

OAS Mission congratulates the Brazilian people for voting peacefully and highlights the TSE's professional work

The Electoral Observation Mission of the Organization of American States (EOM/OAS) deployed to Brazil to observe the second round of the General Elections held on October 28 congratulates the Brazilian people for their civic commitment, as, once again, they turned out massively to the polls to choose their representatives. The Mission congratulates President-elect Jair Bolsonaro on his victory and Fernando Haddad for having recognized the will expressed by Brazilians in the vote. At the same time, it congratulates the elections authorities for successfully organizing an electoral process in which more than 147 million citizens were called upon to vote.

Led by former Costa Rican President Laura Chinchilla, the Mission was comprised of 30 experts and observers of 17 different nationalities, as well as six people who observed the vote abroad in Buenos Aires, Mexico City, Montréal, Paris, Santiago—Chile, and Washington, D.C. This is the second deployment of the Electoral Observation Mission of the OAS in Brazil this year, after having observed the General Elections on October 7. In total, 83 experts and observers were deployed.

The Mission analyzed key aspects of the electoral process, including electoral organization and technology, campaign financing, freedom of expression, political participation of women, electoral justice and the participation of indigenous peoples and Afro-descendants. In order to assess the technical aspects surrounding the electoral process and the impressions of different stakeholders, the Mission held meetings at a federal and local level with electoral authorities and government officials; political parties; candidates; civil society organizations; academics and others.

Based on the observation methodology used by the OAS in all its missions and with the objective of hearing all voices and perspectives on the election, the Mission sought to meet with the most stakeholders possible.

During the run up to the election, the Mission observed with concern the context of polarization and aggressiveness in which the campaign took place. In particular, the Mission emphatically condemns the violent attack against the candidate—now president elect—Jair Bolsonaro during a campaign event. Violence is completely unacceptable in elections and democratic contexts. Violence begets violence. The attack against the life of the President-elect on September 6, as well as the attacks against other actors in the electoral process, are representative of the hate and polarization that we must combat, but peacefully and through dialogue.

In this climate of tension and polarization, candidates, journalists and political supporters were subject to digital threats and physical attacks. The Mission categorically condemns any type of violent attack and regrets the absence of respectful, constructive, and positive dialogue on the part of all political actors during the campaign.

The Mission notes that for this election, the traditional media campaign—in which the majority of candidates had only a few seconds per day of television and radio exposure—was transferred onto the Internet. Although paid advertisement is prohibited on the Internet,¹ in this election, for the first time, the Superior Electoral Tribunal (TSE) allowed the so-called *impulsioneamiento* (promotion) of content produced and published by the candidates, parties, and coalitions on their websites, social media accounts or blogs.

The political debate took place particularly on social networks, extending to the Whatsapp private messaging platform during the runoff election. The Mission regrets the irresponsible use of these tools by various political sectors, as their positive use could contribute to the exchange of information between candidates and voters and help electoral authorities making the electoral process more accessible to citizens. The Mission observed with concern the use of digital platforms to propagate disinformation and launch attacks, also against institutions and the electoral system. During the election, and based on the power granted by the elections law,² elections authorities ordered content considered defamatory to be removed from the Internet.

On the day of the election, OAS observers visited 392 polling stations in 121 voting centers in 11 states and the Federal District. All the polling stations observed by the Mission opened on time following prompt set-up of electronic voting machines and the printing of the *zerésima*, the document indicating that no vote had yet been counted. The Mission recognizes the work of the two million polling station members who made the vote possible, highlighting the high number of women serving in this role.

As with the elections that took place on October 7, the Mission noted the scant presence of party observers throughout election day. According to data collected by the Mission, there were no party representatives at 73% of the polling stations observed as voting opened and closed. Likewise, the absence of national observers was noted, and such observers are not provided for in the law. The Mission reiterates the importance of the involvement of political parties and civil society in the oversight of the different stages of the electoral process.

The biometric identification of voters once again presented challenges. In 75% of the polling stations visited, the Mission observed that the polling station president had to activate a voting machine for a voter when the finger print reader failed. This was done following pre-established procedures and ensured that voters could exercise their right to vote.

The Mission visited the Integrated Center of the Elections Command and the National Center of the Unified Public Security System,³ spaces used for interinstitutional coordination where security and public order conditions throughout the country are monitored. Overall, the vote took place peacefully, with reports of isolated cases of vandalism against electronic voting machines in Fortaleza and Sorocaba.

¹ Law no. 9,504/1997, art 57-C

² Art. 57-D., section 3 of Elections Law No. 9,504.

