Preliminary Report of the Electoral Observation Mission to Paraguay
of the Organization of American States

The Electoral Observation Mission of the Organization of American States (OAS) deployed in Paraguay, led by former President Laura Chinchilla, regarding the general and departmental elections of April 22 emphasizes that election day was peaceful and congratulates Paraguay’s citizens for the civic commitment to the process they showed.

As part of the Mission, a team was deployed to observe the parties’ simultaneous primary elections this past December 17, 2017. For these elections, the OAS deployed a team of 40 experts and observers from 14 different countries, and performed a substantive analysis of electoral organization and technology, campaign financing, women’s political participation, and electoral justice.

During the pre-election stage, the Mission held meetings with the main political forces, including the Multinational Indigenous Political Movement, which was participating in an electoral process for the first time. On election day, the Mission was deployed in 14 of the country’s 18 departments, from the moment the polls opened until the results were counted and reported, during which it visited a total of 203 voting centers.

The EOM took note of the great national legal and political debate regarding the candidacies of former presidents and the President for Senate seats. The Alliance submitted two appeals to the Inter-American Commission on Human Rights regarding this situation. The Mission will be attentive to the international body’s ruling, as well how this issue develops at the national level. These inputs will be included in the Mission’s final report to be submitted to the Permanent Council.

ELECTION DAY

Early on election day, the observers monitored the distribution of the ballot boxes from the headquarters of the Civic Boards to the voting centers. In particular, the observers reported problems in setting up the polls, given that a significant number of officials failed to appear when the polls opened. In these cases, the process of replacing poll workers was not applied uniformly throughout the country. In some of the country’s departments, it was noted that observers from political parties were sworn in as replacement poll workers. Because they did not know the procedures, there was a delay in opening up those polls. However, according to the information provided by the court, at 7:30 in the morning voting had begun in all of the country’s centers.

The Mission also found that the use of a single plastic ballot box to hold the votes from different election levels meant that the box was overflowing.\(^1\) The Mission recommends the use of different ballot boxes for each type of election so as to avoid having to replace them during the day.

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\(^1\) The use of an ordinary plastic box was noted in the elections for Senators and members of the Paralsur on the one hand and for the departmental and representatives’ elections on the other.
The Mission visited the voting centers where the project “Educate to elect, building my country” project was carried out, in addition to accessible vote and vote-at-home programs on election day. In this regard, the observers found that necessary measures were taken in most voting centers to ensure that senior adults and the disabled had access to the polls. However, it was noted that some citizens were unable to use accessible polls because they did not complete registration by the deadline, so they exercised their right to vote at the regular polling stations.

At the end of the day, the citizens were able to learn the preliminary results for president and governors, delivered by the TSJE and transmitted directly by the media. The system proved to be rapid, smooth, and transparent. The Mission compared the figures published by the TREP with a sample of observed polling stations, and found a 100% match.

On election day, the preliminary results could also be consulted through a website. The Mission heard about some problems with use of this platform due to the large number of visits.

To contribute to continuous improvement of Paraguay’s electoral system, the Mission presents a series of preliminary observations and recommendations, which could be considered for future electoral processes. Subsequently, it will submit a complete report to the OAS Permanent Council, which will also be delivered to the Superior Court of Electoral Justice (TSJE) and distributed to those participating in the election process.

FORMATION OF TEMPORARY ELECTORAL BODIES

The electoral process was marked by complaints and disputes regarding difficulties forming the temporary electoral bodies, i.e., the civic boards and the polling stations. The Mission noted that current legislation does not reflect the current electoral policy system, given that the electoral code\(^2\) predates the regulations governing the formation of coalitions\(^3\) and thus does not mention them. Added to this, the regulations do not precisely define the criteria that electoral authorities should adopt for setting up boards and polling stations.

The civic boards, which originally were going to be made up of only two parties, ultimately included two parties and one coalition. This is because the TSJE resolved the appeal filed by the representative of the Guasú Front, based on the criterion of plurality and protection of the political rights of the coalition.\(^4\)

As for setting up the polls, the Mission learned of the failure to apply a uniform standard in the appointments made by the electoral judges. In some cases, they chose to recognize the coalition and give it a place inside the polls. In others, they settled the cases using a more restrictive criterion, taking only the political parties into account. Given this scenario, the challenges multiplied. As a result, hours before the start of election day, there were departments where the polling stations were still not fully manned.

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\(^2\) Law 834/96 approving Paraguay’s electoral code
\(^3\) Law 3212 of 2007 expanding the provisions of the electoral code and creating the coalitions.
\(^4\) A.I 21/2018
In order to increase confidence in the electoral bodies and avoid inequitable setups, the Mission recommends a legal provision establishing a precise and uniform standard for the setup of the polls. In addition, it is recommended that reasonable deadlines be set for each stage in the process, considering how long it takes electoral authorities to resolve challenges. This is fundamental for providing certainty when setting up the polls and legal certainty for those participating in the voting.

