

OAS Electoral Observation Mission congratulates Mexico on the success of the largest and most complex elections in its history

July 3, 2018

The Electoral Observation Mission of the Organization of American States (EOM/OAS), which was deployed in Mexico to observe the federal and local elections on July 1, congratulates the Mexican people on the success of the largest and most complex elections in its history, and applauds the massive turnout to elect more than 18,000 positions. However, it regrets and condemns the five deaths in isolated incidents of violence on election day and the national context of violence in which the elections took place.

The Mission congratulates President-elect Andrés Manuel López Obrador on his victory in the elections last Sunday, and welcomes the democratic spirit of the other candidates who accepted the expressed will of the Mexican voters. The Mission also wishes to acknowledge the hard work of the electoral officials who stepped up to the challenge of organizing the election process and ensuring its success.

Headed by the former President of the Dominican Republic, Leonel Fernández, the Mission consisted of 65 experts and observers of 23 nationalities, who were deployed in 25 States. The EOM/OEA conducted a substantive analysis of key aspects of the electoral process, including the organization of the elections, voting technology, campaign financing, electoral justice, the political participation of women, electoral violence, and the participation of indigenous peoples.

Following a preliminary visit in mid-May, the Mission started its work in the country on June 21. In the days leading up to the election, members of the Mission held meetings with federal and local elections authorities and government officials, political parties, candidates and civil society in order to understand the technical aspects of the elections process and the views of the various stakeholders about the elections.

During the election campaign, the National Electoral Institute (INE) organized three thematic debates among candidates for the Presidency,¹ which attracted significant public interest.² The Mission congratulates the electoral authority on its efforts to promote exchanges of views about candidates' proposals, and on helping voters cast informed votes by airing these debates on various media and social media.

However, the Mission did note that the campaign was characterized by offensive speech by political contenders. Ever since its preliminary visit, the Mission has received a number of complaints about this issue, including one from then-candidate Ricardo Anaya when he complained about the publication by the Office of the Attorney General (PGR) of a video and press releases that, he claimed, sought to tarnish his candidacy. The Mission learned that in this case, the electoral authorities ordered the press

¹ The debates took place on April 22, May 20, and June 12.

² According to the INE, the debates reached a television audience of between 10 and 12 million, a much higher number than the debates in 2012. <https://centralectoralelectoral.ine.mx/2018/04/23/primer-debate-presidencial-alcanza-11-4-millones-de-personas-en-television/>

releases and the video withdrawn from the official PGR media.³ The Specialized Regional Court of the Electoral Court of the Federal Judiciary (TEPJF) found that there had been a “violation, consisting of the partial use of public funds to affect the fairness of the election” by officials of the PGR.⁴ The measure was appealed, and is still pending a decision as of the date of the present report.

The Mission also noted that false news had been circulated in an effort to misinform and discredit the electoral process. The Mission wishes to highlight the efforts made by the INE and by the media, civil society organizations and universities to refute false news via media and social media campaigns.

The Mission learned during the pre-election phase that 24 elections packages had been stolen in Oaxaca, Tabasco, Veracruz and Tlaxcala. To ensure that the stolen ballots were not used during the election, the INE reprinted them with its stamp on the back, and asked the representatives of the parties and the independent candidates to sign them before they were handed over to the voters. The Mission applauds the INE’s rapid reaction to these incidents.

On election day, the OAS observers visited 676 polling stations in 25 of the country’s Federal units, starting from the time the polls opened until the votes were counted and the results declared. As the day began, they saw delays in setting up the polls, which resulted in long lines of voters around the polling stations. The Mission observed that after a while, some voters had to leave without having voted. There were several reasons for the delay, including difficulties in staffing the polling stations, when the officials did not arrive or arrived late; lack of information about the process of setting up the polling stations and the amount of time spent on the many administrative procedures that the officials had to perform before the polls opened. The Mission applauds the way in which voters waited patiently in line in order to vote.

As to the voting itself, the Mission observed that the polling station officials encountered difficulties when they had to detach the ballot papers along the dotted line, and had to use scissors or a ruler to cut the ballots out and prevent them from being torn. In some cases, voters were erroneously given ballots that still had the paper attached. This was corrected by the elections training assistants (CAEs).