³ The Mission was received by the Minister of Public Security, Raúl Jungmann; the Attorney General of the Republic, Raquel Dodge; the Attorney General of the Union, Grace Mendonça; the Minister of State and Head of the Institutional Security Cabinet, Sergio Etchegoyen; the General Director of the Federal Police, Rogerio Galloro and other officials.

At the close of voting, the procedure of printing voting bulletins was carried out without problems in all the polling stations observed. Later, OAS observers monitored the transmission and totalization of the results by the regional electoral tribunals. The electoral technology expert of the Mission had access to the TSE's counting verification area. The Mission confirmed that by 7:00 p.m., the results of more than 88% of the polling stations had been published, and one hour later, information of 99% of the stations was available, with more than 100 million votes counted. For more than 22 years, the use of electronic voting machines in Brazilian elections has made it possible to collect the results quickly and safely, while reducing human error and guaranteeing peaceful transitions of power.

In order to support Brazil's ongoing efforts to strengthen its electoral system, the Mission offers a series of observations and preliminary recommendations. These findings are a compilation of what the Mission observed in its deployment for the first and second rounds of the general elections. Later, a full report will be submitted to the Permanent Council of the OAS, as well as delivered to the Superior Electoral Tribunal and disseminated to the election's stakeholders.

Candidate registration

The Mission observed that, according to the elections calendar, the period for reviewing candidacies took place at the same time as the campaign. This meant that some candidates began campaigning effectively without knowing if they would be able to participate in the election.

Additionally, for this election, the deadline for registering candidates was pushed back from July 5 to August 15, shortening by half the period of time allotted for reviewing candidacies. The review had to be finalized prior to September 17, when the electronic voting machines would be loaded with the names of the candidates. Because of the short deadlines, there were cases in which candidates were declared ineligible after having been loaded onto the voting machines, as well as cases in which candidates were declared ineligible and removed from the voting machines before having their appeal judged by a superior instance.

On the day of the election, the EOM found that there were candidates campaigning whose registration had not yet been resolved. There is a possibility that some of the individuals elected will not be able to serve in those positions if when the pending cases are resolved they are found ineligible by competent authorities.

During the electoral process, the lack of certainty surrounding the candidates generated ambiguity for both the candidates and the citizenry. The cases of greater repercussion took place in the contest for governor of Rio de Janeiro and, at the federal level, regarding the candidacy of former President Luiz Inácio Lula Da Silva, who the Workers Party (PT) finally replaced by Fernando Haddad.

To provide more stability to the electoral process and legal certainty for the contenders, it is suggested that the period established for submittal and approval of candidacies be revised. In this regard, the Mission recommends considering conducting the legal review in a period prior to the candidate's registration and the start of the campaign, with enough time to resolve any issues that may arise.

Disinformation

One of the most complex challenges in this election has been the dissemination of fake news—attributed to supporters of different political parties—using social networks and Internet messaging services. Although the phenomenon had been visible in electoral processes in other countries, Brazil's elections presented new challenges, such as the use of encrypted systems for mass diffusion of disinformation.

Despite the efforts made in Brazil to combat disinformation, the EOM noted that the proliferation of false information observed during the election on October 7 intensified in the run up to the second round, extending to other digital platforms such as Whatsapp. The nature of this tool—which is an encrypted private messaging service—makes the complex job of combating the spread of fake news more difficult.

In view of the intensification of this phenomenon, the Mission has positively observed the reaction of electoral authorities, the media, fact-checking agencies and online platforms. The Mission verified that the TSE adopted new initiatives, such as launching a website—*Esclarecimentos*—to debunk false information, while intensifying its internal and external efforts to disseminate true information.

For its part, Whatsapp launched a digital literacy campaign to raise citizen awareness on the importance of not sharing fake news. Likewise, the company brought to the knowledge of the Mission other actions employed through a conference call held days before the runoff election. According to the information provided, among other measures to be detailed in the final report, hundreds of thousands of spam accounts were eliminated and legal actions were taken to prevent the massive sending of messages by companies, in addition to banning corporate accounts. The instant messaging platform also has a mechanism that tags forwarded messages to make it clear that the content was not written by the person who sends it.

Electoral authorities, digital platforms (Facebook, Twitter, Google, YouTube, and Whatsapp), and the media have worked closely with fact-checking agencies,⁴ which have done a valuable work of identifying and refuting false news items. The Mission also reiterates the important role of the media in providing critical coverage of disinformation as part of their news services.

