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**REPORT OF THE ELECTORAL MONITORING MISSION
IN THE REPUBLIC OF VENEZUELA
Referendum II December 15, 1999**

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ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C.

THE SECRETARY GENERAL

SG/UPD-499/00

May 1, 2000

Excellency:

I have the honor to address Your Excellency and to transmit to you the Report of the Electoral Observation Mission on the July 1999 election of representatives to the National Constituent Assembly of Venezuela and that Mission's Report on the second referendum, held in December 1999. Please be so kind as to arrange for the joint circulation of these two reports to the members of the Permanent Council.

Accept, Excellency, the assurances of my highest consideration.

César Gaviria

His Excellency
Marcelo Ostría Trigo
Ambassador, Permanent Representative of Bolivia
Chair of the Permanent Council of the
Organization of American States
Washington, D.C.

ORGANIZATION OF AMERICAN STATES

REPORT

ELECTORAL MONITORING MISSION

IN THE REPUBLIC OF VENEZUELA

Referendum II

December 15, 1999

Contents

I.	Introduction	1
	1. Constituent process in Venezuela. General background	1
	2. Request of the Electoral Observer Mission. Structure and purpose of the Mission 2	
II.	Electoral System	4
	1. Juridical framework.....	4
	a. Political rights and duties	4
	b. Electoral authorities	5
	c. Automation of electoral processes	6
	2. Electoral infrastructure	7
III.	Activities of the Mission.....	10
	1. Preparations for the Referendum. Organizational aspects	10
	2. Elections campaign.....	11
	3. Evaluation of the voting system.....	13
	a. Preparatory phase	13
	b. Start of voting with counters set at zero	15
	c. Entering of ballots and automatic counting.....	15
	d. Transmission of results from each polling station	15
	e. Totaling of results	15
	f. Publication of results.....	16
	g. Post-election auditing of results.....	17
	h. Contingency plan	19
	4. Election day	20
IV.	Conclusions and Recommendations.....	23
V.	Final Report	26
VI.	Annexes	28

I. Introduction

1. Constituent process in Venezuela. General background

On April 25, 1999, a referendum was held to decide whether to convene a National Constituent Assembly (NCA) for the purpose of "transforming the state and creating a new juridical order to permit the effective functioning of a social and participatory democracy".¹ The rate of abstention recorded was over 62%, but the convening of the Assembly was approved by the "yes" vote of 92% of those who went to the polls.²

As a result, on July 25, 1999, elections were held to select the representatives on the NCA. In those elections, the official slate Polo Patriótico obtained 122 of the 128 seats³ (47.08% of the votes) and the abstention rate was 52.94%.

In accordance with the legislation that governed the process, the NCA consisted of a single chamber and was given a deadline of 180 days within which to complete its work.⁴ The Assembly was installed on August 3 and began its consideration of the draft of the Bolivarian National Constitution submitted to it by the President of the Republic, Hugo Chávez Frias. The definitive text was adopted on November 17, 1999, together with the reserves that had been entered by seven members of the Assembly.⁵ The text was immediately transmitted to the National Electoral Council for publication and dissemination sufficiently in advance of the date of the Referendum II, which, in accordance with an earlier decree of the NCA, had been convened for December 15, 1996.⁶

The proposals regarding the questions to be asked in Referendum II concerned issues related to the original competence of the NCA and the dissolution (or re-legitimization)

1 Text of the first question of the Referendum. The second question refers to the acceptance or rejection of the electoral arrangements that would govern the process.

2 The applicable electoral norm provided that the convocation should be approved if the "yes" votes were greater than the "no" votes. 3,630,666 citizens voted "yes", while nearly 7,000,000 persons on the electoral lists abstained.

3 The NCA was comprised of 131 members, but 3 of them were elected to represent the indigenous peoples in an earlier process.

4 The election rules approved during the referendum of April 25, 1999, regulatory norm approved by the National Electoral Council (CNE), in addition to the applicable provisions of the National Constitution and of the Organic Law on Suffrage and Popular Participation (LOSPP). For more details on the applicable legislation, see the earlier report on the Elections Monitoring Mission that observed the election of representatives to the NCA.

5 The constitutional changes incorporated into the text that had the greatest impact on public opinion were those that concerned the declaration of Venezuela as a Bolivarian Republic, recognition of the right to vote of members of the Armed Forces on active duty (this right had been eliminated in the Constitution of 1953), the provision for the immediate re-election of the President, the power to dissolve parliament, the figure of the Vice President as a member of the Executive (the figure of Vice President appears for the first time in the Constitution of 1830 and disappeared in 1958. It was incorporated and removed in succeeding Constitutions), the unicameral composition of Parliament and the power to vote to censor any minister, recognition of the original rights of the indigenous people to the lands they occupy, reorganization of the judicial branch and establishment of electoral and citizens branches.

6 According to the electoral rules (9th) the text of the Constitution should have been submitted to a referendum within 30 days of its adoption. The decree of the NCA convening the Referendum was dated November 2, 1999 and, in its preamble, it stated that the aforementioned draft was expected to be approved prior to the "expiration of the period provided for its functioning."

of the public authorities.⁷ Initially, the NCA approved the following three questions for inclusion on the ballot:

- Do you approve of the draft constitution prepared by the NCA?
- Do you agree to exempt the Presidency of the Republic from the elections next year?
- Do you agree to exempt the government of your state of the Republic from the elections next year?

Subsequently, it was decided to withdraw the questions that contained no reference to the text of the constitution and to approve only the first question.⁸

2. Request of the Electoral Observer Mission. Structure and purpose of the Mission.

On November 24, 1999, the Permanent Representative of Venezuela to the Organization of American States, Ambassador Virginia Contreras, informed the Secretary General of the OAS, Dr. César Gaviria, that her government would welcome the dispatch by the Organization of an Electoral Observer Mission for the Referendum II that was due to be held on December 15, 1999 to give the electorate an opportunity to pronounce in favor of or against the text of the draft constitution approved by the National Constituent Assembly.⁹

The Secretary General stated that he was favorably disposed to the request and, as soon as the necessary external resources had been obtained to finance the mission, he communicated to the authorities of the Republic of Venezuela the decision to organize the observer mission requested and indicated that he had designated as Head of Mission, Mr. Santiago Murray, Special Advisor in the Unit for the Promotion of Democracy.¹⁰

7 The reference to the NCA “as the primary authority that reflects the popular will” was deleted from the electoral rules that governed the election of representatives following a ruling by the Supreme Court on April 13, 1999. Rule 8 provided that, once installed, the NCA would adopt its own operating rules “that reflect the values and principles of our republican history and respect for international treaties, agreements and undertakings validly entered into by the Republic, the progressive nature of fundamental human rights and democratic guarantees in the most absolute respect for commitments undertaken. Subsequently, on August 30, the NCA adopted the legislative emergency decree, through which it was able to exercise the functions of the congressional committees. On the same date, the President of the Chamber of Deputies, Henrique Capriles, presented to the Supreme Court of Justice a claim of nullity and another claim for protection, requesting the Court to declare null and void the aforementioned emergency decree. The Court, in its ruling of October 7, 1999, and, with the dissenting vote of five of its members, ruled that the NCA was of a supranational character.

