

OAS Mission to the Dominican Republic acknowledges the effort made by the Central Electoral Board to organize elections and implement its recommendations

The Electoral Observation Mission of the Organization of American States (OAS/EOM), led by the former President of the Republic of Chile, Eduardo Frei Ruiz-Tagle, compliments the people of the Dominican Republic on their perseverance and democratic commitment, which were demonstrated in the special municipal elections held yesterday, Sunday, March 15, 2020, in the Dominican Republic.

The Mission, which was present in the country since February 7, recognizes the special lengths that the electoral authorities and officials went to in order to hold these elections within a very short period of time, while at the same time complying with almost all the recommendations made by the OAS. It also commends the close involvement of the political parties in the decisions that made these elections possible. The EOM likewise reiterates its appreciation for the care taken by the country's leading politicians to call for peace, dialogue, and the exercise of the right to vote in an environment of heightened political and social tension. Civil society organizations also played a key role: a measure of the dynamism inherent in Dominican democracy.

The municipal elections were held in a very complex context due to the unprecedented suspension of the February 16, 2020 municipal elections, as a result of widespread flaws in automated voting equipment. Given those special circumstances and at the behest of the authorities, the Mission remained in the Dominican Republic, without interruption, from its arrival in early February. The OAS/EOM strove, through its technical team of specialists in electoral organization and technology, to make specific recommendations designed to contribute to the holding of appropriately conducted special elections.

It is to be noted, too, that, at the request of the Central Electoral Board (JCE), an OAS technical team is currently auditing the computerized system used in the elections that were suspended in order to determine what caused the flaws. That audit's work and findings are independent of the work of this Mission.

Upon its arrival in the country, the OAS/EOM engaged in an in-depth analysis of such topics as electoral organization, electoral technology, political financing, electoral justice, and women's participation in politics. With a view to garnering a variety of perspectives and learning about the concerns of the several players in this process, the Mission met with political, administrative, and judicial authorities, as well as with presidential candidates, candidates to local government office, political party representatives, representatives of nongovernmental and civil society organizations,



academics, experts, and others. For the special elections of March 15, the Mission comprised 36 observers and specialists of 16 nationalities.¹

BACKGROUND

Regarding the suspended February 16, 2020 election

On February 16 and on the days prior to it, the Mission observed a tense atmosphere, with isolated episodes of violence. Several people were wounded and some died as a result of various clashes.

The OAS/EOM received reports of problems with the voting equipment on the night before the elections, along with complaints by opposition parties that JCE technicians had entered the voting centers to operate the equipment without the presence of the parties' delegates. Subsequently, at a meeting with the JCE, our observers were told of the existence of flaws in the software used to issue votes.

In the early hours of Election Day, the Mission managed to ascertain defects in a high percentage of the equipment installed (in some of the voting centers observed by the Mission, up to 60% of the computers had issues). The monitors were not displaying all of the electoral options. That was not, however, the only flaw; there were also screens that froze, problems with printing out the vote, and problems with inputting the names of delegates. It was also discovered that the slip of paper recording the vote unfolded inside the ballot box, so that it was no longer secret. Some polling stations continued to receive voters despite those issues and others never actually opened. The ability of JCE technical personnel to handle these problems was rapidly exhausted, given the sheer number of issues and the time it took to correct them via centralized decisions that delayed the process.

The OAS observers deployed on the ground ascertained that it was impossible to resolve the flaws detected and proceed to voting. Under those circumstances, the Mission understood the decision taken by the JCE to suspend the municipal elections in their entirety. The next day, the electoral body decided to hold the elections on March 15. The Mission supported the decision to conduct the voting manually in 100% of the polling stations for special, presidential, and congressional elections. In addition, the JCE requested that the IFES (International Foundation for Electoral Systems) continue to provide advice in technical areas.

The hours and days following the suspension of the elections were of critical importance for the political stability of the Dominican Republic. The Mission reiterates its appreciation of the country's leading political figures, who rightly said they were bothered by the suspension and demanded clarification of what had happened but, despite that, remained committed to peace and stability and reiterated that an effective voting process was what mattered to them most.

