

OAS Electoral Observation Mission congratulates Guatemala on a successful election day

The Electoral Observation Mission of the Organization of American States (OAS/EOM) congratulates Guatemala on a successful election day, and the Supreme Electoral Tribunal (TSE) on the improvements it put in place to ensure an election that was a marked improvement over the general elections. The Mission also commends the President-elect, Dr. Alejandro Giammattei, on his victory, and the *Unidad Nacional de la Esperanza* (UNE) party for having duly recognized the will of the people as expressed in the polls.

The OAS/EOM, headed by the former Costa Rican president, Luis Guillermo Solís, was made up of 87 international experts and observers¹, from 25 countries, who were deployed in the 22 national departments and in two cities in the United States, where the out-of-country vote took place. The Mission began its work in Guatemala with a preliminary visit in April. Later, it sent a group of experts and observers for the general elections on June 16; that group remained in the country² during the post-election phase for the review of ballot sheets carried out by the TSE. In all, the OAS deployed 172 persons during this electoral process.

BACKGROUND

On July 1, the TSE announced the official results of the presidential election³ and reported that, in view of the fact that none of the tickets of candidates vying for the presidency had obtained an absolute majority, a second presidential election would be held on Sunday, August 11, 2019 for the two-person tickets representing the *Unidad Nacional de la Esperanza* (UNE) and the *Vamos por una Guatemala Diferente* (VAMOS) parties. The results for the Congressional deputies were announced on July 11.

The Mission observed that for these elections, 130 of the 340 mayors sought re-election (38.2%).⁴ Information compiled by the EOM showed that in most of the mayoral races in which mayors

¹ The Mission consisted of 47 men (55.1%) and 39 women (44.9%).

² Up to July 6.

³ Agreement 362-2019

⁴ ASIES Data from 2015 and 2019.



were seeking re-election, citizens opted for a different party.⁵ This is indicative of the wide variety of options and democratic competition.

However, the TSE decided to repeat⁶ the elections for the Municipal Corporations in five municipalities: Iztapa, Escuintla Department; Tujumulco and Esquipulas Palo Gordo, San Marcos Department; and San Antonio Ilotenango, Quiché Department. It also decided to repeat the election in the Municipality of San Jorge, Zacapa Department, where the vote was unable to take place on June 16, due to “acts of sabotage.”⁷

PREPARATION FOR THE SECOND PRESIDENTIAL ROUND

In its preliminary report, the OAS/EOM presented a series of recommendations for the second presidential round. The Mission recognizes the efforts made by the TSE to adopt them, and welcomes the measures implemented to improve many aspects of electoral organization and technology.

Among the improvements noted by the EOM was the adoption of a timetable for preparation and distribution of electoral materials, which on this occasion was duly shared with the Departmental and Municipal Electoral Boards. The Mission observed that this schedule was followed to the letter, and that 100% of the electoral material was distributed in accordance with the timetable.

In addition, the EOM observed that the TSE developed a new application for transmission of the preliminary electoral results. The changes implemented included the following: a new programming language, in an effort to speed up the time of response to citizens’ consultations; a new database, which increased the potential volume of simultaneous consultations; and, new servers, which expanded the processing capacity, stability, and security of the tool. The Mission also noted that the TSE conducted a trial in which it demonstrated the operation of the new transmission system to the political parties’ public prosecutors, who indicated their agreement with the trials and with the new data transmission system.

The OAS/EOM draws attention to the request by the TSE to the Inter-American Union of Electoral Organizations (UNIORE), for a technical mission to conduct a general diagnosis of the data

⁵ Of the 130 mayors seeking re-election, only 42 were re-elected. These data do not include the election of the Mayor of San Antonio Ilotenango, Quiché.

⁶ Decree Nº 4-2019

⁷ Resolution 254-2019



transmission system and issue an opinion on its operation. The practice of mutual support among electoral authorities is a positive sign.

Moreover, the Mission was informed that, for the second presidential round, the TSE relocated a total of 69 voting centers in 35 municipalities throughout the country. These changes were made for various reasons, including security situations, maintenance and infrastructure conditions, and the occupation of public education institutions by student movements.⁸ In addition, in the municipality of San Mateo, Huehuetenango, the TSE decided to cancel the second presidential round, in view of the absence of the conditions required for freedom and the full exercise of constitutional rights.⁹

ELECTIONS – SECOND PRESIDENTIAL ROUND

On election day, the OAS observers covered 2,798 polling stations or electoral precinct boards [*Juntas Receptoras de Voto*] (JRVs) at 687 voting centers in the country's 22 departments. The Mission was also present in two cities, New York City and Silver Spring, where voting took place outside the country. They followed the election from installation of the polling booths to counting of the votes and transmission of the results. When the centers opened, they observed that the majority of the JRVs were staffed by the members, opened punctually, and had the voter registry in view, plus all the necessary materials. Generally speaking, the voting centers had the conditions needed to ensure that citizens could exercise their right to vote in secrecy and with security. However, frequently they did not have the facilities needed to ensure access by and the mobility of persons with disabilities. In 90% of the polling stations observed, representatives from both parties were present. In addition, the presence of police or security forces and national observers was also notable throughout the day.