8 Some sectors of society considered the questions to be a “plebiscite maneuver”, while others claimed that the Assembly was competent only to submit the text of the draft constitution to a vote, while other critics argued that there could be no consultation on the relegitimization of powers based on a Constitution that had not been approved.

9 The above-mentioned note is included as Annex I.

10 The corresponding notes are included in Annex II.

On December 7, Ambassador Virginia Contreras and the Secretary General of the OAS signed the Agreement on the Privileges and Immunities necessary for the exercise of the functions and the purposes of the mission. Two days later, a second agreement on the procedures for monitoring the Referendum was signed at the headquarters of the National Electoral Council.¹¹

It should be noted that the Mission was undertaken with contributions of external resources from the Government of the United States of America.¹²

11 The document was signed by the President of the CNE and the Deputy Chief of Missions.

12 The financial report is included as Annex III.

II. Electoral System

1. Juridical framework

The Organic Law on Suffrage and Political Participation (LOSPP), which was enacted on December 30, 1997, governs all electoral processes held in Venezuelan territory, including popular consultations. In addition, and under the powers granted it by virtue of this legislation, the National Electoral Council determines for each electoral process the regulatory norms that it deems necessary for the efficient conduct of the elections.¹³

a. Political rights and duties

Suffrage is universal, direct, secret and obligatory. The Constitution provides that "voting is a right and a public function."

The right is recognized to "all Venezuelans who are at least 18 years old and are not subject to loss of civil or political rights."¹⁴ Members of the Armed Forces are not entitled to exercise their right to vote while on active military duty. For this process, the regulatory norms provided that Venezuelans resident abroad who are inscribed in the electoral register would be entitled to vote in their corresponding diplomatic jurisdictions.¹⁵

On the subject of voting as the exercise of a public function, it should be mentioned that the electoral laws provide that electoral service is an obligation on the part of citizens. They also provide for citizens' participation in subsidiary electoral organs whenever they are selected to do so through the public drawing mechanism established by the law and where they are not covered by any of the grounds for exemption from the fulfillment of such function.¹⁶

13 LOSPP, article 192. The CNE ruled that, wherever applicable, this process would be governed by the regulations approved for Referendum I, which was held on April 25, and the procedural norms approved on November 23, 1999, by Resolution No. 991123-430 and those relating to publicity and electoral campaigning, Resolution No. 991129-447 of November 29, 1999, respectively (Res. 430 and 447, respectively).

14 National Constitution, articles 110 and 111. The vote may be granted to foreigners for municipal elections under conditions laid down by the law, namely, when such foreigners have had, inter alia, more than 10 years of legal residence in the country. Similarly, Venezuelan residents abroad may vote in national elections.

15 Res. 430, article 2.

16 LOSPP, articles 30-48. The law provides for the CNE to coordinate the program of instruction of members of polling stations and electoral boards and for the directors of the educational institutions housing voting centers to be responsible for training the members and secretaries of the district boards in such centers.

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b. Electoral authorities

The organs of the National Electoral Administration are as follows:¹⁷

- National Electoral Council (CNE)
- Electoral Boards (JE)
- Electoral District Boards (ME)

In order to be a member of these electoral bodies, a person is required to be unaffiliated to any political party or movement. Decisions are adopted by simple majority, except where the law provides for a qualified majority.

The National Electoral Council (CNE) is the highest organ. It is permanent in character and autonomous in the exercise of its functions; its jurisdiction extends throughout the country and its headquarters is in the capital of the Republic. It is comprised of seven full members and seven alternates who are responsible for the management, organization and supervision of electoral processes, discharging functions of a normative (see text of regulations) and jurisdictional nature (see nullity of elections).¹⁸ The acts, activities and omissions of the CNE may be challenged in a judicial forum through the filing of an electoral appeal. The Office of the Electoral Register is the organ responsible for the establishment of the electoral register under the direction and the supervision of the National Electoral Council.¹⁹

The Electoral Boards (JE) are transitory subordinate organs, with state or municipal jurisdiction over the organization and monitoring of electoral processes. The five members of each Board and their respective alternatives are selected by the CNE by the drawing of lots. The functions of the JE are expressly set out in the LOSPP.²⁰ However, bearing in mind that the CNE is to have exclusive responsibility for the counting and totaling of the votes, the regulation approved for Referendum II provided that the responsibilities of the electoral boards should be limited mainly to the issuance of credentials to the members of the district boards and witnesses under their jurisdiction.²¹

The District Electoral Boards (ME) are comprised of five members and a secretary who are selected, by the drawing of lots, from among the lists of teachers, students and voters. They are responsible for the conduct of the vote and the counting of the results. Their functions are temporary and begin to be exercised as soon as the Board is constituted until the counting is completed and the tally sheets signed.²² For the holding of this Referendum, using the powers granted to it by the law, the CNE ordered the consolidation

17 Organic Law on Voting and Political Participation (LOSPP), article 23. Its provisions have replaced the Supreme Electoral Council by the National Electoral Council, fundamentally preserving the regime established for subordinate organs.

18 LOSPP, articles 24, 49-54 and 235-250. The law provides that the Congress should elect the members “during the first half of the year in which the constitutional term of the national public authorities is beginning.”

19 LOSPP, articles 87-89.

20 LOSPP, articles 60, 64 and 66.

21 Res. 430, articles 7 and 8.

22 LOSPP, articles 41 and 70-74.

of district boards into centers with one, two or three boards, with assistant secretaries being assigned in the latter two cases.²³

In accordance with the legislation in force, polling station officials are required to be in place at 5:30 a.m. and at least three of their members present for the purpose of reviewing the electoral materials and signing the act of installation.²⁴ Voting should begin at 6:00 a.m. and continue without interruption until all voters present and awaiting their turn have voted. However, polling stations are closed at 4:00 p.m. The activities of polling station officials may be monitored by the representatives of political parties and candidates ("observers"), where these are duly accredited by the CNE or by the JE, as appropriate.²⁵

c. Automation of electoral procedures

The Republic of Venezuela has an automated electoral system, which is one of the most advanced in the region. The system relies on cutting-edge information technology and an integrated communications network that covers much of the national territory and nearly all polling stations.