¹ For the suspended elections of February 16, the Mission had comprised 25 observers and specialists of 12 nationalities.



The JCE opened up opportunities for exchanges of views and decision making with the political parties and citizens in general, thereby following one of the OAS Mission's recommendations. All electoral processes stand to gain from transparency, dialogue, and inclusion. The OAS/EOM trusts that that attitude will transcend the current electoral cycle and that civil society will continue to advance its ownership of a democratic process to which it is fully entitled.

Period between elections

During this period, the Mission ascertained that, thanks to the establishment of productive channels of communication between the electoral authority and the political parties, basic agreements were reached on how to handle the elections, such as the agreement to print new ballot papers of a different size and color and the agreement to reuse the scanners deployed for the 2016 elections for transmitting results. The Mission likewise commends the creation and reactivation of other opportunities for political and social dialogue, especially the contribution made by actors not directly involved in the electoral contest, including young demonstrators, business leaders, and representatives of nongovernmental and civil society organizations.

Organizing unscheduled elections in less than one month and just two months away from the presidential and congressional elections required an exceptional effort on the part of the electoral authorities. The Mission wishes to acknowledge the firm resolve with which JCE personnel resumed their functions under considerable political and social pressure. Outstanding achievements included (re-)training the instructors, facilitators, and authorities of the polling stations; the reprinting and distribution of electoral materials; and the recovery and testing of the technological equipment (scanners) used in the 2016 elections, among others.

The adoption of manual voting in all of the polling stations vastly reduced technological input into the voting process. Despite that, the Mission again ascertained the lack of appropriate protocols to govern testing, quality control, verification, and auditing of the performance of the technological aspects of the process. Once again, the Mission noted the lack of appropriate documentation of processes that would enable the electoral authorities themselves, as well as third parties, to analyze those processes. The day before the election, the Mission attended the installation and partial testing of the scanners in the voting precincts, both of which were flawless.

One of the key developments during the period between the suspended and the special elections was the appointment of the Special Prosecutor for the Investigation and Prosecution of Electoral Crimes and Offenses. The Mission was able to meet with her in connection with these elections. Her appointment had repeatedly been requested by political parties and by civil society, and had also been recommended by the OAS. Her function will be to coordinate the various institutions involved in prosecuting electoral crimes and she will play a key role in forging trust in presidential and congressional elections. To that end, the office of the Special Prosecutor will need to be endowed



with all the financial and human resources needed to perform its functions, as well as with technical and political-party independence.

The days prior to the March 15 elections also stood out for the reduced number of acts or incidents of violence, compared to the days prior to the suspended elections of February 16.

ELECTION DAY

On Election Day, OAS observers covered 99 voting centers and visited 435 polling stations in 20 of the country's provinces and in the National District, from the opening of the polls through to the transmission of results. Although there were some delays, the Mission underscores the fact that all polling stations opened. These comprised, for the most part, their principal members (a high percentage of whom were women), demonstrating once again their commitment to political life in their country.

Generally speaking, the voting was orderly and calm. In some polling stations, there were reports of ignorance of the requirement that voters leave a fingerprint on the voter registration list. The presence of a large number of political party representatives was observed on Election Day, especially representatives of Partido de la Liberación Dominicana (PLD) and Partido Revolucionario Moderno (PRM). The Electoral Military Police was present at virtually all the voting precincts observed.

During the course of the day, the OAS/EOM observed various political groups buying votes and voter registration cards (*cédulas*) at a number of sites. That has been a recurrent issue in elections in the Dominican Republic and one that has been pointed out by past OAS Electoral Observation Missions. In addition, political canvassing was observed both near and inside voting precincts, along with an abundance of "party facilitators," i.e. political party agents carrying large badges, showing the colors and emblems of their respective parties.

During Election Day, the Mission received complaints about the purchasing of voter registration cards, noncompliance with JCE provisions regarding assisted voting, and about the Electoral Military Police preventing the entry of vote-count observers. Those complaints will be forwarded to the competent authorities.

