened punctually, and had all the essential election materials.

The Mission also found that in general the facilities adequately allowed citizens to cast their ballot in a secret and safe manner. Nonetheless, it observed that some centers did not facilitate the mobility of persons with disabilities.

In Escuintla, Huehuetenango, and Sacatepéquez the Mission took note of the lack of ballots for the municipal election in some polling stations. This problem was resolved by the TSE in a timely manner. As regards the design of the ballots, it was observed that the small size of the font used for the names of some parties and candidates made them hard to read, especially for older adults.

At the polling stations visited, there were numerous poll watchers from political parties and national election observers. The Mission applauds the active participation of citizens and their commitment to democracy. Nonetheless, it found that many of the political parties' poll watchers did not clearly understand their election-day functions and were not familiar with the procedures or resolutions adopted by the electoral authority.

The OAS/EOM observed confusion in those municipalities where candidates were disqualified a few days before the election: the voters, members of the polling station, and poll watchers were unaware that candidates who appeared on the ballot had been sidelined from the contest. It also noted tensions in some places where the members of the polling stations and the poll watchers did not have the correct information on the revocation of the measure imposed by the TSE that prohibited the use of cellular devices during the vote count.<sup>15</sup>

The OAS observers reported cases of mass transportation of voters in several departments. This led to conflicts at certain polling places, especially because some representatives of parties and the authorities interviewed interpreted these facts in different ways. Some considered these to constitute improper hauling of voters to the polls, whereas for others it was nothing more than

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<sup>15</sup> Supreme Electoral Tribunal. Decision 319-2019 of June 10, 2019, and Decision 334-2019 of June 13, 2019.

the legitimate ability of the parties to transport their supporters from one municipality to another.

The average closing time at the polling stations observed was 6:03 p.m. During the counting of the votes and completion of the tally sheets the Mission observed a lack of training of polling station staff and coordinators. The EOM also found that members of the polling stations were not familiar with the procedures for resolving conflicts that arose.

At 7:00 p.m., the TSE began to publish preliminary results of the presidential election. At first the webpage for communicating the results failed and access to the data by this means was intermittent for several hours. Nonetheless, it must be clarified that the transmission system worked smoothly and that the media had access to this information at all times through terminals at the TSE's information center. This enabled the TSE to communicate the results to citizens. At 10:00 p.m. results of the presidential election, corresponding to 25.08% of the tally sheets nationwide, had been published. At 1:00 a.m. on Monday the count was available for 64.44% of polling places.

The Mission noted that in some departments the day was characterized by a climate of tension, reflected in various disturbances, demonstrations, ballot burning, and roadblocks on highways.<sup>16</sup> In this context the elections were cancelled in two municipalities: San Jorge, in the department of Zacapa, where members of the Municipal Board stepped down due to threats, and Esquipulas Palo Gordo, in San Marcos, where restrictions on voters led to confrontations among the political parties.

The acts of violence increased after the polls closed. One sympathizer of a political party<sup>17</sup> was killed, while nine police officers were injured.<sup>18</sup> In addition, infrastructure was damaged at some polling stations and police officers<sup>19</sup> and electoral officials were detained.<sup>20</sup> The Mission found that of the post-electoral incidents reported by the National Civilian Police 37.5% took place in municipalities where the mayor was seeking re-election.<sup>21</sup>

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<sup>16</sup> Incidents were reported in Santa Rosa, Huehuetenango, Malacatán, Baja Verapaz, Ciudad de Guatemala, Suchitepéquez, Jutiapa, El Progreso, San Marcos, Quiché and Escuintla.

<sup>17</sup> In the municipality of Panzós, Alta Verapaz, due to possible rivalry between sympathizers of different political parties.

<sup>18</sup> Six police agents were wounded in Quetzaltenango and one in Suchitepéquez. In addition, injuries were reported of one officer III in San Marcos, one agent, and one inspector in Suchitepéquez.

<sup>19</sup> In Sololá, 10 police were detained.

<sup>20</sup> Ten IT operators from the TSE were detained in Huehuetenango.

<sup>21</sup> Election Monitoring Report of the General Directorate of the National Civilian Police at 08:00 hours on June 17, 2019.

The OAS/EOM firmly rejects all violence and appeals to the political parties to refrain from inciting, calling for, or promoting violence as a means of resolving their conflicts. In the second round the Mission trusts that political leaders will promote conflict resolution through dialogue and the mechanisms provided for by law. It also urges all public institutions to cooperate closely and in a coordinated fashion to identify and address in a timely manner incidents that may negatively impact the day of the poll, within the framework of their functions, authority, and jurisdictions.