The system automates the main stages of the voting of citizens, from the electronic scanning of the vote, tallying of totals, counting of ballots and the automatic production of tally sheets, transmission of the totals from each polling station to the Counting Center and the computing of the results at the national level.²⁶

The voting machine carries out three of these phases.²⁷ Firstly, when the machine is turned on and before the voting begins, the machine prints a "zero vote statement" that confirms that no previous voting has been done or any vote entered into the machine.

The stage of actual voting then follows and this consists of the scanning of the ballots. After the voter has marked the option of his choice on the ballot or card, he places

23 Res. 430, article 11, single paragraph.

24 The absence of the principal members is covered by the alternate members of the same Electoral Board or continuing Electoral Boards, in the order of their designation or, in their absence, by the electoral observers of the political parties which obtained the highest number of votes in hierarchical order in the election of deputies to the Congress until the Electoral Council adopts appropriate measures in accordance with the provisions adopted by the CNE.

25 LOSPP, articles 75-84

26 LOSPP, articles 153 and ss.

27 The functioning of each voting machine is assisted by a technician who is trained and instructed in its operation. The technician in charge of the voting machine must ensure that the infrastructure of the designated voting center (space, electricity, telephone) is adequate for its functioning. During the process of review of the premises on the day prior to the elections, the technician receives from the management of the automation process of the CNE the voting machine and printer, installs the equipment and checks its functioning. On the day of the elections, the technician installs the machine and printer, shows that the ballot box is empty and prints the voting sheets with all the figures set at zeros and hands them over to the respective chief polling officer. These documents are issued so that members of the boards and witnesses from the political parties may verify that the counters of the voting machines are set to zero and this can be recorded in the report.

it in the tray of the voting machine, which checks to ascertain whether the votes are valid or not, sorts them and counts them. The equipment simultaneously processes both sides of the ballot (which is why the card may be entered into the machine on either side), since it can analyze the voting marks with a two-sided optical scanner and adjusts the accumulated total for each type of choice. Each voting machine is equipped with an urn that stores the ballots. In the specific case of Referendum II, provision was made that, in addition to the question concerning the text of the vote, two ovals should be included on the ballot for each of the options (YES, NO).²⁸ Provision was also made for invalidating the vote where marks are placed outside of the oval or in both ovals or where no mark is placed against any of the options.²⁹

Finally, at the end of the day and during the closing stages, the voting machine prints the tally sheet and is immediately thereafter blocked from responding to any other human manipulation: only the number of copies required (copy of the tally sheet itself) to transmit the results to the authorities and distribute them to the witnesses representing the political parties may be obtained. This closing phase also includes among its various steps the transmission of the data to the Counting Center using regular, cellular or satellite telephone lines, depending on the location.³⁰

Within 48 hours of the close of voting, and based on the corresponding tally sheets, the CNE is required to compute the total from each and every one of the polling stations.³¹ The totals may be checked by the representatives of the political parties and of the candidates ("witnesses"), when the latter are duly accredited by the CNE or the JE, as appropriate.

The law allows for the possibility of choosing a manual voting system by decision of the National Electoral Council (CNE), for which the reasons must be stated, in cases in which the automated system cannot be used for reasons that have to do with, *inter alia*, transportation, security or service infrastructure.³² In polling stations where voting is manual, polling officials are required to count the votes cast and rule invalid those that do not fulfil the requirements to be deemed valid.

2. Electoral infrastructure

According to the records of the Permanent Electoral Register, the Republic of Venezuela has a total number of 10,940,596 voters distributed throughout 10,556 electoral districts, and 8,403 authorized polling stations in the country, as the following table shows:

28 Resolution 430, article 18, provided that the voting ballot could not include symbols, signs or elements that could induce the voter to vote for any of the options.

29 Resolution 430, article 24.

30 Some machines do not have communication mechanisms and so the sheet with the data is transported by members of the Republican Plan to the corresponding Counting Center (see page 9 for reference to the Republic Plan).

31 Res. 430, articles 28-30 reg. See also LOSPP articles 175-180.

32 LOSPP, articles 154-157.

State	Voters	Polling stations	Districts
<i>DTO. FEDERAL</i>	1,163,640	559	8831
AMAZONAS	39,958	45	448
ANZOATEGUI	534,949	342	4456
APURE	164,672	172	1198
ARAGUA	686,606	316	4495
BARINAS	262,121	300	3337
BOLIVAR	500,353	429	5507
CARABOBO	836,560	335	5571
COJEDES	127,133	133	1145
DELTA AMACURO	60,246	118	1122
FALCON	395,481	450	5500
GUARICO	292,872	256	3311
LARA	701,089	539	6688
MERIDA	344,339	366	4410
MIRANDA	1,163,465	635	8878
MONAGAS	320,144	267	3524
NVA ESPARTA	191,568	121	1153
PORTUGUESA	335,923	489	5521
SUCRE	387,612	453	5506
TACHIRA	460,289	458	5544
TRUJILLO	308,732	418	4459
VARGAS	177,307	109	1144
YARACUY	235,104	273	2298
ZULIA	1,238,636	703	9995
EMBAJADAS	11977	117	1
<i>TOTAL</i>	10,940,596	8,403	110,441

A total of 6,998 voting machines were used and approximately 92% of the electorate were able to participate in the automated process.³³ The table below shows the number of districts and voting machines per state:

³³ Of the 10,940,596 electors listed in the register, 9,956,509 persons would vote in automated booths.
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State	No. of voting machines
DTO FEDERAL	774
AMAZONAS	27
ANZOATEGUI	353
APURE	104
ARAGUA	432
BARINAS	160
BOLIVAR	313
CARABOBO	516
COJEDES	84
DELTA AMACURO	40
FALCON	250
GUARICO	189
LARA	454
MERIDA	220
MIRANDA	736
MONAGAS	204
NVA ESPARTA	152
PORTUGUESA	199
SUCRE	256
TACHIRA	292
TRUJILLO	186
VARGAS	121
YARACUY	160
ZULIA	786
EMBAJADAS	
<i>GRAND TOTAL</i>	6,998

Republic Plan

The Republic Plan was adopted in 1963. It refers to the operation under the responsibility of the Armed Forces (Air Force, Army, Marine and National Guard) and which includes logistics, distribution, delivery, guarding and collection of all election material, including the guarding and transporting of diskettes and smart cards containing the electoral data on each ballot processed by a voting machine, identification of the machine by its number, and identification of the corresponding polling station.³⁴ The Republic Plan is also responsible for providing security on election day.