The polling stations began closing at 5:00 p.m., as required by law. The vote tally at the polling stations observed by the Mission was conducted appropriately, although in some cases it took over five hours due to difficulties with counting preferential votes and correctly filling in the tally sheets. The Mission observed that vote counting procedures were not followed in a standardized manner in all the polling stations observed.

The first tallies began to be processed at 6:00 p.m. and the dissemination of initial results began at 8:00 p.m. The website designed for transmitting results functioned without major flaws until 10 p.m., after which there were technical issues that prevented further transmission. Despite that, the

political parties and the media had constant access to information via internal dedicated channels, which ensured that citizens were kept informed.

Finally, it is to be noted that, as these were the first municipal elections in recent years that were not conducted at the same time as other elections, voter turnout was lower than in previous elections in the Dominican Republic.

FINDINGS AND RECOMMENDATIONS

These were the first municipal elections governed by the electoral reform contained in Law 15-19, the Organic Electoral Regime Law, and Law 33-18, the Law on Political Parties, Groups, and Movements. The Mission commends the desire of Dominican society to continue perfecting its electoral regulations and appreciates the incorporation in the new legislation of several recommendations made by the OAS as part of its technical cooperation and in previous OAS/EOM reports on elections in the Dominican Republic. Nevertheless, this process did pinpoint important legal gaps and challenges with interpreting and applying the regulations that should be addressed in a comprehensive review of legislation, once this electoral cycle is over.

Based on a detailed review of existing norms and taking into account investigations conducted directly by OAS/EOM technical personnel and observers as well as information culled from a variety of institutional, political, and social actors, the Mission presents its preliminary findings and recommendations, with a view to contributing to the ongoing improvement of the Dominican electoral system, particularly in light of the presidential and congressional elections to be held in May 2020.

I. Electoral Organization

The OAS/EOM wishes to highlight two core features of the way elections are organized in the Dominican Republic, which, in its view, constitute the main strength and the main weakness of the system. On the positive side, the system benefits from experienced personnel in both the JCE and the Municipal Electoral Boards (JEM), a factor that facilitates the quest for solutions to problems that arise when preparing and conducting the process. That said, the Mission did note a contrast between the individual experience acquired by electoral personnel and the lack of both standardization and documentation of procedures, so that the success of elections is overly dependent on the part played by specific individuals and their capacity to improvise when challenges arise.

The Mission noted major differences in terms of the quality and operational effectiveness of the JEM. That can directly impair the conduct of an election.

The Mission therefore recommends:



- Standardizing and documenting the procedures used at the various stages of the electoral process. This includes harmonizing national and municipal procedures.
- Drawing up a detailed electoral timetable for the holding of presidential and congressional elections in May 2020, so that both political actors and citizens in general have a clear idea of what to expect.
- In establishing the polling stations, cross-matching the list of possible authorities with the political parties' lists of their members, in order to ensure the balance required under Article 62 of Law 15-19. Although the Mission is conscious of the characteristically high level of political party affiliation and political activism of Dominican citizens, it considers that more effort is needed to avoid the perception that polling station authorities are associated with particular political preferences.
- Maintaining and further developing dialogue among the electoral authorities, political parties, and civil society.

II. Electoral Technology

The impossibility of holding elections on February 16 for the reasons discussed above triggered distrust of the JCE's I.T. unit. For that reason, it was decided to dispense with the mobile app for transmitting results that had been envisaged for the manual vote in the February elections. By agreement with the parties, the JCE decided to use scanners to transmit tally sheets that would then be digitized in the JEM so as to consolidate results.

The scant weeks allowed for the electoral body to implement that technological solution required considerable effort and posed several challenges. As in the February elections, the Mission observed shortcomings with the testing needed to ensure that the technological equipment would function properly. While the electoral authorities did perform some ad hoc tests, the performance of some computer equipment on Election Day revealed how deficient that testing had been and the imperative need to generate strict protocols, especially comprehensive functionality testing and stress tests.