In order to move forward in combating disinformation, the multisector approach must be deepened and extended to include political parties—both members and supporters—who have an ethical responsibility to prevent the spread of fake news, defamation, and attacks. Similarly, citizens themselves should be critical of the information they receive and verify the news before sharing them. In this regard, the Mission recommends promoting digital and media literacy with campaigns to raise awareness and educational initiatives.

The TSE's Advisory Council on Internet and Elections, comprised of electoral authorities and representatives of the military, civil society and the federal government, could provide a permanent forum where the various actors would deepen the study of the phenomenon of fake news and its impact on elections. This body could

⁴ The Mission thanks the Comprova Project and the factchecking agencies Fato ou Fake, Aos Fatos, and Lupa for their collaboration. It also recognizes the work of the Sala de Democracia Digital, from the Fundación Getulio Vargas.

export the good practices developed during the Brazilian electoral process to other countries that face similar challenges in the context of the organization of their elections.

Freedom of expression and the media

According to information collected by the Brazilian Association for Investigative Journalism (ABRAJI), during 2018, more than 130 attacks against journalists have been recorded, of which more than half took place during partisan political demonstrations. This statistic includes cases of aggressions, threats, and physical violence.

The data provided to the Mission also reveals dozens of attacks against journalists on social networks and using digital tools. Most of these cases involve "improper exposure of the image of the communicator"—that is, users sharing images of a journalist suggesting that he or she is a supporter of a specific ideology and inciting others to attack him. The Mission condemns attacks on communicators. As expressed by the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights,⁵ acts of violence against journalists threaten not only the rights of these individuals to express opinions and ideas freely but also the rights of citizens to seek and receive information, something that is especially important during elections.

Voter registration

Article 14 of the Constitution of Brazil establishes that voter registration is obligatory for Brazilian citizens between the age of 18 and 70. Voter registration is permanent, and it is a citizen's responsibility to visit a certain electoral address—based on where he or she lives—to register. Since 2008, voter registration has been done using biometric technology that allows voters to be identified by reading their fingerprints. Currently, 10 states have their total electorate registered with biometrics, accounting for almost 60% of the national electorate.

In parallel to this ongoing voter registration process, Brazil's electoral authorities conduct exceptional revisions of the register. When this happens, voters are called to the registration office to update their information. If they fail to appear, their voter registration is canceled, preventing them from voting in elections until their situation is regularized.⁶ Information provided to the Mission by the TSE indicates that, in the framework of the exceptional registration revision process carried out between 2016 and 2018, 3.400.000 registrations were canceled. This procedure is established by law and its purpose is to clean up the voters list by eliminating people who have passed away and people with duplicate registrations. However, there is a real possibility that citizens who are not informed of their obligation to update their registration or who have difficulty accessing a registration office will be unable to vote. The Mission recommends that the competent authorities redouble their efforts in the most affected regions to inform citizens of their obligation to update their registration, and, when necessary, help transport voters to registration offices.

⁵ IACHR, *Violence against journalists and media workers*, cit., para. 1.

⁶ During an election year, exceptional review of the registration lists must conclude by March 31. However, subsequent to that date, citizens who have had their registration canceled have until May 9—the day on which the lists are finalized—to fix their situations. If they fail to do so, they must wait until registration is reopened on November 5 to update their registration.

Election technology

Electronic voting system

The electronic voting system used in Brazil was implemented for the first time in the 1996 municipal elections.⁷ Since then, it has been used in a dozen elections. During more than 20 years, the electronic voting machines have been subjected to security tests involving the participation of technology specialists from public bodies, political parties and private institutions.

Among the tests that are part of the electoral calendar, the public security test, in which a group of technology experts external to the electoral body assess the electronic voting machines' firewalls, is a highlight. The Mission appreciates this exercise, which allows authorities to identify potential vulnerabilities and act to reinforce the system's various components. In addition, in the week prior to the election, the regional tribunals choose a random sample of voting machines to audit, in order to verify if they are operating normally. Likewise, on the day of the elections, three voting machines per state are randomly selected, taken from the polling centers and transported to the regional tribunals. There, a simulated voting is performed, in which the votes typed in are compared with the results recorded by the machine. Although all these activities are conducted publicly, the presence of party representatives is very limited.

The Mission recommends increasing the size of the sample used for the parallel voting, as well as increasing the duration and scope of the tests that are part of the public security test. It is also suggested that the necessary legal mechanisms be developed to guarantee the presence of party experts at different levels of voting machine inspections. It is also recommended to create spaces for dialogue in which authorities and party representatives work together to develop new measures to enhance all actors' trust in the system. One example of how to move forward on this would be to certify the voting machines according to international norms and standards.