³⁴ For the holding of Referendum II, the Republic Plan used the services of 70,000 military personnel. Subject to Revision and not for Release to General Public Pending Consideration by Permanent Council

III. Activities of the Mission

The Mission carried out its activities between December 8 and 18 and consisted of 13 international observers from various countries of the hemisphere. Its primary objective was to evaluate the automated and manual voting systems as well as the communications systems used to transmit the results. Given the Mission's objective, emphasis was placed on including technical observers who were specialized in elections systems.³⁵

Taking into consideration the Mission's structure and primary objectives, travel by the observers was limited to the Federal District and to the departmental capitals of the states of Miranda, Valencia, Vargas and Zulia.

1. Preparations for the Referendum. Organizational aspects

The issuance of credentials both to polling officers and to witnesses or representatives of the candidates was generally completed within the time-frame that had been set.

The installation of the polling stations began on Sunday 12 and, despite heavy rainfall, by the day before the Referendum, the electoral authorities and those responsible for the Republic Plan reported that more than 50% of the operation had been completed.³⁶ They also reported that nearly 50,000 citizens had been trained to perform functions in the polling stations³⁷ and that more than 7,000,000 copies of the draft of the new constitution had been distributed throughout the national territory.

All of the voting machines were exhaustively checked before being transferred to the corresponding polling stations. Also, in the days prior to the vote and as a result of the careful quality control carried out on the production of the ballots, printing of the ballots had to be suspended on two occasions. Nevertheless, the delivery of the 12,000,000 ballots required for the Referendum was completed within the time frames set and with the agreed technical specifications.³⁸

In order to motivate people to participate and exercise their right to vote, underground and metro-bus services were provided free of charge and December 15 was declared a holiday.³⁹

35 Santiago Murray, Head of Mission, Cristina Tomassoni, Deputy Head of Mission; International Observers, Moisés Benamor; Luz Marina Escamilla, Alfredo Fischer; Guillermo Gallarday, Judith Lobos; Senen Magariños; Fátima Nicoletti, Félix Ortega de la Torre, Jorge Tlatelpa and Raúl Sanguinetti.

36 It should be pointed out that, according to the statements made by Angel Rangel, National Director of the Civil Defense Agency, certain voting centers were required to be used as shelters for the victims of the heavy rainfalls. This circumstance made it necessary to relocate some of the voting centers in the federal district and in the states of Carabobo, Falcón, Lara, Nueva Esparta, Sucre, Vargas, and Yaracuy.

37 The total number of polling officers was approximately 60,000.

38 The inspections were carried out by International Press, the company that was responsible for the development of the voting instruments, CNE, ES&S (Elections Systems & Software), a manufacturer of voting machines that provides the certifications of the ballots, and INDRA, the company that provided the automated voting system.

39 The decree of the NCA provided that workers who went to work would receive a bonus on their salaries. Subject to Revision and not for Release to General Public Pending Consideration by Permanent Council

So that complaints could be received about possible irregularities on the day of the Referendum, the Ministry of the Interior reported that 233 inspectors had been assigned throughout the country, 55 in the metropolitan area and six at the national level, assisted by 85 support personnel.

Given that the voting arrangements presented no complications, the electoral authorities estimated that each voter would take 3 minutes and 35 seconds to complete the process from the moment he was identified at the table to the moment he placed his vote in the machine. On the other hand, it was estimated that the transmission of the results from each polling station to the Counting Center would take 35 minutes. The CNE therefore announced that it would be in a position to announce the first results before 7 p.m.

The engineering tests of the automated voting system were conducted from December 8 and on Saturday 11 a mock national referendum was organized to verify the smooth functioning of the equipment (machines and printers), the quality of the ballots and the transmission of the tally sheets. According to information provided by the CNE, all the equipment functioned smoothly. The observers witnessed the mock exercises conducted in 10 polling stations in the metropolitan area and were able to verify that the automated tally sheet reflected the voting choices that were marked on the corresponding ballots and counted as invalid the incorrect markings that had been intentionally placed. The technical observers also noted that the tally sheets had been successfully transmitted to the Counting Center.

2. Electoral campaign

The electoral campaign began in the last few days of November with mass demonstrations in favor of and against the draft constitutional text.⁴⁰ These first marches, banging of saucepans and fireworks were the first indications of a divided vote between the supporters of the "Yes" and "No". The arguments used to defend the first of these options were that the proposed constitution provided an effective framework for the defense of human rights, major changes in the way the economy functioned, the defense of participatory democracy through the establishment of electoral and citizen bodies and the recognition of indigenous rights, among the most important arguments. On the other hand, its adversaries considered as negative elements of the proposal the change in the name of the country, the discrimination against naturalized Venezuelans, the militarization of the public administration, the concentration of power in the executive branch, the possibility of censoring information, the unicameral structure of the Congress and the absence of any effective decentralization.

During the days prior to the Referendum, a series of polls were published on the intentions of voters. The opinion polls in early December indicated, coincidentally, a notable lead in favor of the "Yes" vote as the following table shows:⁴¹.

POLLING ORGANIZATION	"YES" VOTE	"NO" VOTE
Datanálisis	0 67%	33%
Consultores 21	71%	22%

40. The "Yes" campaign was declared closed by the President of the Republic on Sunday 11 December with a massive event in the Plaza Bolívar. The supporters of the "No" organized a mass in the Metropolitan Cathedral.

41. The technical statements of the polltakers showed that the public opinion surveys had been carried out in the largest cities of the country with stratified and random samples.

Instituto Venezolano de Análisis	66%	24%
Mercanálisis	63%	27%

The polling organizations generally preferred not to make any projections of abstentions, although some of them indicated that the vigorous nature of the campaign suggested a higher level of participation than on previous occasions. Others, however, considered that the heavy rainfall could contribute to a higher rate abstention.

It should be mentioned that at a very early stage, the campaign took on an air of marked confrontation.⁴² Tempers flared and in the radicalized political climate proselytizing took on, in certain cases, an aggressive and dismissive tone lacking in the necessary decorum required for debate and in respect for dissenting opinions. The clashes shifted also to the various sectors of society and the tension and political hostility affected the high dignitaries of the Catholic Church.⁴³ The degree of tension was such that the CNE was forced on a number of occasions to issue appeals for tolerance and calm.