Because of the large number of elections that were being held concurrently, up to six ballot boxes were installed in some polling stations, which was an additional challenge. The observers reported that at times, the space available was somewhat too cramped to accommodate the elections materials, the polling officers, voters and party representatives. They also noted some confusion among voters about which ballot box they should use to deposit each of their ballot papers. The tellers helped voters and the problem was solved.

The Mission acknowledges the work done by the polling officials, electoral, elections training assistants and others involved in organizing the polling stations; they worked tirelessly to ensure a successful outcome of the voting in the most complex elections in Mexico’s history. The Mission also notes that large numbers of party representatives were present in the polling stations, an essential factor in ensuring accountability in the process.

³ SUP-REP-53/2018. Resolution of the Upper Chamber of the Electoral Court of the Federal Judiciary of March 20, 2018, confirming Decision ACQyD-INE-41/2018 of the Committee on Complaints and Denunciations of the National Electoral Institute, of March 13, 2018.

⁴ SRE-PSC-61/2018. Resolution of the Specialized Regional Court of April 12, 2018.

The Mission observed with satisfaction that the Electoral Institute of Mexico City (IECM) used a variety of means to enable voters with disabilities, whether mobility or visual or upper body issues, to vote.⁵ The Mission applauds this kind of inclusive initiative that seeks to improve electoral processes.

The OAS observers noted that problems occurred on election day in the special polling stations, because a large number of voters arrived, causing long lines and causing the ballots to run out in a number of cities before the time the polls closed. This prevented some voters from exercising their right to vote, and produced some tense situations around the special voting centers.

Election day was calm in most states, where the Federal and local authorities helped ensure an atmosphere of normalcy that allowed voters to exercise their right to vote. However, in some states, the violence that had occurred during the campaign continued. While the election was not at risk, violent incidents occurred during the day, including the theft and destruction of ballot papers, shooting and fights around polling stations, as well as threats against party representatives and polling officers. The Mission learned that five people were killed in Michoacán, Chiapas, Guerrero and Puebla in incidents possibly related to the election.⁶ According to data from the INE, voting had to be suspended in thirteen locations due to the theft and/or destruction of electoral materials, and the vote count and computation was suspended in two other locations⁷ due to theft and/or destruction of electoral documentation. The Mission regrets the loss of human life and strongly condemns the violence that took place in the context of the election.

When the polls closed, the Mission noted a lack of uniformity in the procedures for the vote count, which was not always conducted as stipulated in the legislation.⁸ The observers reported that the order in which the different ballots should be counted was not clear. They also witnessed confusion about when the operations book and the certification of the vote count and computation was to be completed.

As scheduled, the Mission observed that the INE's Preliminary Election Results Program (PREP) began to publish results at 8 p.m. on Sunday, July 1. Shortly thereafter, the Presidential candidate for the coalition "Todos por México", José Antonio Meade; and the candidate of "Por México al Frente", Ricardo Anaya, conceded their defeat and recognized the victory of Andrés Manuel López Obrador, of the coalition "Juntos Haremos Historia".

The OAS Mission followed the progress of the PREP from the central offices of the INE, and noted that the publication of the preliminary results was proceeding more slowly than anticipated. For example, while it was expected that by 6 a.m. on July 2, 67% of voting stations would have been counted, in fact less than fifty percent had been counted by that time. Later on, the Mission noted that the INE extended the closing of the PREP until 9 p.m., when it concluded its operation with 93.56% of the certified results of the Presidential election counted.

The electoral authorities had anticipated that delays could occur given the large number of elections to be counted in the polling stations and also because of the rule that provides that the certifications of the

⁵ These included support at the ballot boxes for easier access by people with difficulties; older adults and persons with upper body disabilities could mark "X"; labels in Braille on the ballot boxes, overlay in Braille for the ballot paper, and a magnifying glass for voters with reduced vision.

⁶ Information provided by official sources on July 2, 2018. These cases are under investigation.

⁷ Report from the Election Day Information System (SIJE) of the INE, at 8 p.m. on July 1.