Biometrics

Since 2008, Brazilian electoral authorities have been making progress on building a biometric voter record that allows the identification of voters by using their fingerprint. According to data provided to the Mission by the TSE, of the 147.306.275 people registered to vote in the 2018 elections, 59% had biometric identification, and the Tribunal expects to reach 100% of the voter registry in the 2022 elections. The Mission welcomes the incorporation of this technology and recognizes its usefulness for preventing duplicate registration and cases of voter identity theft. Nevertheless, on election day, the Mission observed that the biometric identification system had some problems. According to official data, of the total number of citizens with biometric registration who participated in the first round of the election, 10,8% could not be identified using the fingerprint reader. However, this did not deprive them to exercise their right to vote. Pursuant to procedure, in these cases, the president of the polling station activated the voting machine with his or her own fingerprint after requesting the

⁷ During the 1996 elections, 32% of voters voted with an electronic voting machine. In 1998, the percentage reached 57.6%. Finally, in 2000, 100% of the electorate voted using an electronic voting machine.

voter's document to confirm the identity. For future elections, it is suggested that the TSE perform a comprehensive analysis of the malfunctions experienced.

Campaign financing

Brazil has a mixed model of campaign financing that combines public and private resources. In the 2018 general elections, public financing was reinforced with the creation of the Campaign Fund,⁸ through which 1.716 billion reais⁹ were distributed so the various political parties could publicize their candidates and proposals. This new financing channel was added to the existing party fund, through which the State provides resources for the regular functioning of political parties.

According to the current regulation,¹⁰ each party defines how it will distribute the resources from the electoral fund among its candidates. Different actors told the Mission that, due to the short duration of the campaign, the party leadership concentrated resources on candidates who were already well known among the electorate. To ensure more equitable use of these resources, the Mission recommends adding to the norms that regulate the campaign fund general guidelines regarding its distribution within parties.

In addition to creating the electoral campaign fund, other significant changes have been made in recent years to Brazil's campaign financing model. In 2015, the Federal Supreme Tribunal (STF) declared unconstitutional the articles of the election law authorizing corporate donations to parties.¹¹ Likewise, in 2017, the TSE set limits on campaign spending for the first time.¹² The Mission positively values the establishment of limits to maintain the equity of the contest. Information provided to the EOM by the TSE reveals that campaign spending has been reduced significantly compared to the 2014 election, reflected in less elections advertisement in public areas.

Regarding the control of party finances, the TSE has a digital application called *Sistema de Prestação de Contas Eleitorais* through which the parties are required to report their financial transactions. The Mission wishes to emphasize that the information reported is not only reviewed by electoral authorities but is also open to citizen scrutiny, as voters can access all the parties' income and expenditure reports through the virtual platform. This tool is a valuable instrument for providing transparency to the process and promoting informed voting. In order for the TSE to be able to monitor the accounts of the parties properly and in a timely manner, the Mission recommends increasing the staff and financial resources of the oversight unit, which have not increased despite a growth in the volume of public funds to be audited compared to previous elections.

To verify the information reported by the parties, the electoral authorities act in coordination with other State entities, particularly bodies with greater financial investigation tools. In this regard, the Mission wishes to highlight the coordinated work of the Financial Intelligence Team, formed by representatives of the TSE, the

⁸ Law no. 13,487, October 6, 2017

⁹ <http://www.tse.jus.br/eleicoes/eleicoes-2018/prestacao-de-contas-1/fundo-especial-de-financiamento-de-campanha-fefc>

¹⁰ Law no 9,504 / 1997, Art. 16-C, § 7

¹¹ (ADI) 4650. Supreme Federal Tribunal

¹² Resolution 23,553/2017. Supreme Elections Tribunal

Public Federal Ministry, the Court of Auditors of the Union and other institutions. By crossing data, this unit has been able to identify more than 24.000¹³ incidents of irregularities in campaign donations and expenditures.

Regarding the penalties regime, Brazilian law establishes fines for parties that receive illicit irregular income. However, the payment of fines can be deducted from future transfers of the party fund and over a period of up to five years. Multiple actors agreed that these types of penalties lack a real impact. For future elections, the Mission recommends evaluating the pertinence of the penalties in order to increase their deterrent effect.