Since the arrival of the Mission, its members have had a number of interviews with government and electoral authorities as well as with political figures supporting both options. These meetings were intended to communicate the Mission's general objective, receive information on possible problems in the campaign and collect testimony and possible complaints of alleged irregularities and/or concerns.⁴⁴

One of the concerns expressed by some political figures was the mistrust of the Republic Plan owing to the alleged partisanship of the military forces and their active participation in promoting the official option. Another concern was the allegation of inappropriate use of State resources to promote the "Yes" vote in the Referendum. Some citizens also contacted the members of the Mission to express their concern over what they described as the absence of legitimacy in the process and to question the impartiality of some members of the electoral institutions.⁴⁵ All of these concerns were transmitted to the electoral authorities, who expressed the willingness of the organization to submit complaints

42. Some sectors promoted abstention as the only way to reject the constitutional proposal and to de-legitimize the process.

43. Annex IV contains a copy of the communication of the Episcopal Conference.

44. José Vicente Rangel, Minister of Foreign Affairs, Aristóbulo Iztúriz, second Vice President of the NCA, Alexis Aponte, Vice-Minister of the Interior, André Caleca, President of the CNE, Rafael García Borges and Miriam Kornblitz, full members of the CNE, Allan Brewer Carías, Alberto Francheschi, members of the constituent Assembly, Dr. Pedro Nikken, Dr. Gerardo Blyde, Dr. Bernabé Castillo, Dr. Mireya Rodríguez, Congresswoman.

45. See communications included in Annex V. With regard to the funding of the electoral campaign, it should be noted that the CNE is competent to investigate the source of the economic resources used for the campaign and to limit them, where necessary. In accordance with the applicable legislation (RES. 430, single paragraph of Article 15 and RES. 447, Articles 2) public officials, including the President of the Republic, were authorized to engage in campaigning but were prohibited from using public resources. In the days prior to the Referendum, a number of civil organizations protested to the CNE over the use of State resources and property in the campaign. The Bar Association of Caracas presented a formal complaint to the CNE on the matter. With regard to the alleged partisanship of some of the members of the electoral body, it was stated that for a number of days and by resolution of the NCA, the management of CNE had been entrusted to three of its members, without consulting the plenary of the body.

to the Office of the Public Prosecutor and to the Comptroller when evidence in support of the allegations made it necessary to do so.

Without doubt the most controversial issue in the process concerned the rehiring of the company that provided the automated voting system.⁴⁶ That company had been responsible for the previous electoral process in which, according to the auditing surveys conducted, inconsistencies had been recorded in the counting of the ballots.⁴⁷ In this connection, it should be noted that when the new contract was signed and in response to public concerns, the parties agreed to include a clause under which the aforementioned company was required to pay US \$3,500.00 for each machine that failed to calculate the results. However, other provisions of a technological nature relating to confidentiality clauses and ownership of the source program, which had been requested by various sectors, were not included.

3. Evaluation of the voting system

An overall evaluation of the automated system was conducted with special attention being paid to the security and integrity of the processes and data (total votes, automated counting and totaling), transmission of the results for each polling station to the Counting Center, reliability of back-up systems and contingency plans, as well as verifiability of the results.

During the process of compiling the data, difficulties of a normative nature were encountered which limited the scope of the evaluation by blocking information on the computer programs used in the voting machines and in the Counting Center and information on the controls and protocols governing its use. Despite the Mission's request for a copy of the various documents and programs which was contained in a note addressed to the President of the CNE, (see Annex V), it was not possible to gain access to all the documents. In view of this situation, recourse was had to different auditing techniques based mainly on interviews with parties holding opposing views in order to achieve a greater understanding of the system and to obtain more information to permit a comprehensive evaluation by the Mission. 48.

The evaluation was conducted based on the eight principal phases that are described below and on the value of the process compared with the technological risks to which the system might be exposed.

a. Preparatory phase

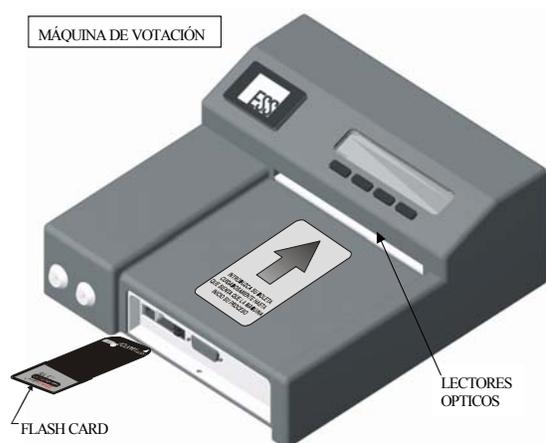
46. INDRA

47. The Bicameral Congressional Commission for the Study and Evaluation of the Vote Automation Project carried out an investigation that concluded with the submission of a report in which alleged irregularities and responsibilities were identified. The report was submitted to the Plenary of the Commission for its consideration and was not approved due to the lack of a corium.

48. Meetings were held with the principal managers in the field of automation of the National Electoral Council (CNE) and with the technical personnel of the company INDRA, which was contracted to develop and process the system of automated voting. Meetings were also held with representatives of the company that manufactured the voting machine, election systems and software (ES&S), and with the managers and technical personnel of the company CANTV, which was responsible for the telecommunications infrastructure of the system. As a result of these meetings information was obtained about the system with respect to the components and infrastructure used in the electoral process.

This phase includes all activities related to the preparation of the systems and infrastructure. It includes, *inter alia*, the maintenance and calibration of the voting machines, the printing of ballots in accordance with the required technical specifications, the issuance of the list of voter identification cards by each polling station, up-dating of flash-cards and firmware program, inspecting and installing telephone lines and electricity supply lines, conduct of unit and comprehensive tests of all programs/software and of the system for the transmission and totaling of results.

Voting Machine



The CNE has 7,370 voting machines distributed throughout the 24 states of the territory of Venezuela, of which 350 are for back-up purposes while the remainder serves approximately 92% of the voting population. For their operation, these machines have a PCMCIA technology feature known as a flash-card (which stores the necessary parameters for the use of the machine and the sum of the votes cast), a modem (for the transmission of the result), a set of eight scanners (4 in the upper part and 4 in the lower part to scan the ballot, regardless of the direction and side by which it is entered into the machine) and an internal electronic device to store the firmware (which contains the basic software for the operation of the machine).

During the interviews, which it conducted, the Mission was informed that the machines had been subjected to rigorous tests and the required maintenance for these elections, with satisfactory results. This could be verified from printed documents and from the conduct of the tests. It was believed, however, that the review of this documentation could be subject to errors, and it would therefore be advisable to automate this part of the review.