OAS observers reported 14 different types of incidents, including vote buying, mass transport of voters to polling places, and threats to members of the Departmental Electoral Boards. Moreover, there were disturbances early in the day in La Blanca (San Marcos) that delayed the opening of some centers in that municipality. The police managed to control the situation and the voting proceeded normally.

⁸ <https://elecciones2019.tse.org.gt/noticias/reubicacion-de-centros-de-votacion>

⁹ Due to acts of violence that occurred on June 16 during the first round, and to dissension over the results of the elections in that Municipal Corporation, the members of the Municipal Electoral Board resigned out of fear of retaliation and death threats. Despite efforts made, the TSE was unable to form a new Municipal Electoral Board.



During election day, the VAMOS party told the Mission of its concern over authorization given by the TSE president to accredit more than one party representative per JRV. This instruction was given as a result of the petition presented by the UNE party. The Mission considered that the change in rules during election day was not a good idea, and that the measure could favor one party over another, and so they voiced that concern to the TSE president. The OAS/EOM was informed that the decision was rescinded.

Despite these events, the Mission emphasized that the voting on Sunday occurred in a considerably more peaceful atmosphere than that of the general elections, in which, regrettably, there were even injuries and deaths.

On average, the JRVs where the Mission was present closed at 6:01 in the evening. The observers reported that the ballots were appropriately supervised and protected before, during, and after the voting. In addition, the observers reported that, at the time of the vote count, the members of the JRV followed established procedures, and that this resulted in a much better vote count than in the general election. The transfer of the closing records was done in a safe and orderly way in the vast majority of cases.

At 6:21 p.m., the TSE began to publish the preliminary data. With the exception of a few inconveniences in publishing the results of the votes of persons residing abroad, the Mission observed that the transmission system functioned fluidly, and citizens had constant access via the webpage. At 8:46 p.m., the results of the presidential election for 94.56% of the country's vote records were published.

Based on the preliminary results presented by the Supreme Electoral Tribunal, participation in the general elections was 42.7%, as compared to 61.41% for the first round. Only 0.8% of registered voters outside the country exercised their right to vote, a figure lower than that for the June 16 vote. Although implementation of the vote outside the country is a step forward for the exercise of political rights of Guatemalan migrants, the Mission considers that measures should be taken to improve procedures for future elections. The Mission laments the low electoral participation both within and outside the country.

At the time this report was made, the TSE had processed the voting records of 99.73% of the JRVs.¹⁰ The preliminary results show that 57.95% of the votes were for the VAMOS ticket, and 42.05% for UNE. These results coincide with the information compiled by the OAS Mission observers.

¹⁰ Date and time of the consultation: August 12 at 10:46 p.m.



FINDINGS AND RECOMMENDATIONS

In the course of these months of work, the Mission analyzed key aspects of the electoral process, including organization and technology, the political financing system, voting abroad, the political participation of women, indigenous people, and Afrodescendants, as well as the Guatemalan electoral justice system. In order to have an in-depth understanding of each of these elements, as well as the context in which the election occurred, the EOM met with candidates, various political actors, electoral and governmental officials, and representatives of academia and civil society.

The electoral process took place under a new legal framework, following approval of the 2016 political-electoral reform. Among the changes made, the following are highlighted: a new general regime for political and media financing; introduction of the vote for Guatemalan citizens living abroad; prohibition of *transfuguismo* [party switching]; the inclusion of new causes for nullifying the election; establishment of a fixed number of deputies (160); the inclusion of new powers for the Supreme Electoral Tribunal (TSE) to control and sanction political parties.

Implementation of these reforms represented a major burden for the electoral entity, as it entailed internal structural changes¹¹ and the responsibility for enforcing the new rules, and imposing the corresponding sanctions. The Mission recognizes that implementation of reforms such as the ones imposed in Guatemala comes with its own challenges. The electoral body was required to act quickly, especially in cases in which it needed to draft regulations and analyze the criteria for proper execution of the Law on Elections and Political Parties (LEPP).

In addition, the Mission observed that the political context was highly complex, largely due to the extremely litigious atmosphere existing throughout the electoral cycle. This was particularly evident during the pre-electoral stage, when both the design of the justice system, the failure to arrange for a period for challenges prior to the start of the campaigns, and the fact that it was impossible for parties to substitute their candidates, all combined to generate uncertainty over which candidates would be authorized to participate.

Taking into account the direct observations of experts and observers, the meetings held with various actors involved in the process, and an analysis of the existing laws and regulations, the OAS/EOM will present its findings and preliminary recommendations, in an effort to support the work performed by the TSE and the Electoral Updating and Modernization Committee [*Comisión de Actualización y Modernización Electoral*] to implement improvements in the Guatemalan electoral system with a view to future elections.

¹¹ For this electoral process, new units were created to oversee the media and financing, in addition to a unit for the vote outside the country.



Once the electoral process has ended, the Mission will present a final report to the OAS Permanent Council in Washington, DC.