⁸ Article 289 of the General Law on Electoral Institutions and Procedures provides that the count should begin with the Presidential election, followed by the elections for senators and deputies, and that if there is a single polling station with concurrent elections, the vote count for the local elections should be conducted simultaneously.

vote count and the results should not be completed until the vote count for all of the elections has been finalized. However, the Mission noted that also contributing to the slow progress of the PREP were delays in the transfer and delivery of election packages to the Data Collection and Transmission Centers, which is where the acts were digitized and sent to the PREP.

FINDINGS AND RECOMMENDATIONS

Based on the observations and information gathered during its various meetings, the OAS Electoral Observation Mission offers the following observations and recommendations, with a view to continued enhancement of the Mexican electoral system:

- Electoral violence⁹

2017 was the most violent year in Mexico in two decades,¹⁰ generating a climate of insecurity for the 2018 elections. According to data provided to the Mission by official sources, as of June 29, 103 politicians had been killed in 25 States since the beginning of the campaign.¹¹ Of these, the largest group were candidates and pre-candidates (46),¹² followed by municipal officials (21), former municipal officials (22), party officials (6), former legislators (4), officials of autonomous agencies (2), legislators (1) and former candidates for elective office in prior elections (1).¹³ These figures make this election one of the most violent in the region in recent years.

According to many people interviewed by the Mission, the number of killings and threats directed at politicians during the electoral period suggests that there were political motives. Those interviewed told the Mission that the origin of the violence that was affecting this election was closely related to organized crime networks that were operating by means of armed commandos and hit men.

The campaign was also affected by other forms of violence. Party representatives and candidates interviewed by the Mission said that they had been the victims of telephone threats and aggressive messages on social media. Some candidates decided not to run because of the threats. In addition, the Mission learned of episodes of gender violence intended to limit the participation of women candidates.

The Secretariat of Government [*Gobernación*] informed the OAS Mission about measures that had been taken to reinforce security during the election process, including an increased presence of the Federal Police in high-risk States such as Guerrero, Tamaulipas and Chiapas. In addition, in order to provide physical protection for the candidates for President, the Presidential General Staff (EMP) and the National Security Commission (CNS) jointly developed a personal protection protocol for candidates in 2018. Responsibility for the security of local candidates lay with the state police.

⁹ For the purposes of this Mission, electoral violence is defined as "any form of intimidation or physical violence directed at parties with an interest in the electoral process, interrupting it, or damaging the materials in such a way as to affect an electoral process or influence its result."

¹⁰ According to data published by the Secretariat de Gobernación. See data on intentional homicide, kidnapping, extortion and vehicle theft 1997-2017

http://secretariadoejecutivo.gob.mx/docs/pdfs/cifras%20de%20homicidio%20doloso%20secuestro%20etc/HDSECEXTRV_062017.pdf and report on victims of homicide, kidnapping and extortion 2017
http://secretariadoejecutivo.gob.mx/docs/pdfs/victimas/Victimas2017_122017.pdf.

¹¹ Information for September 8, 2017 to June 29, 2018.

¹² This type of homicide was reported in 14 states: Guerrero, Puebla, Estado de México, Jalisco, Guanajuato, Chihuahua, San Luis Potosí, Veracruz, Michoacán, Baja California, Coahuila, Colima, Quintana Roo and Oaxaca.

¹³ Of the 44 candidates or precandidates killed, 28 were running for local office. These figures show that the spiral of violence affected local candidates in particular.

Despite the authorities' efforts, a number of people told the Mission of their concern over the conditions under which the campaign was being conducted. According to their statements, the lack of security guarantees was particularly critical at the municipal level, given the greater limitations of the State police and the politicians' lack of confidence in the local police.

The OAS Mission strongly condemns any type of physical or psychological aggression during an election; violence has no place in a democracy. While regretting the killings that took place in the course of the electoral process, the Mission hopes that the security authorities will redouble their efforts to clarify these events and punish those responsible.

In an effort to deal with this problem, the Mission suggests a multi-faceted approach to reduce the incentives for criminal behavior and at the same time enhance the capacities of the state security forces. It is also recommended that protection for politicians and representatives of civil society be reinforced during elections.