Independently of the aforementioned tests, the technical observers conducted additional tests on the voting machine that was available for this purpose in the premises of the CNE. During these tests, the Mission noted the quality of the marks which the machines were programmed to read.

With regard to the distribution of the firmware, no information was available on the source program and its quality control mechanisms. This is also true of the BIOS program

and of the operating system of the voting machine as well as of the operating system and programs of the Counting Center.

It should be noted that the quality control tests were designed to minimize the risk of unauthorized modifications to a specific or partial function of a program or to the entire program. These controls are of greater importance in cases in which the same program must be copied to various pieces of equipment; such as in the case of the programs in the voting machines, which it is reasonable, to assume may affect the manner in which the automatic voting is done.

b. Start of voting with counters set at zero

This stage refers to the procedures that are carried out before the votes are entered into the machine. The polling station is declared open and the initial voting sheet is printed from the contents of the data archive, which should show the counters at zero to prove that no previous votes have been cast. Also during this phase the initial voting sheet with the vote count at zero is transmitted to the Counting Center. This procedure, which is carried out immediately prior to the recording of votes, serves as a mechanism to verify that the lines of communication are functioning smoothly.

c. Entering of ballots and automatic counting

This stage involves the entering of the ballot in the machine and counting of votes using the criteria that determine the validity or invalidity of a ballot. In this connection, the Mission was informed that the voting machine's firmware renders inoperative its control buttons in order to avoid interruptions in the normal operation of the voting or counting process, whether these interruptions are accidental or intentional. The machine is also sealed to ensure that the flash card cannot be exchanged during use. The Mission was also informed that the firmware had been programmed to record errors in calibration of the machine during the voting so that when the results are sent to the Counting Center, indicators are also provided about the performance of the machine during the entire process. The Mission is of the view that this control has a positive effect in that it eliminates factors that may distort the results, such as malfunctioning of the voting machine.

d. Transmission of results from each polling station

This stage covers the following activities: totaling of votes cast at each polling station, connection of the telephone line to the voting machine, verified transmission of the results to the Counting Center, disconnection of the telephone line and issuance of the tally sheet prepared by the machine, which is compared with the number of voters voting at the polling station as indicated on the Voters List. It should be pointed out that, at this stage, before the results can be transmitted, two physical keys in the voting machine must have been previously activated and the communication line connected to the modem. Net transmission time, after validation of both the user and the key to each machine, is approximately 7 seconds, according to statistics provided by the CNE and CANTV. This factor and the network of communications and controls that have been set up together minimize the possibility of interferences during the communications. Nonetheless, it would be very useful to incorporate a data encryption program.

e. Totaling of results

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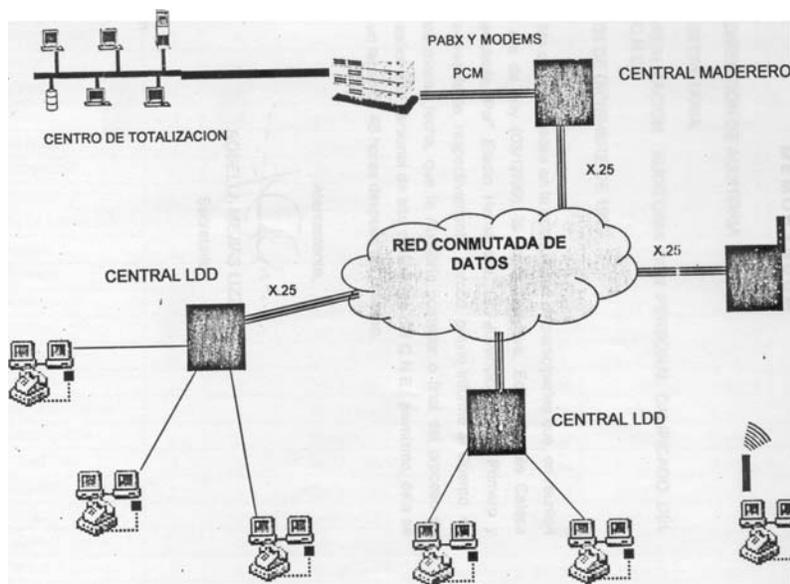
This phase includes the receipt of the results transmitted from the polling stations, checking the source of the transmission, recording of the results for each polling station and consolidation at different levels such as the parish, municipality, state and the national levels.

Communication of the results from the voting machines to the Counting Center is done mostly through dedicated and wireless lines for regions that do not have the necessary facilities.

These lines were especially prepared by CANTV and use the infrastructure of the CANTV switching network. It is important to note that CANTV installed a mini telephone exchange on CNE premises (in its Counting Center), thereby ensuring that communications would be conducted basically between exchanges that are part of the same telephone network which that communications operator provides.

For the reception of the results, three numerical telephone trunk lines were installed in the Counting Center, which were connected to 168 modems, or 24 modems of 33.6 Kpbs for each one of the 7 network servers. In addition, there were 40 back-up modems.

A diagram of the corresponding connection is shown below:



It should be noted that the capacity of the 168 modems has been tested in earlier elections and, more recently, with the conduct of the tests prior to the Referendum. It was established that within a maximum period of three hours the transmission of the results of all polling stations to the Counting Center can be completed. In the Center, the CNE has two HP 9000 computers, each simultaneously backing up the other. These servers store the totals from each voting machine and then calculates the totals.

The Mission did not have the necessary information available to it to include in this report an evaluation of the functionality and quality control features of the programs, except to mention that their functions are essential to the calculation of the totals at each level. Consequently, verification of the results depends on the subsequent auditing process for which the CNE is responsible.

f. Publication of results

This stage includes the transmission of the results to the publication servers, storage and production of the reports for the communications media, production of charts, generation of web pages and production of CDs with the results for each polling station.

The principal risk in this phase is the possibility of alteration of the results to be published. In this regard, the Mission was told that a firewall has been developed to control access, but no more details were provided.

g. Post-election auditing of results

This phase includes the verification of the results obtained by the automated system through comparison of the results of a sampling of the automated vote count with the physical ballots cast. This auditing system was designed using a methodology that is based on a valid statistical framework and, as is generally known, envisaged a random selection of a sampling of 288 polling stations to be audited by 25 technical CNE teams.⁴⁹.

