Preliminary Report of the OAS Electoral Observation Mission for the 2018 legislative elections in Colombia

The Electoral Observation Mission of the Organization of American States (EOM/OAS) in Colombia, headed by the former Vice President of Costa Rica, Kevin Casas Zamora, deployed a team of 20 experts and observers to cover the legislative elections and inter-party consultations in six departments and the Capital District. It is important to emphasize that these were the country’s first elections since the signing of the Peace Agreements in which the FARC participated as a political force after more than half of century of armed conflict.

The Mission began its deployment on March 5 with the arrival of the first observers. They included experts – from 11 countries – on electoral organization and technology, political financing, women’s political participation, and the electoral participation of indigenous peoples and afro-descendants.

During the week before the elections, the Mission held meetings with electoral and government authorities, representatives of the political parties, potential presidential candidates, and civil society organizations. On election day, the members of the Mission observed the setup and opening of the polling stations, the voting process, and the count. The observers were also present at the Unified Command Post and the Data Processing Center of the National Civil Registry.

The Mission wishes to emphasize the significant reduction of the risks to public order associated with the voting process. This was a positive contribution allowing the elections to be organized and conducted in a climate of tranquility without any need to change voting centers, except in one case in the entire country. In terms of public order, yesterday’s elections were the most tranquil in many years. This needs to be acknowledged and celebrated.

Despite the above, the EOM/OAS expresses its concern regarding the attacks suffered by some presidential candidates and other political actors involved in campaign activities. The Mission strongly condemns these acts and calls for their prompt investigation.

In view of the upcoming presidential elections, it is important that both politicians and citizens avoid polarization and intolerance in their speeches and comments. Colombia deserves to have an electoral debate conducted within a climate of civility and respect for everyone’s ideas. In a democratic society, legitimate differences of opinion should be peacefully resolved through the vote. Elections can and should be an opportunity to sow the seeds for peaceful coexistence.

The Mission also acknowledges the increase in participation in these elections compared to the legislative elections of 2014. Nonetheless, participation continues to be low compared to the rest of the
region. The commitment to reducing the rates of those who abstain from voting requires constant work on multiple fronts on the part of all political actors involved in the electoral process.

**Election day**

On election day, the members of the Mission visited 76 locations and 167 polling stations. During the setup, the EOM observers noted a lack of coordination between those who delivered the materials and those who received them. Almost all of the country’s polling stations opened normally. The Mission noted that the voting materials used in these legislative elections adhered to high standards of quality and security. The Mission was informed of difficulties opening up the polls in the municipality of Francisco Pizarro, in Nariño department, and in the town of Boca Cerrada in Sucre department. These problems were overcome and citizens were ultimately able to vote.

Most of the poll workers participated in setting up the polls, demonstrating that they were trained to carry out their roles. The Mission also noted the presence of members of the Registry, security forces, the Prosecutor’s Office and the Office of the Attorney General, who supported the work of the poll workers and the election day process. However, the EOM noted few representatives from the political parties. It wishes to emphasize the dedication of the national observers who monitored the process.

The Mission repeatedly noted assisted voting practices in all departments where it was present. In many cases, the attendant marked the ballot without asking the voter. The Mission also saw cell phones being used to capture images of the ballots once they were marked. The Mission received one complaint of votes being bought in Medellín and took note at the Unified Command Post of the seizure of significant amounts of money at three locations in the country. These events are clear signs of the persistence of vote buying, a practice that OAS missions have pointed out and deplored on earlier occasions. It is essential that legislation be adopted on this matter and that electoral council members be given the tools they need to discourage this practice.

With regard to the inter-party consultations, the Mission also received complaints on the use of a different list of voters for each consultation. In addition, at about noon, the Mission noted the lack of voter cards for the inter-party consultations at some voting sites in Bogotá, Bucaramanga, Cali, Cúcuta and Medellín. The lack of cards created confusion and unrest among the voters and the competing political organizations. The availability of a sufficient number of cards must be guaranteed in advance to secure the right to vote and prevent the use of handmade solutions like that eventually utilized by the Registry through the use of photocopies.

At the end of the day, the Mission observed the rapid processing of the preliminary count data, so that the winners of the inter-party consultations could be identified early, and information was available by 10:00 p.m. on more than 97% of the country’s polling stations on the election results for the Senate and House of Representatives.
However, it should also be noted that there was some disorder when the voting materials reached the counting committees. For the upcoming elections, it would be important to consider establishing and enforcing clearer protocols.

The Mission presents below a series of preliminary observations and recommendations intended to contribute to the comprehensive and ongoing improvement of Colombia’s electoral system. After the presidential elections, it will submit a complete report to the Permanent Council of the Organization of American States, which will also be delivered to the Colombian electoral authorities and the participants in the electoral process.

**Legislation and electoral justice**

Colombia’s legal electoral framework is highly dispersed among numerous laws and administrative provisions. The Mission noted that on some issues this makes it difficult to verify whether a specific provision is in effect, which weakens legal certainty. Colombia needs to make an effort to standardize and systematize electoral legislation within a single legal text.