- **Electoral Organization**

Criteria for the Classification of Votes

On June 7, 2018, the INE published its decision that ballots bearing a mention of a candidate, whether by their nickname, or other names, would be counted as valid votes.¹⁴ The Institute also considered that votes for the candidate who had withdrawn, Margarita Zavala, should be counted as "support for non-registered candidates." This decision was reversed by the TEPFJ. On June 18,¹⁵ the Upper Chamber of the Court decided that these votes should be recorded as null and void.

These changes in the criteria for classifying votes were made very shortly before election day, when the training for the poll officers was almost complete. Nonetheless, the INE's efforts to publicize the new guidelines meant that on election day, no significant problems arose with the vote count in the polling stations.

Polling stations

Location: In Mexico 23.75% of polling stations are located in private homes, and 15.85% in the open air, in streets or plazas. While this may help facilitate and indeed encourage voting by bringing the polling stations to the voter, the Mission observed that these spaces were not always ideal. Polling stations located in the street or in plazas are not protected against the weather, and in many cases, have poor lighting, which was particularly noticeable at the time of the vote count. In private homes, there is sometimes not enough space to set up a polling station and access was not suitable. The Mission thus reiterates the recommendation made by the OAS in the elections of 2009, 2012 and 2015 to look at the possibility of making greater use of spaces such as school halls and classrooms in which to set up the polling stations.

Installation: On election day, the poll officials were formally convened to arrive at 7:30 a.m., half an hour before the voting begins at 8:00 a.m. In light of the new model of concurrent elections in a single polling place, the Mission finds that thirty minutes is not enough to ensure that all the necessary procedures have been completed by the time the polls open. Given what occurred on election day, when a significant number of polling stations opened late, the Mission recommends that in future elections, the officials be asked to arrive earlier, so that the polling stations can be correctly set up, and thus ensure that the voting can begin on time.

¹⁴ Decision INE/CG515/2018. This decision was confirmed by the Electoral Court of the Federal Judiciary (SUP-RAP-160/2018 and adds.).

¹⁵ SUP-RAP-151/2018.

Special polling stations: The Mexican electoral system calls for the installation of special polling stations so that voters who are temporarily outside their own voting district can vote. The district councils determine the number of special polling stations to be installed.¹⁶ Each special polling station, like other polling stations, will have a maximum of 750 ballot papers. A total of 1,051 special polling stations throughout the country were approved for this election.

Although this type of polling station is designed to guarantee the right to vote of as many people as possible, significant problems occurred in the implementation given the large number of people who came to vote in the special polling places. As occurred in past elections in Mexico, at least 292 special polling stations ran out of ballots,¹⁷ which meant that many people could not vote.

The Mission recommends implementing greater controls over who votes in the special polling stations to ensure that only those persons who are truly in transit can vote, and to make sure that this type of voting is not abused. The possibility might also be considered of increasing the number of special polling stations, or of allowing them to have a larger number of ballots.

- **Electoral Technology**

Preliminary Election Results Program (PREP)

For this election, the INE implemented the new “PREP Polling Station”, which enabled the certificates of the vote count and results to be transmitted by mobile devices directly from the polling stations for processing. This speeded up the transmission of the results and also reduced the logistics involved in transferring the certifications to the Data Gathering and Transmission Centers.

While the Mission applauds the implementation of this system, it observed that in practice, it was implemented only partially since approximately half of the electoral training assistants did not forward the photograph of the act of certification because they were involved in helping with the vote count and computation, filling out the certifications, and transferring the electoral package. The Mission recommends that in order to improve the way this system operates in future elections, training for electoral assistants stress the importance of the “PREP Polling Station” system, and even consider delegating this function to other officials in order not to overburden the electoral assistants.

Technology for tracking sensitive materials

The Mission observed the use for the first time of radio-frequency identification (RFID) to track sensitive elections materials in the electoral packages in Mexico City. The Mission observed that this innovation allowed the Electoral Institute of Mexico City to exercise greater logistical control and order. The Mission acknowledges the appropriate use of technologies to help with a timely vote count and computation in Mexico City.