49. At the time of the preparation of this report, the National Electoral Council had not submitted the results of the above-mentioned internal verification process, despite repeated requests for them .
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The following table shows the distribution of the sample:

Distribution of sample by state and type of vote

State	Total	Stations		Votes to be checked	
		Automated	Manual	Total	Automated
1. D. Federal 1	831	776	55	31	30
2. Anzoategui 1	456	353	103	14	13
3. Apure	198	105	93	4	3 1
4. Aragua 1	495	432	63	18	17
5. Barinas 1	337	160	177	7	6
6. Bolivar 1	507	313	194	13	12
7. Carabobo 1	571	522	49	22	21
8. Cojedes	145	84	61	4	3 1
9. Falcon 2	500	250	250	10	8
10. Guarico 1	311	189	122	8	7
11. Lara 2	688	454	234	18	16
12. Merida 1	410	220	190	9	8
13. Miranda 1	878	736	142	30	29
14. Monagas 1	324	204	120	8	7
15. NVA Esparta	153	153	0	5	5 0
16. Portuguesa 2	521	199	322	9	7
17. Sucre 2	506	256	250	10	8
18. Tachira 2	544	292	252	12	10
19. Trujillo 2	459	186	273	8	6

20. Yaracuy 1	298	150	148	6	5
21. Zulia 2	995	786	209	32	30
22. Amazonas	48	27	21	2	1 1
23. D.Amacuro	122	40	82	2	1 1
24. Vargas	144	121	23	6	5 1
25. Embajadas					
Totals	10441	7008	3433	288	258 30

The Mission is of the view that this stage is key to verification of the transparency of the automated system since, generally speaking, the data system is not freely available and accessible.

In addition, the automated process for selecting the sample of votes to be audited by the CNE was analyzed. An extract of the CNE program for selection of the sample, which has been written in the programming language Visual Basic, is shown below.

```

Randomize
Random = Int ((IntMax * Rnd)) + 1
Digits = Len (CStr (IntMax) - 1
For I = 0 To Digits
  1b1Rand ( I ). Visible = True
  1b1Rand ( I ) = ""
  1b1Rand ( 1 ). BackColor =
  &H808080

```

In this regard, it is important to note that the program uses the function of generating random numbers, typical of the "Rnd" programming language, which does not utilize any core parameter. To do otherwise might have introduced a bias in the selection of the sample when the process was converted into pseudo-random.⁵⁰ The function of "Rnd" randomness provides a random number with various decimals ranging between 0 and 1 (without ever really attaining the value of 1). The most likely scenario is that at the core of the programming language will be the time of the computer's internal clock, with which the probability of reproducing the same random sequence of voting centers in different executions of the program (or of predicting the voting sheets that will be selected) tends to be very remote.

Because of this, it is important that there should be built-in controls to maintain the integrity of the program for the selection of samples and to provide the level of transparency necessary to ensure that the sample is totally random, that it has no bias and

50. The process of generating of "pseudo-random" numbers provides a sequence of numbers in random order, but the difference is that the same core, increased to the same algorithm of generation (program), always produces the same sequence of random numbers.

that it has not been previously defined. A table is reproduced below showing the results of the tests that were conducted during the Referendum.

h. Contingency plan

During the evaluation of the system, a number of mechanisms were identified to deal with possible contingencies. It should also be noted that the CNE through its Electoral Technology Unit has developed an "Automated Help System" to monitor any type of incident that may affect the normal conduct of the process, so that the necessary resources are allocated for its timely solution. The table below contains a brief summary of the contingency plan:

Contingency	Measures to be adopted
<ul style="list-style-type: none"> If the flash card does not function 	<ul style="list-style-type: none"> Request back-up copy of the flash card from the source by which it is kept
<ul style="list-style-type: none"> Voting machine does not function 	<ul style="list-style-type: none"> Continue introducing ballots into the corresponding slot after previously notifying the Help Desk. If the breakdown can be repaired, repair it and continue the process. If the breakdown cannot be fixed, ballots are processed in another machine into which the corresponding flash card is inserted and which begins with its counters set at zero. If there is no other machine in the polling station, voting continues manually. In all cases, an incident report is filed. If a printer fails, a replacement printer is used.
<ul style="list-style-type: none"> If communication lines do not function 	<ul style="list-style-type: none"> The principal telecommunications back-up is the CANTV communications infrastructure and its contingency plan for maintaining service to the community. In addition, the principal connecting route between the two NewbBridge 3600 redundant nodes of CANTV to the NewBridge 3600 concentrator and from there to the ALCATEL's CPA 1500 lines 4E1 per PCM (Pulse Code Modulation) exchange has as its back-up a direct 43 cable (vocal frequency cable) and a redundant route with 2 radios of 18 and 21 GHZ 4E1, respectively. In extreme cases, there is a team of telephone technicians ready to address any unforeseen contingency. If the error lies in the communication lines from the polling station, then the Counting Center, through its Help Desks, will provide a cellular phone and a modem with which to transmit the results.
<ul style="list-style-type: none"> Failure of the electricity supply 	<ul style="list-style-type: none"> The machines have two batteries (UPS) which provide service for 12 hours, a period of time that is considered sufficient within which to complete the voting, counting and transmission of the results.
<ul style="list-style-type: none"> Computer failure in the Counting Center 	<ul style="list-style-type: none"> There are two HP9000 computers, which back up each other.

4. Election Day

As was stated at the beginning of this chapter, the small size of the Mission did not permit the qualitative and quantitative monitoring of the process. Because of this, only a few general observations are made about the voting day itself.

It should be pointed out, firstly, that the excessive rainfall created emergency situations with regrettable loss of life and material damage in various states of the country.

On the other hand, the torrential rains recorded in nearly all of the national territory, while they delayed the setting up of the polling stations, did not prevent thousands of voters from going to cast their ballots. At the request of the NCA authorities, the CNE decided to postpone for two hours (up to 6:00 p.m.) the closing of the polling stations, due to the

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situation created by the rain. The decision led to a number of discrepancies and claims of the alleged manipulation of the voting hours to favor the official line.

According to information provided by spokespersons of the Ministry of Interior, the Office of the Attorney-General received and investigated more than 50 complaints concerning alleged acts of electoral fraud that occurred in various polling stations, most of them concerning failure to observe the closure of the electoral campaign.

The first results were published by the CNE, after 7:30 p.m.