Based on the preliminary results provided by the Supreme Electoral Tribunal, participation in the general elections was approximately 61.41%. Of Guatemalans living abroad, only 1.15% of those registered exercised their right to vote. While the implementation of the vote abroad is a step forward in the exercise of the political rights of Guatemalan migrants, the Mission considers that steps should be taken to improve the procedures with a view to future elections.

As no candidate obtained an absolute majority to become elected president and vice-president of the Republic, a second round of the presidential elections will be held on Sunday, August 11, 2019.

## **COMPLAINTS**

From the time it arrived in Guatemala up to the date of the presentation of this preliminary report the Mission received 20 complaints, the vast majority of which related to acts to coerce voters and the improper use of public funds during the weeks before the election.

The current law establishes that the crime<sup>22</sup> related to delivering money or goods to the citizenry in order to influence votes is limited exclusively to the 36 hours prior to Election Day, and Election Day itself. The time limitation renders the law ineffective, given that most such acts occur in the weeks and days leading up to Election Day.

In the context of its attributions the Mission will forward all the complaints received to the Supreme Electoral Tribunal.

## **RECOMMENDATIONS REGARDING THE AUGUST 11 ELECTIONS**

This report presents only recommendations that can be implemented for the elections to be held on August 11. The Mission's substantive findings and recommendations on structural aspects<sup>23</sup>

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<sup>22</sup> The offense of coercion of the vote is provided for at Article 407 of the Criminal Code.

<sup>23</sup> The Mission's next report will address issues related to the political participation of women and indigenous and Afro-descendent peoples as well as the system for political financing, electoral justice, electoral violence, the implementation of voting abroad, and the Guatemala political party system.

of the electoral process will be submitted after the second round and expanded upon in the final report that the Mission will submit to the Permanent Council of the Organization.

With a view to the next elections, the Mission makes the following recommendations:

- Improve the channels of communication between the TSE and the representatives of the candidates and parties so that they can have timely access to the information needed to oversee the various stages of election preparation.
- Adopt, with sufficient lead time, an operational plan with a timeline for preparing and distributing election materials. This should be made available to the Departmental and Municipal Election Boards, which are responsible for the last stage of distributing materials to the polling stations.
- Clearly determine the controls in place for manufacturing and assembling the more than 20,000 ballot boxes.
- Instruct the facility coordinators and members of the polling stations to situate the voting booths in such a way that the secrecy of the vote is guaranteed.
- Reinforce the training given to the members of the polling stations and coordinators of the voting centers, in particular the procedures for closing the polling places and for resolving unforeseen circumstances that arise during the course of Election Day.
- Improve the inter-institutional coordination among the electoral authority, the security agencies, and the Attorney General's Office in order to collect, share, and systematize information related to incidents that could affect the events of the day. This would enable them to strengthen precautionary measures and expedite decision-making.
- Develop and adopt an action plan and technical timetable aimed at implementing the Integrated System for Transmitting the Preliminary Election Results (SITREP).
- Set up the TSE's center for counting and consolidating the results.
- Consider running a number of tests and simulations of the transition system with sufficient lead time prior to the election. This exercise should consider a test that involves processing 100% of the tally sheets to evaluate the operation of its various constitutive elements.
- Document the scope and objectives of the tests to appropriately measure the results and determine the improvements needed.



- Facilitate direct access by the candidates' poll watchers to the transmission tests and simulations, give them information about how the system works, and agree ahead of time on a protocol for access to the archives of the preliminary results on Election Day.
- Strengthen security mechanisms to counter difficulties on the results dissemination website, thus guaranteeing continuous access to the preliminary results by this means.
- Incorporate monitoring tools to keep tabs on the connectivity of the transmission equipment and follow up on the various problems that may arise in the stations.

## **Acknowledgments**

The Mission would like to thank the Supreme Electoral Council, the Ministry of Foreign Affairs, the Ministry of Interior, the National Police, and other institutions of the State, as well as the political parties and civil society representatives for their cooperation with the Mission. The Mission would also like to express its gratitude for the contributions of Bolivia, Brazil, Chile, Colombia, Costa Rica, France, Japan, Mexico, the Netherlands, Panama, Peru, Spain, Sweden, Switzerland, and the United States.