- **Local Public Agencies**

Standardization

In the political-electoral reforms of 2014, the new National Electoral Institute took on functions that had previously belonged to local institutes. As the centralized agency, the principal objective of the INE is to standardize the electoral processes of the local public agencies (OPLs). With regard to the **2015 election**, the Mission observed greater clarity as to the roles of each institution, and the existence of formal mechanisms for operational coordination between the INE and the various OPLs. However, the Mission cautions that challenges remain in the standardization of procedures, given that because of Mexico’s

¹⁶ General Law on Electoral Institutions and Procedures, Article 258.

¹⁷ Information provided by the INE.

Federal political and elections system, the OPLs have autonomy in terms of electoral legislation at the local level, which on occasion may differ from the Federal provisions.¹⁸

Budget

The costs associated with local elections are financed at the state level. Representatives of a number of OPLs told the Mission that they were worried that they did not have enough of a budget to carry out their duties. They were also concerned that they had received disbursements in installments, or only a few days before the election. Such situations not only endanger the election itself, because of the inability to comply with the various stages of the electoral calendar, but also undermine the health of the OPLs themselves and their credibility with political parties and the general public. The Mission recommends looking into a mechanism that will ensure that the OPLs have the budget they need at the proper time to carry out their functions.

Voting abroad

Ever since 2006, Mexico has used a number of methods to allow voting abroad, including online voting in at least two Federal entities. In the 2018 election, voting abroad was only by postal vote. According to information received from the INE, a total of 181,256 citizens registered to vote abroad. Preliminary data indicated that of this total, approximately 54% were received. The number of voters originally from Mexico City who registered to vote abroad represented 21% of the total number. The Mission can testify to the laudable efforts of Mexico City to locate these citizens and motivate them to participate in the election process, which was reflected in a participation rate of 72.83%.

Although nationally, the number of votes received from abroad greatly exceeded the number in previous elections, the Mission invites discussion of how many procedures are needed to vote from abroad, and to identify areas where improvements might be made.

- Political participation of women

The inclusion in 2014 of parity in the Mexican Constitution¹⁹ caused a number of legal and regulatory provisions to be developed to implement it. Through successive reforms, Mexico has developed a robust body of legislation to ensure gender parity and equality, which has been accompanied by effective action by the electoral bodies. This places Mexico in the forefront of the political participation of women.

To assure women's right to be elected under equality of conditions, Mexican law includes provisions that are considered essential to effective implementation. These include alternation in the lists of proportional representation, application of parity in the lists of relative majority, both for the Chamber of Deputies and for the Senate, women heading all the candidacies for Senate under the principle of proportional representation, and the penalty of non-registration in the case of non-compliance. Other notable regulations include the legal obligation of political parties to earmark 3% of regular public financing for the promotion of political leadership among women, and a prohibition on placing them exclusively in losing districts.

The preliminary results of the election indicate a significant increase in the number of women in the makeup of the new Congress. In the Chamber of Deputies, 49.2% of the seats will be held by women, and in the Senate, it will be 50.78%. This represents progress over the previous composition. In the 2015

¹⁸ As an example, the INE guideline allows for a recount in the polling stations whenever the difference between the first and second candidates is 1% or less of the votes. By contrast, in the State of Morelos, the law permits a recount when the difference is 0.5%.

¹⁹ Article 41, Base I.

elections for the Chamber of Deputies, which is when the principle of parity was first applied, the percentage of women elected was 42.4%. In the Senate, following the 2012 elections, the outcome was 32.8%. While final data from this election are still to be issued, every indication is that Mexico will be among the countries of the region with the highest proportion of women in Congress. The Mission wishes to explicitly record its appreciation to Mexico on this important achievement.

These preliminary results show that the laws on parity have significantly enhanced women's formal access to elective office in Mexico. However, in the elections for single-member posts—in which these types of measures are not applied—the participation of women is still in the minority. The predominance of male candidates in the election for President is a clear reflection of this situation.

This makes it evident that the conditions for electoral contests are still unequal, and that women continue to face challenges because of their gender. Among the factors affecting the political participation of women are the internal resistance of the political parties, unequal media coverage, and greater difficulties in obtaining financing. These problems are aggravated at the local level.