Although the computing of results was slow, the tally sheets were transmitted flawlessly: a key step for ensuring transparency in elections. As mentioned earlier, the website envisaged for the dissemination of results developed technical flaws, which meant that from 10 p.m. up to Monday morning, the results on the portal were only available intermittently. Citizens were kept informed via the media.

Bearing in mind that the JCE's difficulties with implementing technological solutions and given the upcoming presidential and congressional elections in May, the Mission deems it essential that the electoral body perfect the current system and ensure that it functions properly, before embarking on any other project.

Improving and boosting procedures and technical aspects of the system for transmitting and consolidating results is indispensable to ensure an expeditious and reliable flow of information capable of ensuring the transmission, processing, and dissemination of results for the three levels of elections to be held in May. The Mission therefore recommends:

- Drawing up a timetable of the work to be completed by the I.T. unit of the JCE, including all technical and technological activities, and that it be synchronized with the schedule of the Directorate of Elections.
- Implementing an Incident Management System.
- Formalizing the structure for software/system developers and standardizing the type of development, so as to guarantee project continuity in the event of incidents.
- Implementing a software versioning system.
- Implementing a mechanism for documenting adaptations, modifications, and corrections made to the software versioning system.
- Implementing a formal source code (White Box) and software functionality testing mechanism.
- Implementing a mechanism for freezing software, before it is produced, cloned, or inseminated.
- Ensuring functional retrofitting of the hardware in 100% of the scanners to be used in the elections.
- Implementing a quality and operational control mechanism covering 100% of the components of the technology pack to be used in electoral precincts.
- Implementing an inventory system for the components in the technology pack, with tags (MAC Address, IMEI code) showing in which pack they are located and thus making it possible to identify any components with flaws.
- Conducting a practice run to test 100% of the functionalities envisaged for the upcoming elections, with all the JEMs and at least 80% of voting precincts, and 100% of polling stations. This should be done at least 15 days prior to the elections, so as to leave time for any adjustments needed.

- The website envisaged by the JCE for disseminating results must be optimized, using feedback from the practice run data.
- The bulletin boards (*paneles de consulta*) envisaged for the dissemination of results should be constructed before establishing data warehouses and must take feedback data from the practice run into account.
- Generating tests that simulate election scenarios.
- Upgrading the human resources in the I.T. Unit.

III. Political Participation of Women

The Mission welcomes the progress made in Dominican legislation with respect to promoting the gender equality protected under the Constitution.² In particular, it lauds the increase in the gender quota (previously set at 33%) to a range of between 40% minimum and 60% maximum for persons of the same sex on multi-candidate lists for elective office.³ The OAS/EOM likewise took note of valuable initiatives to promote women's political leadership, such as the "Conoce a tu Candidata"⁴ [Get to Know Your Candidate] platform and the holding of a training course with a gender perspective, directed in particular at women in municipalities and in municipal districts in rural areas, in order to familiarize them with the new electoral laws.

During the registration of candidacies phase for this process, a conflict arose regarding interpretation of the scope of the gender quota, because Law 33-18 refers to quotas per "electoral district"⁵ (*demarcación electoral*), whereas Law 15-19 talks of a "national proposal,"⁶ leaving an option open for political parties to assign their women candidates to constituencies in which they would be less likely to be elected. Following litigation before the Superior Electoral Tribunal (TSE) and the Constitutional Court, the criterion ensuring greater equity prevailed, that it is to say, application of the "electoral district" quota. While that process was unfolding, the Superior Administrative Tribunal (TSA) heard a suit against the calculation for applying the quota issued in JCE Resolution 28-19, which ultimately had to be amended. The above goes to show that the

² Article 39.4 and 5 of the Constitution of the Dominican Republic, proclaimed on June 13, 2015.

³ Law 13-00 had already provided for mixed-gender lists of candidates for executive positions in municipalities.