The recent ruling of the Council of State on February 8, 2018 demonstrated the importance of strengthening the mechanisms for challenging and defending the vote. The Mission emphasizes that the judicial resolution repaired the violation of the fundamental right to elect and be elected and in doing so restored the popular will as expressed in the ballot box. However, the nearly four years that have passed since the political party MIRA filed the respective complaints reflects an electoral challenges system that needs to be thoroughly overhauled. The nature of elections requires agile and expeditious processes, along with safeguards for due process.

With regard to the above, it is essential to safeguard all electoral processes and adequately preserve both physical and electronic documentation that can be used as evidence for potential challenges. The Registry, it should be stated, has taken the relevant measures to achieve this.

**Campaign financing**

Colombia has a mixed model of campaign financing. The State disburses direct public financing through advances and replenishment for valid votes obtained, as well as indirect public financing through free space in the media. However, 48 hours before the election, only four of the 76 political organizations that registered candidates for the Senate and House had obtained advances and they received them late. Following the election, the political forces will receive financing based on their voter strength. This distribution method affects the competitive conditions of political groups that are new, small and/or find it difficult to access bank credit.

With respect to private financing, a large portion of the funds are donations made by the candidates themselves and their families, followed by contributions from individuals and legal entities, including the media. Although Colombian legislation establishes limits on donations made by individuals, these
ceilings do not apply to contributions from the candidates and their families. This creates disadvantages for candidates who have neither their own funds nor any close ties to legal entities and the media, which affects equity in the electoral contest.

By law, political parties, movements and significant groups of citizens must submit their consolidated income and expense reports within two months following election day using the Clear Accounts application. This is a requirement for accessing public campaign financing. In addition, an administrative ruling of the National Electoral Council (CNE) establishes that partial reports on income and expenses should be submitted during the eight days following the transaction dates.

The Mission expresses its concern over the low percentage of candidates who informed the citizens before the election about the sources and uses of their campaign funds, and recommends explicitly establishing in the law the requirement to submit these reports. In addition, the Mission notes that even though there are random audits, Colombia would benefit from a CNE with enhanced ability to review and verify the income and expenses of political organizations.

We congratulate the State of Colombia for its adoption of Law 1864, which criminalizes prohibited electoral conduct and in some cases increases the penalties. This represents a measure for discouraging the commission of crimes related to campaign financing. It is, of course, necessary that the authorities responsible for enforcing these standards have the legal, human, and financial resources they need to enforce them effectively.

The Mission recommends continuing public discussions on the subject of political and electoral reform intended, inter alia, to strengthen public financing – particularly financing granted before the elections – and to make private financing more transparent. This should include an additional effort to calculate the real costs of campaigns, so as to establish financing ceilings consistent with the reality and avoid under-reporting of income and expenses, in terms of both cash and in-kind contributions.

**Political participation of women**

With the enactment of Law 1475 of 2011, which introduced affirmative action measures for legislative election candidacies, Colombia took an important step to strengthen the opportunities for women’s political participation. In the case of the Senate, 30% of the slate of candidates should be women. The same quota is used for candidates for the House of Representatives but it applies only in those departments that share five or more seats. The impact of this was that, before yesterday, no women had been elected to the House since 1991 in 13 of the Republic’s departments.

There were 1,043 candidates registered for yesterday's elections, who represented 32% of the Senate candidates and 35% of the candidates for the House of Representatives. However, based on the preliminary results, on this occasion 23 women would be elected to the upper chamber and 31 women would be elected to the lower chamber, representing 22.5% and 18.6%, respectively. These figures are

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1 CNE Resolution No. 3097 of 2013. “Accounting entries in the income and expenses ledger module should be recorded no later than during the eight days following the transaction dates.”
similar to those obtained in the legislative elections of 2014. It is obvious that there are still challenges facing women who seek to occupy positions of power.

The EOM recommends that the quota for election to the House of Representatives be applied in all of the country’s departments. Additionally, it suggests giving consideration to imposing some gender-based mandate for all candidate slates, both in blocked slates and in those that authorize preferential voting, so as to prevent women from being relegated to the end of the list. Even in the case of slates with preferential voting, the use of a position mandate would increase the visibility and viability of women candidates. To ensure compliance with the representative mandate won by women, it is suggested that should they have to renounce their seat for some reason once elected, they must be replaced by another woman.

Added to this and as mentioned by the Mission deployed by the OAS in 2015, affirmative action measures must be accompanied by robust policies to train and promote women leaders within the political parties.

**Political participation of indigenous peoples and afro-descendants**

Respect for and full recognition of the political rights of the indigenous and afro-descendant population is necessary for strengthening democracy. The Mission values the efforts made by the Registry to serve the entire population. Due to the country’s ethnic, cultural and linguistic diversity, the Mission urges the Registry to provide electoral information in the indigenous and afro-Colombian languages and dialects.