In addition, in Mexico as in other countries of the region, political violence on account of gender continues to threaten female candidates. In the 2015 elections, the OAS identified this as a problem. Three years later, the Mission observed that in 29 Federal entities, amendments had been made to a number of local laws to move forward in this area. Also, the jurisprudence of the TEPJF has established that the authorities are obligated to act in cases of gender-based political violence in order to prevent adverse impact on political and electoral rights.

While these are important steps forward, a Federal law is needed in order to address the problem in a comprehensive way so as to ensure prevention, penalties and eradication. New legislation should be geared to criminalizing gender-based political violence, and should clearly establish the competencies of each of the agencies involved in addressing it, prioritize preventive measures, indicate appropriate mandates for the political parties, and set appropriate penalties.

Political participation of indigenous peoples and people of African descent

Mexico has the largest number of indigenous people in the hemisphere, and more indigenous languages are spoken in Mexico than in any other country in the region. The number of people who self-identify as indigenous in Mexico is 25,694,928,²⁰ or 21.5% of the total population (51.3% are women and 48.7% men.)²¹

One of the principal new features of the 2018 elections was the establishment of affirmative action measures for indigenous peoples. On the indication of the electoral authorities,²² in the election of deputies according to the principle of relative majority, the parties had to present indigenous candidates in the thirteen single-member districts where indigenous peoples accounted for more than 60% of the population.

While this measure may be perfected in the future, the Mission appreciates the efforts of the electoral authorities to increase the political participation of indigenous peoples. In the same spirit, it notes the need to encourage greater inclusion of people of African descent, who have not so far benefited from any affirmative action measures.

²⁰ According to the Socioeconomic Indicators of Indigenous Peoples in Mexico 2015, which the National Commission for the Development of Indigenous Peoples prepared on the basis of the Intercensal Survey 2015 of the National Institute of Statistics and Geography.

²¹ Decision INE/CG508/2017.

²² <http://portal.te.gob.mx/noticias-opinion-y-eventos/boletin/0/274/2017>

With regard to the climate of violence that affected the election, the Mission noted that the data on the incidents reported did not include the ethnicity of the victims. Given that minorities tend to be particularly exposed, knowing the impact specifically of violence on indigenous candidates would help protect them in the exercise of their political rights.

Lastly, in order to facilitate voting in future elections, the Mission recommends that more information, technical material and election ballots be made available in indigenous languages. It also suggests that when selecting the polling station officials in districts with a majority indigenous population, at least one official should be able to speak or understand the languages of the indigenous communities to facilitate interaction with voters.

- **Registration of independent candidates**

Mexican law allows candidates to stand for office without the backing of a political organization, as independent candidates,²³ provided they have sufficient voter support in particular geographical areas.²⁴ In order to run as an independent candidate at the Federal level, the candidate must, among other things, present a written statement of intent to the INE, and the INE must in turn certify that he or she wishes to be recognized as an independent candidate. In addition, the candidate must, within the established time period, collect the necessary percentage of voter signatures, depending on the office for which he or she is running.²⁵

In this election, the INE approved a Decision containing guidelines on verification of voter support,²⁶ which allowed candidates to request hearings to check the signatures of support that had been validated or reject, and to request a confirmation of validity up to the close of the collection of signatures. The electoral authority also decided on the use of a mobile App and web portal to collect these signatures. The app captured the personal data and images of voters' credentials. The data were then transmitted to the INE servers, where they were subject to both automatic and manual validation processes to determine the validity of the support.²⁷ The web portal classified the voter support into different categories, including: 1) voter support in the nominal list; 2) duplicates of the same candidate; 3) withdrawals; and 4) inconsistencies.

According to interviews conducted by the Mission, users of the App and the web portal had the impression that the first category (voter support in the nominal list) corresponded to the signatures of support that had been definitively confirmed, and that only those categorized as duplicates, withdrawals or inconsistencies were rejected and/or were under review. This became important because as a result of a review conducted by the INE after the period for receiving signatures of support had closed, there were cases in which signatures initially found to be valid were in fact rejected.