⁴ A platform promoted jointly by the JCE, the Ministry for the Promotion of Women, the United Nations Development Programme (UNDP), the Research Center for Women's Action (CIPAF), UN Women, and the United Nations Children's Fund (UNICEF).

⁵ Article 53, I and II of Law 33-18, the Law on Political Parties, Groups, and Movements, of August 15, 2018.

⁶ Article 136 of Law 15-19, Organic Electoral Regime Law, of February 18, 2019.

progress made with raising the quota was undermined by long-drawn-out judicial proceedings and uncertainty as to interpretation of the laws: a situation that was disproportionately detrimental to women candidates.

It is clear that the political participation of women in the Dominican Republic still faces significant challenges. Political parties have been taking a minimalist approach to the legal quota in their interpretation of the law, as is shown by the fact that men headed 85% of the candidacies for executive positions in these latest municipal elections, while women candidates made up 85% of those applying for deputy mayorships and deputy directorships in municipalities.

With a view to consolidating gender equity and contributing to the Dominican Republic's objectives in that field, the Mission recommends:

- That all administrative and judicial dependencies fully enforce the resolutions on interpreting the quota in the manner that most favors equity, thereby guaranteeing maximum legal certainty ahead of the presidential and congressional elections in May.
- Improving the presentation of data and the availability of statistics broken down by gender, so as to highlight women's political participation and corroborate the progress made in that regard. Also keeping up-to-date statistics on how long women remain in the positions to which they were elected, so as to avoid parties promoting women candidates subject to the condition that they resign once the elections are over.

IV. Political Financing

The Mission acknowledges that new regulations have been adopted to regulate political financing, including caps on campaign expenditure and on individual contributions, permitted sources of revenue, resource accountability and audit procedures, the introduction of financing-related sanctions, and so on. Nevertheless, experts in political financing ascertained that many of the provisions in the legislation were not applied in practice and that, in some cases, the authorities lack the financial and human resources needed to effectively exercise the oversight functions assigned to them in the new legislation.

Political parties blatantly failed to comply with the requirement to post their budgets on the platform set up for that purpose by the JCE and to provide accounting information that truly reflected their income and expenditure. They also ignored the requirement to register contributors and to provide the information needed to verify observance of the campaign expenditure and individual contribution ceilings. This lack of information not only makes it impossible for the JCE to

exercise appropriate oversight; it also prevents auditing by political actors and social oversight by citizens and civil society organizations.

Since its installation, the Mission ascertained that the presidential campaign started ahead of the date allowed in the regulations, there were numerous instances of political propaganda when it was still banned, and posters remained in public places following the primaries. The Mission also received various reports of public funds being used for electoral purposes. Even though there were instances in which the JCE requested the withdrawal of publicity flaunting the regulations, there are no records of it actually having imposed sanctions on those responsible.

Accordingly, the Mission recommends:

- Considering the presidential and congressional elections in May 2020, immediately allocating sufficient resources to the Specialized Financial Oversight Unit of the JCE's Finance Directorate, providing it with human capital and the political backing it needs for proper supervision and auditing of campaign expenditure, the detection and sanction of illicit sources of financing, equitable access to the media, and so on. Included in the above is prompt issuance of any regulations still needed for implementation of the new norms.
- Requiring candidates and political parties to use the Candidate Screening Platform set up by the JCE.
- That the electoral authority facilitate public access to campaign budgets and the annual budgets of political organizations, so that citizens and political groups can help verify compliance with the regulations. Such information is vital for ensuring that citizens are well informed when they cast their vote.

V. Electoral Justice

The Mission can testify to the ongoing reform process undertaken by the Dominican Republic in order to strengthen its electoral justice system. That process nevertheless still needs to overcome several challenges. The role that the Constitution accords to the TSE as the maximum authority in electoral disputes has recently been curtailed by an excessively restrictive interpretation of the powers vested in it by law. Thus, the Constitutional Court has repeatedly ruled that it is up to the Administrative Tribunal (TSA) to review electoral acts by the JCE, ignoring the fact that those acts are, formally speaking, administrative but, materially speaking, electoral. That has led, for instance, to the TSA pronouncing on such matters as the location assigned to political parties on ballots.