The Mission also recommends including the ethnic and linguistic variable in the electoral census, so that in future years there will be better information for developing programs and policies that promote the inclusion of indigenous peoples and afro-descendants in the electoral process.

In order to facilitate the exercise of the vote in rural areas, the Mission recommends adopting decentralization mechanisms that bring electoral institutions closer to more remote communities.

**Electoral organization**

**Voter migration**

We received information from the national Electoral Observation Mission regarding 28 municipalities in which the voter card registration rate was three times higher than the national average. Based on these data, we received expressions of concern regarding possible cases of voter migration. This must be taken seriously.

In this regard, the EOM/OAS commends the efforts made to combat this electoral crime, particularly the enactment of Law 1864 of 2017, which also added penalties and fines for electoral conduct that was prohibited but not punished.
Added to this, the Mission noted that strategies have been adopted to verify the place of residence provided by citizens when they register. For example, since 2015 the Registry has been confirming voters’ residences with greater accuracy using a system that cross-checks the databases of entities that handle public information. This is a positive development.

**Information, communication and civic education**

The Mission celebrates the effort made by the Registry to encourage the civic exercise of the vote through information and education campaigns. An example of such efforts are the applications *Infovotantes* and *Infocandidatos* and funds like *Colombia Elige* and *YoNoDejoAColombiaenVisto*. In addition, the EOM celebrates the government’s adoption of strategies to address the challenge of voters who choose to abstain, with benefits for voting such as a half-day off from work, reduced military service, discounts on costs for the issuance of passports and other documents, benefits involving access to housing subsidies or discounts on tuition costs.

The EOM/OAS also welcomes the introduction of the program *Primivotantes*, intended to “graduate in citizenship” those who vote for the first time by providing a diploma.

**Accreditation of electoral witnesses**

The new measures for this election included the implementation of a comprehensive system for management of electoral witnesses so that political parties and organizations can deliver their lists of witnesses in digital format. The Mission obtained information that some political organizations encountered difficulties in accrediting their witnesses for the polling stations. To remedy this, the Registry should extend the deadline for nomination of the political parties’ representatives.

**Training**

For these elections, the Registry trained a total of 537,046 electoral panels throughout the country, achieving a coverage rate of 79% of the total number of those called. The profile of the members of the electoral panel has been redefined with the incorporation of a larger number of young people who assumed this responsibility for the first time. The EOM was able to confirm qualitative improvements in the training, with the application of interactive methodologies and the use of kits with educational materials. The recommendation is to continue these efforts to strengthen the work of those responsible for the polling stations.

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2 Governmental Decree 1.294 of June 17, 2015.
3 [https://consulta.infovotantes.co/#/consultavotacion](https://consulta.infovotantes.co/#/consultavotacion)
5 [https://www.facebook.com/colombiaelige18/](https://www.facebook.com/colombiaelige18/)
Inter-party consultations

Complaints were received and there was direct observation of the lack of voter cards in the two inter-party consultations. To improve future elections, the Mission recommends evaluating and revising the rules for distributing electoral material and coordinating with the participating political parties.

In addition, the Mission observed the use of separate voter records for each of the consultations. This undermines the principle of a secret ballot. In future, the Mission suggests using a single voter registry, regardless of the number of inter-party consultations being conducted at the same time.

The Mission took note of the complaints made regarding the failure to scan the records from the count in the consultations. In this respect, it considers it important to clearly and precisely define the responsibilities of the Registry and of the parties.

Electoral technology

The use of information and communications technology systems has helped to raise the percentage of those trained for Electoral Panels within the country and abroad. It has also made it possible to improve the systems for checking ballots recorded in the Electoral Census against the databases of other public institutions, and to safely record ballots in this registry as well as updates for changes of residence.

The Mission took note of the efficiency of the preliminary count system, by means of which informative bulletins were issued continually during election night, achieving a high percentage of processing a few hours after the polls closed. This expedited process, along with digital access to the records from the count available on the website, provided timely information and promoted transparency in the vote count.

The Mission recognizes the advances made in terms of the automation of the preliminary counting and counting processes. It also emphasizes that for the first time full files of the data entered in the record of the count will be delivered to the political parties that request them. This will allow political forces to conduct their own exercises to check the election results.

For future processes, the EOM/OAS recommends implementing a safe and isolated server for the counting process production system that will give political parties real-time access to the complete files and images of the records, through dedicated links between the Data Processing Center and party headquarters and through File Transfer Protocols.

Acknowledgments

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with which we interacted, for their openness and the cooperation they provided to the Mission. Their good will facilitates the labors of our experts and observers.

Finally, we wish to emphasize the support provided by the other participants in the electoral process and the hospitality of the Colombian citizens. The Mission is also grateful for the financial contributions of the governments of Bolivia, Canada, Korea, Spain, the United States and France, which made the Mission’s deployment in Colombia possible.