A number of independent candidacies did not comply in the first instance with the required number of signatures. Two cases that were particularly important in that they were independent candidates for the

²³ Constitution: Article 35. At the Federal level, General Law on Electoral Institutions and Procedures: Articles 3 (No. 1, paragraph c), 7 (No. 3), 357-437. The States establish their own legislation on the matter.

²⁴ General Law on Electoral Institutions and Procedures: Articles 357-371.

²⁵ The percentage of signatures needed varies depending on the office. General Law on Electoral Institutions and Procedures: Article 371.

²⁶ Decision INE/CG387/2017.

²⁷ Signatures of support shall not be considered valid if they contain names with false or incorrect data, if they are not accompanied by copies of the voter's current credentials, if they belong to voters whose residence is outside the territorial district where the candidate is running for election, and if the voter(s) have been withdrawn from the nominal list. In the event there is more than one indication of support from a voter in favor of the same candidate, only one shall be counted. And lastly, when the same person has presented an intention of support for more than one candidate, only the first signature shall be counted. General Law on Electoral Institutions and Procedures: Article 385, paragraph 2, Guidelines: No. 25.

Presidency were Jaime Rodríguez Calderón²⁸ and Armando Ríos Pitter, whose candidacies were rejected by the INE and subsequently challenged in the Electoral Court of the Federal Judiciary (TEPJF). In the former case, the Court decided to include the candidate in the ballot, while the latter was granted an extension of ten days for review of the signatures.

A number of people told the Mission of their concern over the different criteria used in the two cases, and the uncertainty caused by the decision to allow one of the candidacies to be registered without certainty that the constitutional and legal requirements established for independent candidacies had been met. According to information received from the INE, the additional time required to verify the signatures in support of the candidate would have been approximately 22 hours.²⁹ The Mission considers that allowing an additional period of time to verify the signatures of support for both candidates would have resulted in greater certainty and would have avoided questions about the legitimacy of this independent candidacy. In addition, the Mission recommends that there be express regulation of the procedure and time periods for review, including the possible verification of any inconsistency that might be found. This information should be available on the web page and the mobile App.

The Mission also believes that mechanisms might be considered for voters to check via a web portal or other easily accessible device whether a candidate had used his support, and not only by requests for access to public information, of which there were few during this election.³⁰

- **Political Communications**

A model of political communications was designed in order to promote fairness in elections. It guarantees political parties and independent candidates radio and television time in which to put forward their platforms. At the same time, the law³¹ provides that private individuals and legal persons may not buy advertising on radio or television that are designed to influence voter preferences in the election, whether in favor or against political parties or candidates for public office.

In the light of inter-American³² and national standards, and reiterating the statements of the OAS in 2015, the Mission views with concern that the current law “might restrict the expression necessary for an intensive, far-ranging and democratic debate”³³ involving non-party actors.

The Mission recommends to Mexican institutions that they seek an interpretation of that constitutional prohibition/ban in order to maximize protection of the rights to freedom of information and expression, which should indeed enjoy greater guarantees in the context of an electoral process.

- **Electoral Political Financing**

²⁸ SUP-JDC-186/2018 and add. SUP-JDC-201/2018.

²⁹ According to representatives of the Unit on Prerogatives and Political Parties of the INE.

³⁰ According to information provided by the INE, only 22 requests for information were received, asking whether the personal data of these voters (such as signature, voting credential, OCR, etc.) appeared as voter support on behalf of an independent candidate.

³¹ Article 41. Constitution of Mexico.

³² Article 19 of the International Pact on Civil and Political Rights, and Article 13 of the American Convention on Human Rights guarantee the right to freedom of expression and information, wherein it is provided that any restriction of these rights must be previously written into law and be necessary and proportional to the protection of a right or other legitimate purpose. Similarly, in addition to stressing its importance in a democratic state, the Inter-American Court of Human Rights has ruled that it is essential that exercise of this right be protected and guaranteed in the political debate during an electoral process (Cf. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004, Serie C, No. 111.)

³³ Organization of American States, Report to the Permanent Council of the Electoral Observation Mission for the Federal Elections, June 7, 2015.