This fragmentation of spheres of competence adds to legal uncertainty, impairs the specialization and unification of criteria in electoral jurisprudence, triggers confusion among political actors, and makes it difficult to guarantee prompt justice, especially given that actions under administrative law are not designed to fit into electoral timetables.

Here it is worth stressing that the JEM operate as first-instance courts for election-related administrative litigation.⁷ The Mission notes that much of the TSE's litigation burden stems from appeals and challenges of decisions handed down at the local level demonstrating, in many cases, technical shortcomings in terms of JEM familiarity with judicial matters.

As regards the electoral criminal system, the recent amendments to Dominican law incorporated a list of electoral offenses, along with the establishment of the Office of a Procurator Specializing in the Investigation and Prosecution of Electoral Crimes and Offenses.⁸ The Mission welcomes these advances in the form of additional instruments for guaranteeing respect for the will of the Dominican people, especially vis-à-vis the perception by a number of political and social actors that electoral crimes go unpunished.

The OAS/EOM recommends:

- Enhancing the technical capacity of the JEM to resolve litigation, thereby easing the burden on the TSE and making it possible to focus on matters with a greater impact on the election process.
- Establishing, via legislative amendments or interpretations of the Constitution, that only the TSE is competent to hear cases of conflicts affecting the electoral process. Worth mentioning here is that fact that, in 2016, the OAS/EOM pointed to the importance of granting the TSE legal and material power to review the legal and constitutional propriety of all administrative acts undertaken by any authority with regard to electoral matters.
- Providing the parties and the general public with up-to-date information on the status of complaints, claims, and petitions filed with administrative and judicial authorities, so that track can be kept of progress with institutional proceedings, with the date of reception of the complaint, claim, or petition, assignment of the case, the resolution handed down, and notification of the parties. Likewise, improving the search engines, stores, and repositories of the resolutions handed down by electoral bodies, so as to facilitate access to information.
- Endowing the system for prosecuting and punishing electoral crimes with all due criminal justice guarantees, including the right to a second hearing.

⁷ Article 46, Section 2 of Law 15-19, the Organic Electoral Regime Law of February 18, 2019 and Articles 13, 15, 17, 26, and 27 of Law 29-11, Organic Law of the TSE, of January 20, 2011.

⁸ Article 289 of Law 15-19, Organic Electoral Regime Law, of February 18, 2019.

- Strengthening the technical, material, and logistical capabilities of the TSE, so as to ensure that it can perform its functions as an electoral crime tribunal, without thereby diminishing its jurisdiction over non-punitive election-related administrative matters.
- Reinforcing and consolidating the as yet incipient work of the Specialized Procurator so that she can efficiently comply with the tasks entrusted to her by law.
- Cultivating a healthy environment of complaints filed through institutional channels, which includes the responsibility of the authorities to follow up on them in accordance with their merits.

FINAL CONSIDERATIONS

The municipal elections of 2020 constituted a milestone in the history of the Dominican Republic's electoral institutions and their relations with political organizations and civil society. The Mission considers that the lessons learned in the course of this sometimes daunting process may lay the foundations for the successful organization and holding of the presidential and congressional elections, preparations for which are already under way.

Acknowledgments

The OAS/EOM thanks the Central Electoral Board for allowing it access to the various bodies and activities preparing for the elections and for its openness to suggestions made by the Mission throughout this process. We would like to extend those thanks also to the Superior Electoral Tribunal for the information and cooperation it provided. The EOM is also grateful to the various State institutions, government authorities, political parties, social actors, academics, entrepreneurs, and security forces, whose cooperation was essential for the Mission's activities.

Finally, the OAS/EOM thanks Bolivia, Canada, Chile, Germany, Guatemala, Korea, Mexico, the Netherlands, Panama, Spain, and the United States for their financial contributions which enabled the Mission to remain deployed in the Dominican Republic since February 7.