Political participation of women

Brazilian legislation obliges political parties to submit at least 30% of women candidates in elections for proportional representation positions (federal deputy, state deputy, district deputy).¹⁴ Despite the existence of this provision, Brazil has one of the lowest levels of representation of women in its legislative chambers, as the results of the October 7 election reflect. Although the number of women deputies in the lower chamber grew from 51 to 77, women still represent only 15% of the total. In the Senate, women account for only 16,05% of the total, with only 13 seats. The lack of an effective regulatory framework to promote the participation of women is due not only to the low percentage of the quota but also to the behavior of political organizations, which apply 30% as a ceiling rather than a floor. In view of the situation, the EOM/OAS considers that Brazil should take a step beyond the quota and aspire to gradually and progressively incorporating political parity.

The reduced inclusion of candidates in the lists is compounded by the fact that women face greater difficulties in accessing the resources needed to fund their campaigns. The 2015 political reform included an article that reserved a minimum of 5% and a maximum of 15% of campaign funds for female candidates. However, this provision was challenged before the STF, which decided that the lower limit was inadequate and that it was unreasonable to set a maximum limit.¹⁵ The Tribunal ruled that a minimum of 30% of the resources that parties use for campaigns should be set aside for women. In 2017, the TSE followed the same criteria in a resolution that deals with campaign fund and distribution of electoral time on radio and television.¹⁶ The decision makes Brazil one of the few countries in the region with a quota for female candidates to access media advertising space.

The Mission congratulates Brazil's judicial authorities for promoting the introduction of mechanisms to increase equity in spaces of political representation. It notes, however, that the current law does not establish any type of sanction for parties who fail to comply with the women's financing quota. Also, there are no guidelines on how these funds should be applied, which has led to the majority of the resources being concentrated in a few candidates, some of them alternates for male candidates.¹⁷ The Mission recommends establishing clear criteria to enable a more equitable use of public resources in order to promote access to the largest number possible of

¹³ Information provided to the Mission by the TSE. Updated through October 15, 2018.

¹⁴ Law no. 9,504

¹⁵ Ação Direta de Inconstitucionalidade (ADI) 5617

¹⁶ TSE Resolution no 23,575 / 2018

¹⁷ Information provided to the Mission by the TSE.

women to positions of popular election. It also suggests defining a penalty regime for parties who fail to comply with the female financing quota.

The role that the TSE can play in the promotion of the effective participation of women is fundamental. The Mission recommends establishing a Gender Policy Unit within the Tribunal with sufficient human and financial resources to support continuous long-term actions and programs aimed at increasing the political participation of women; develop and implement mechanisms to monitor compliance with the application of gender and financing quotas and promote antidiscrimination messages and education within political parties, media and schools.

Political participation of indigenous peoples and Afro-descendants

The Mission observed a remarkable under-representation of indigenous peoples and Afro-descendants populations among both candidates and members of Congress. The EOM invites Brazilian authorities to reflect on potential measures to improve these populations' access to positions of popular election. The establishment of a quota and direct financing are alternatives to consider for making progress in this regard.

On the other hand, it was observed that there are no official data on the ethnic origin of voters that could indicate the voter registration and electoral participation of indigenous and *quilombola* communities.¹⁸ However, multiple actors expressed to the Mission that, in general, the participation of these populations in all stages of the electoral process is low. The Mission recommends including ethnicity as a variable in the electoral census so more information could be collected in future elections to develop programs and policies to promote the inclusion of indigenous and Afro-descendant voters.

Final considerations

Lastly, the Mission emphasizes that, even in this highly polarized context, Brazilians have been able to peacefully elect their president. The Mission took note of the comments of the authorities of the Superior Electoral Tribunal and the president of the Federal Supreme Tribunal on making political efforts towards democratic coexistence and calling for all political actors in Brazil to work to achieve new spaces for dialogue and agreements that strengthen peaceful coexistence.

¹⁸ *Quilombola* communities are territorial units populated by Afro-descendant groups.

Acknowledgements

The Mission thanks the Government of Brazil for the invitation to observe these elections, as well as the authorities and officials of the TSE for their openness and collaboration, which facilitated the Mission's work. The EOM would also like to highlight the support provided by the other actors in the election, as well as the hospitality of the Brazilian people.

The EOM also thanks the financial contributions of the Governments of Argentina, Bolivia, Chile, Colombia, France, Germany, Honduras, Israel, Italy, Japan, Mexico, Peru, Portugal, Serbia, Spain, and the United States, as well as contributions from the regular fund of the OAS, that made the deployment of this Mission possible.