**ELECTORAL ORGANIZATION**

**Voter rolls**

Paraguayan citizens who reach the age of 18 are automatically included in the Permanent Civil Registry (RCP), the list of citizens who meet the requirements for being voters. To put together the voter rolls, the information is drawn from the registry managed by the Department of Identifications of the National Police. Thus, the data that appear in the registry are those that the person indicates when processing the identity card.

Given that the procedures for entering information in the system are not standardized, the domiciles included in the registry may be incorrect. For this reason, it is recommended that verification mechanisms be developed facilitating the precise identification of the voters’ domicile. This will facilitate various organizational aspects of the electoral process, from the determination of voting centers to implementation of the “vote at home” program.

The Mission learned that the Civil Registry of Paraguay has a base of biometric data on citizens. Given the availability of this technology, it would be very advantageous to explore the possibility of implementing a biometrical voter roll. The development of this tool would facilitate the identification and authentication of the voters, which would strengthen the system’s reliability and transparency.

**Transmission of preliminary results**

The Transmission of Preliminary Results (Transmisión de Resultados Preliminares - TREP) is a mechanism that allows political parties, the media, and citizens to have information prior to the official count. On election night, this tool was used to report only the results of the presidential and governors’ elections, unlike what happened in past elections, when preliminary results for the legislative elections were also released at that time. The Mission feels that the TREP is capable of being used in future to report the election of representatives and senators at the end of election day.

The Mission learned that there is no provision for the TREP in Paraguay’s election regulations and that it is governed solely by court ruling. The Mission recommends incorporating this tool within Paraguay’s legal elections system and drawing up implementing regulations.

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5 Law No 4559/12 establishing automatic registration in the Permanent Civil Registry.
EXIT POLLS AND OPINION SURVEYS

A few hours after the start of election day, projections based on exit polls were released. This led the campaign teams to make statements indicating a certain trend while voters were still at the polls. This is a poor practice in Paraguay that is repeated from one election to the next despite being prohibited by law.6

The exit polls are based on clear ties between companies, the media, and political parties. Their release during election day is a manipulative and misleading mechanism. The legislation is clear regarding the prohibition of such practices and the necessary measures must be taken to ensure effective compliance. This means that in upcoming elections there should be no exit polls on voting day.

It has been noted that this issue has been the subject of litigation. The Mission will do a study on court appeals and legislation on the subject and will address the issue in its final report.

In addition, the subject of opinion surveys merits special attention. In Paraguay, as in other countries, such surveys are meant to be used as a tool for predicting the results. However, regional experience has shown that trends in these surveys rarely coincide with election day results.

STRUCTURE AND PROVISIONS OF ELECTORAL JUSTICE

Electoral justice is hierarchically organized in the Superior Court of Electoral Justice, Electoral Courts, Electoral Judges, and the Electoral Registry Directorate, which are responsible for administrative and jurisdictional organization in electoral matters. The Electoral Prosecutor’s Offices, on the other hand, are responsible for the prosecution of electoral offenses and criminal justice rules on matters of electoral crimes. In addition, the Supreme Court of Justice is responsible for oversight of constitutionality.

Based on the study of national legislation, the Mission noted that the provisions governing the jurisdictional mechanisms are dispersed in different laws. In order to clarify the defense remedies, it is recommended that substantive and procedural legislation be developed on electoral matters, establishing with precision means of appeal, challenged actions, and appropriate deadlines for filing, arguing, and ruling on appeals, as well as the authorities that will hear them. In addition, it is suggested that a single law be drawn up on the subject to electoral offenses and crimes, to include the respective penalties.

Review of the decisions of the TSJE

Under Paraguay’s legal system, the decisions made by the Superior Court of Electoral Justice (TSJE) can only be reviewed by the Supreme Court of Justice based on the action of unconstitutionality. The Mission views favorably the existence of a review body, given that administrative and jurisdictional matters are concentrated under the Superior Court of Electoral Justice.

6 Paraguayan Electoral Code, Law 834/96.
However, the Mission notes that this challenge method is not designed to address procedural needs in political-electoral matters. The filing, argument, and resolution of actions of unconstitutionality before the highest court are conducted on the basis of a regular proceeding, while during an electoral process the authorities’ actions must be prompt and expeditious in order to guarantee the right of redress of the party filing the action.

WOMEN’S PARTICIPATION IN POLITICS

Paraguay is among the countries in the region with the lowest level of female representation in the legislative chambers. This situation is, in part, the result of deficient quota legislation: since 1996 the Electoral Code of Paraguay establishes for the parties’ internal elections a minimum of 20% for women, one of the lowest in the region, and a position mandate whereby only one out of every five nominations must be held by a woman. This mechanism acts more as a constraint than an incentive for female participation and its effects are exacerbated by the bureaucratic and reductionist conduct of the majority political organizations, which assign women to the minimum position required by law.

Given this situation, the Mission recommends increasing the minimum percentage currently in effect for the gender quota and establishing a position mandate granting greater guarantees in equality of results. Approval of the parity bill in the Senate, now being debated in the Chamber of Deputies, opens up a significant opportunity for more equitable conditions in electoral choices and access to women’s representation.