Mexico has a mixed model of political financing, which combines public and private sources of funds.³⁴ Direct public financing at the Federal level in 2018 amounted to 6,000,800 million pesos, the equivalent of 350 million dollars.³⁵ In addition, the political parties and independent candidates had indirect public financing, notably access to government radio and television time. The significant amount of public funding that the law grants to the parties is one of the central pillars of a system that has made significant progress in the question of fairness.

With respect to oversight of party financing, the law gives the INE considerable scope, in that the bank secrecy and fiduciary and fiscal constraints do not apply to the INE.³⁶ To carry out its oversight responsibilities, the INE has a sophisticated information application called the Comprehensive Oversight System, in which the parties are obliged to record their financial and accounting operations. The information reported is subject to review by the electoral authority and also open to public scrutiny: the income and expenditure statements are uploaded to a web platform accessible to all. The Mission welcomes this exercise in transparency, and its impact on the promotion of an informed vote.

With regard to the system of sanctions, the law³⁷ provides for establishment of a system of nullification of Federal or local elections in cases where campaign expenditures exceed the total authorized by

five percent, if radio and/or television time is purchased, or public funds or funds of illicit origin are used in the campaigns. Additionally, those who are late in submitting their financial reports incur monetary penalties. Despite this provision, the Mission noted that some parties did not report their income and expenditure information in timely fashion.

The party finance oversight authorities faced a significant challenge in this 2018 election, given the number of campaigns being conducted simultaneously. The large number of candidates participating in the election gave rise to approximately 30,000 reports to be written.³⁸ In this complicated situation, the law gave the INE only 40 days to review the financing reports of all of the campaigns. In light of this significant administrative burden, the OAS Mission recommends that the time periods given to the electoral authority to complete its oversight work be extended.

Furthermore, despite the existence of a robust regulatory framework, party representatives, academics and members of civil society told the Mission that they were concerned over possible campaign income of unknown origin and unreported funds. This invisible financing could harm the transparency of the system and distort the fairness of the election in favor of those candidates having access to that type of financing.

Looking to future elections, the Mission recommends examining the system of sanctions, to strengthen its dissuasive capacity. In addition, in order to strengthen the oversight capacities of the National Electoral Institute, it is suggested that coordination with other State entities be improved, particularly with those agencies that have better tools for financial investigation and intelligence.

Use of public resources and cards

³⁴ General Law on Political Parties: Title Five.

³⁵ National Electoral Institute, Oversight Unit.

³⁶ Constitution: Article 41.

³⁷ In the event of serious, intentional and determining violations. A determining violation will be presumed if the difference between the first and second place is less than 5% (Constitution: Article 41; General Law on the System of Electoral Challenges: Article 78 Bis).

³⁸ Information supplied by the Technical Oversight Unit of the INE on June 26, 2018.

A number of stakeholders told the Mission that some campaigns had used public funds and social programs. In addition, cards or certificates were given out, together with a pamphlet describing the benefits of a social program that the voter would receive if the party or candidate giving them out were elected.

In previous elections, the Electoral Court addressed cases related to the use of these cards, and ruled that they were part of electoral advertising.³⁹ However, in 2017 the INE amended the Oversight Regulations to prohibit them.⁴⁰ In its ruling on the measure, the Electoral Court of the Federal Judiciary found that the Institute had exceeded its authority, and it vacated the amendment.⁴¹

Current law prohibits “handing out any type of material that offers or delivers any direct, indirect, mediate or immediate benefit, whether in cash or in kind,”⁴² the Mission considers that more thought needs to be given to the use of cards, since it is possible that voters see the cards as a benefit in exchange for their vote.

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³⁹ SUP-RAP-388/2017 and add.

⁴⁰ “any card, flyer, folder, pamphlet, plastic or any other document or material that offers or deliver any direct, indirect, mediate or immediate benefit, whether in cash or in kind, by means of any system that involves the handing over of goods or services, or asking voters for any personal data in exchange for such a benefit.” (Decision INE/CG409/2017).

⁴¹ SUP-RAP-623/2017 and adds.

⁴² General Law on Electoral Institutions and Procedures, Article 209, No. 5.