Votes Counted	78.15%
Participation	45.84%
Abstention	54.15%
Yes Votes	71.15%
No Votes	28.85%
Invalid Votes	4.39%

Random sampling of polling stations

Voting results selected by the OAS

Referendum Day December 15, 1999

Based on polling station tally sheets

State	Tally sheet No.	Center	Polling Station	Yes	No	Inva lid	Comparison with results of the Counting Center(*)
D. Federal	00034-026-6	200	2	460	342	12	Total of valid votes
Carabobo	03083-784-6	18560	1	455	383	29	Total of valid votes
Carabobo	03084-473-1	18560	2	481	370	32	Total of valid votes

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Carabobo	03085-164-9	18560	3	461	364	33	Total of valid votes
Miranda	06114-571-7	38680	1	288	797	21	Total of valid votes
Miranda	06005-495-4	38680	2	292	766	33	Total of valid votes
Miranda	06116-421-3	38680	3	301	864	15	Total of valid votes
Miranda	06076-570-4	38480	2	310	468	12	Total of valid votes

(*) During the elections the terminal of the office of the automation manager of CNE was used. That terminal was connected directly to the computers of the Counting Center.

The Mission randomly selected certain voting centers in order to compare the results obtained from each one of these polling stations with the totals generated by the Counting Center. The following table illustrates the work that has been done.

The head of Mission went to the press room of CNE to give his preliminary impressions of the Mission. The text of the communiqué has been included in Annex VII.

The following day, the final results were published:⁵¹.

Participation	44.38%
Abstention	55.62%
"Yes" votes	71.78%
"No" votes	28.22%
Invalid votes	4.43%

The post-election auditing of the results was conducted by CNE on Friday, January 21, 2000. While the Mission was not able to be present at this procedure, it was informed about its positive results.

51. In the ballots cast abroad, participation was over 51% (approximately 6,000 citizens) and the "No" votes were 57.62, while the "Yes" votes was 42.38%.

IV. Conclusions and Recommendations

Venezuela has broad experience in the use of automated voting systems since these were introduced in the various elections held since November 1998. There is no doubt that automated voting facilitates the balloting, counting and totaling of votes, thereby resulting in a more efficient process and reducing the time needed to compute the results of the election. It should be noted that voting machines are complex pieces of electronic equipment, which require special preparation, maintenance, installation and handling. The voting instruments must also be produced to conform to very precise norms. The communications network, moreover, must conform to very specific characteristics: a high degree of reliability and the capacity to transmit a high volume over a short period of time.

Taking into account the analyses and evaluations of the automated voting system that were carried out, the Mission has arrived at the following conclusions:

Flexibility and functionality. The system fulfills its objective by significantly reducing the need for human intervention, which is recognized as the principal source of errors, including the subjective discussion of polling officials when votes are counted manually. It should be noted that the control mechanisms that have been introduced with the use of the operator's telecommunications infrastructure, combined with the average real time taken for the transmission of the results, which is approximately 7 seconds, significantly reduce the possibility of interception during transmission. Even so, however, it would be advisable to incorporate standard encryption methods in telecommunications.

Back-up procedures and contingency plans. While these were not formally demonstrated to the Mission, contingency management systems seemed to be adequate to deal with any problems that might occur, without affecting in any significant way the ability of the system to cope.

Integrity of processes and data and verifiability of results. In keeping with the country's domestic legislative provisions, it was not possible for the Mission to obtain information on the computer programs and verification procedures used both in the voting machines and in the Counting Center. The Mission therefore believes that the principal means of ensuring the integrity and transparency of the automated voting process and its results should be cross-checked through the selection and review of a random sample that is representative of the votes counted and which is obtained and verified using a transparent verification process based on a statistically valid theoretical framework. In this connection, it was noted that the CNE had prepared a formal document based on a statistically valid sample and using documented procedures that permit a reliable review of the results to be carried out.⁵² It should be mentioned that the verification system has special design features that permit the process to be evaluated based on the ballots cast which, after being recorded by the automated system, are stored as documentary evidence to facilitate the subsequent auditing and verification of the results of the automated process. However, in light of the series of legislative restrictions described above, it would be helpful to increase the level of transparency in the selection of the sample, using a procedure with features that are similar to those suggested in our recommendations.

52. Schedule and procedure for prior testing and subsequent auditing in the December 1999 referendum.

In this connection, it should be noted that the contracting of the services of third parties implies the need to establish supervisory and control mechanisms, largely of a preventive nature, to facilitate the attainment of the objectives set. In the case of the contracting of the company that provided the voting equipment and services, the agreements that were negotiated to govern the contract and the operating standards make it difficult to carry out the necessary task of supervising, for example, the copies of the software and does not facilitate the transfer of knowledge to the CNE which might help to minimize for the country the cost of the overall process.

A number of suggestions or recommendations are given below to raise the level of internal control over the automated voting system:

- Implement a certification and automated system of control of the integrity of the program that selects the sample to be audited to ensure that the program (which should be previously checked by the relevant agencies, such as the Internal Auditing Unit of the CNE) has not been modified in whole or in part from the time that it is certified for use to the time of its use. For example, standard algorithms for the verification of the integrity of a process may be used for this purpose, such as those built into the VALIDATE.EXE program, which is a component of the MCAFFEE anti-virus program. Also, in light of the relative lack of security of personal computers, which are used to process the samples, additional security measures should be adopted to also protect personal computers and the basic resident software they contain. Integrity controls, similar to those suggested for the program that selects the sample, can be applied directly to the stored files and special programs that load the operating system as well as to the operating system itself and its complementary modules.
- Include in contracts for the supply of automated services the provisions necessary to maintain standards that permit verification of the various related processes and the transfer of knowledge.
- Incorporate into the system a procedure for storage in protected sites of copies of the latest versions of programs and implement preventive mechanisms for safeguarding the integrity of the copying and distribution of the programs, especially on the BIOS, operating system and firmware of the voting machines, as well as the integrity of the basic software and programs of the Counting Center.
- Update the documentation on the infrastructure of the systems and procedures involved, including contingency plans.
- Design a testing system whose scope, size and results are not known to the company or to those responsible for processing of the data, in order to help demonstrate the transparency of the process.
- Request from the manufacturer (ES&S) instructions on the frequency and procedures for the maintenance of the voting machines and effect the required maintenance.
- Ensure that appropriate conditions are maintained for the storage of voting machines in terms of temperature levels, storage in a dust-free area, etc.

- Coordinate with the manufacturer and jointly assess the option of automating the process of validating the parameters for calibrating the machines, since there was evidence that the visual checking of test reports may cause errors.
- Automate the system of control, distribution and storage of voting machines to keep data updated, historical and timely with respect to the performance of each item of equipment. A list of the incidents that occurred during the tests, together with the dates on which maintenance was carried out, reasons, quantity, etc. should be included as part of the information to be considered.
- Encrypt the results of each polling station that are transmitted through telephone lines.
- Place at the disposal of the public via the Internet the totals for each polling station. This will be the only mechanism by which any person obtaining information about the results of a particular polling station could compare it with the results received and published by the Counting Center. This would contribute to the transparency of the process.