In line with the recommendations made by the OAS in its 2013 and 2015 reports, the application of gender parity is suggested, following the path traveled in the region by Bolivia, Ecuador, Costa Rica, Mexico, Nicaragua, Panama, and Argentina. Slates should present an alternating and sequentially equitable configuration by gender (one to one) across the board making it possible to: i) produce egalitarian environments in the structuring of party choices in electoral competitions; and ii) make women’s participation in decision-making positions visible on a frequent basis and not as isolated cases.

In promoting the effective participation of women, the role that the Superior Court of Electoral Justice and, specifically, the Gender Policy Unit, can play is fundamental. Given its importance, the Mission recommends strengthening this structure with more resources so that it can continuously support actions and programs over the long term and not just during election periods. It is also suggested that coordination strategies be planned with other areas and programs within the Superior Court of Electoral Justice, so that the gender perspective is not isolated in a single body but incorporated in all activities conducted by the Court. Finally, it would be advisable to incorporate the monitoring function to observe the compliance of political parties and alliances both in the application of gender quotas and in the training that should be provided within parties.

INCLUSION

Something that drew the attention of the EOM is the prohibition indicated in Article 91 (b) of the Electoral Code, Law 834/96, indicating that “the following may not be voters: the deaf and dumb who
are unable to make themselves understood in writing or by other means.” We consider this contrary to Article 46 of the Constitution, which states that: “All inhabitants of the Republic are equal in dignity and rights. Discriminatory acts are not allowed,” and to Article 58 stating that “The disabled are guaranteed equal opportunities for the enjoyment of rights.”

The EOM feels that the relevance of that prohibition should be analyzed in the light of the United Nations Convention on the Rights of Persons with Disabilities (Law No. 3540/08); the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (Law No. 1925/02); Article 23(2) of the American Convention on Human Rights (Pact of San José); and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.

FINANCING

Paraguay has a mixed political financing model combining public and private sources. With regard to public financing, the State provides funds for the operation of political organizations (called the state contribution) and electoral campaigns (electoral subsidy).

According to the law, the electoral subsidy is distributed exclusively on the basis of the number of votes obtained by each political party and is paid after the elections. Under this scheme, groups that want to conduct campaign activities must use private funds until the subsidy is deposited. However, many parties do not have sufficient funds and access to credit depends on electoral projections. In response to this problem, the Mission recommends assessing the delivery of public financing before the election.

In the area of accountability, the Mission congratulates the Republic of Paraguay for the design and implementation of the first phase of the National Political Financing System (Sistema Nacional de Financiamiento Político - SINAFIP), a software program that facilitates and lends transparency to the recording of political groups’ income and outgo. It is recommended that a module allowing efficient recording be incorporated in the system, so that the electoral authority can exercise oversight during the campaign and not just during the forty days following the election, as happens now. It is also suggested that this module be freely accessible to the citizens in order to strengthen transparency and promote informed voting.

The Mission noted that, although the parties submit their financial information, the oversight bodies do not have adequate verification and audit tools. In this regard, the recommendation is to develop oversight mechanisms with the human and financial resources needed to compare the information submitted by the groups. The establishment, in the TSJE, of the New Advisory Commission of the Political Financing Program and the Political Financing Technical Unit provides a good opportunity for moving ahead in this direction.

Regarding indirect public financing, in Paraguay television and radio channels must allot, free of charge, 3% of their daily space to political groups during the ten days preceding the end of the campaigns. According to the electoral code, the distribution of such space must be made equitably and the TSJE is

7 Law No. 4743 governing public financing.
responsible for assigning it. However, a resolution\textsuperscript{8} issued by the court itself transfers to the media the ability to assign the space, which can lead to discretionary assignment and inequitable treatment. Given this, the Mission recommends that the TSJE assign the space, through mechanisms guaranteeing greater competitiveness and complying with the principle of transparency.

Finally, the Mission notes with concern the absence of regulatory provisions governing financing systems in the parties’ internal elections. This legal vacuum weakens the oversight mechanisms mentioned and leaves the door open to money of unknown origin entering the political system. As a result, the Mission recommends moving ahead on the oversight of funds for the parties’ primary campaigns. Added to this, the EOM recommends including in the law a ceiling on expenses in municipal elections, an aspect not covered in current regulations.

Acknowledgements

The Mission recognizes the collaboration and openness provided by the Superior Court of Electoral Justice of Paraguay, affording the Mission’s experts and observers access to all the information needed to prepare this report and allowing it to be present for the different stages in the electoral process. The Mission will continue to be mindful of the development of the final count.

The Mission thanks Paraguay’s government officials and political and social actors. It expresses its gratitude to Argentina, Bolivia, France, Peru, Spain, and the United States, whose financial contributions allowed the deployment of this Mission.

\textsuperscript{8} Resolution 33/2018 of the TSJE