Electoral Justice

Instruments to guarantee access to justice are a key aspect of the democratic process. Their regulation should be clear and simple, as should their use, and they should provide for effective protection of the political rights of citizens. In the 2019 elections, the EOM observed factors that limit and have a negative impact on the legal certainty, equality, and security required for an electoral process.

In these circumstances, the Mission reiterates that the multiple jurisdictional entities for resolving disputes constitute a positive and necessary part of an electoral system provided they are not used as tools for political and party strategies. When there are clear, uniform criteria, and the stages of the process are well defined, they provide the electoral process with legal certainty and security, and help promote an equitable election.

– *The three entities comprising the electoral justice system*

The electoral justice system in Guatemala is made up of three bodies for the settlement of disputes: The Supreme Electoral Tribunal (TSE), the Supreme Court of Justice (CSJ), and the Constitutional Court (CC).¹² As the legal system is designed, the final decision in electoral conflicts does not lie with a government body specializing in electoral matters, and the need to go to three separate bodies leads to delays in settlement of conflicts in electoral contests.

– *Judicialization of elections*

Most of the challenges received by the TSE were related to the registration of candidates and the validity of the elections and the electoral results. It is worth mentioning that some of them were also considered by the CSJ and the CC, through amparo proceedings and appeals, respectively.

The Mission learned that 416 petitions for nullity against decisions on registration of candidates were presented,¹³ in contrast to 269 presented in 2015.¹⁴ Most of these petitions had to do with

¹² The first body hears the petition for nullity, the second the amparo proceeding, and finally, the last body the motion for appeal.

¹³ The figure was provided by the Citizens' Registration Directorate, although the Legal Affairs Coordination Office reported 356.

¹⁴ Supreme Electoral Tribunal, *Memoria de Elecciones Generales y al Parlamento Centroamericano 2015* [Record of the General Elections and Elections to the Central American Parliament], Guatemala, p. 129, <https://www.tse.org.gt/images/memoriaselec/me2015.pdf>.

two requirements imposed on aspiring candidates. The first is provisional attestation to the nonexistence of debt claims (debt extinguishment), issued by the Office of the Comptroller-General for persons who have managed public funds.¹⁵ This attestation may be revoked at any time if an investigation is opened into administrative liability. The second is the requirement of probity and propriety for persons running for public office, stipulated in the Constitution.¹⁶ Based on this legal provision, the registration of candidates has been denied or revoked in cases in which aspiring candidates are subject to a criminal investigation or judgment.

To this is added a series of disputes that are not resolved by the TSE, as they fall under the jurisdiction of administrative or criminal courts, such as investigations which may officially be initiated or filed by the Office of the Attorney General [*Ministerio Público*], through its various specialized public prosecutors, or by the Comptroller's Office, and which also have a direct impact on registration of candidates and the electoral contest. This is also the case with numerous petitions for preliminary hearings or issuance of the referenced provisional debt extinguishment attestation, which meant that the Comptroller's Office would receive 95 cases for denial of said attestation.

In the second stage, after election day and the beginning of the second round of the presidential election, the TSE reported that 363 special petitions were received and 10 amparo cases processed, in contrast to 139 presented in 2015,¹⁷ which is another indicator of increased electoral disputes.

– *Delays in settlement and lack of uniform criteria*

The Mission received numerous complaints regarding the time it took to settle disputes and the lack of consistency on the part of the jurisdictional bodies in applying and interpreting the law.

On the first point, the Mission observed that challenges were not necessarily resolved in a timely fashion, to the point that on the day of the June 16 general elections, issues that had an impact on the registration of candidates were still pending.¹⁸

Moreover, it was noted that there are cases that have to do with the 2015 elections which have not been resolved to date. This is relevant, because the consequences of the settlement of these

¹⁵ Article 214 of the LEPP.

¹⁶ Article 113. Political Constitution of the Republic of Guatemala.

¹⁷ *op. cit.* note.

¹⁸ There are cases, such as those involving Thelma Aldana and Edwin Escobar, who were left out of the electoral contest, or even Sandra Torres, which are still pending a final decision by the courts.

cases could affect the persons who are eventually elected in 2019. The Mission is of the view that this element diminishes legal security.

As regards the second, the EOM noted the different criteria used by the various jurisdictional bodies on matters such as party switching (*transfuguismo*) and the requirements for registration as a candidate for the presidency of the Republic.

– *The definitive nature of candidacies*

The Mission observed that the law does not provide for a mechanism that allows for challenges to be presented and that makes the registration of candidates definitive prior to the start of the campaign period. To this is added the cases in which a candidate requires the so-called debt extinguishment provision. This attestation may be revoked at any time upon the start of an investigation for possible administrative or criminal liability. This action can lead to cancellation of the registration of a candidate at any time during the electoral process, and thus take the candidate out of the electoral race, even if that candidate wins the election.¹⁹

An additional limitation is that it is impossible for political parties to substitute candidates whose registration has been rejected or revoked for any reason. On this occasion, 2,455 candidacies remained vacant, some of them shortly before election day, which created uncertainty regarding the nominations among the political actors themselves and the citizenry in general.

Thus, the Mission recommends as follows:

- Develop a simple mechanism, with short, specific deadlines, to handle only two types of challenges. For example, in the first instance, the TSE itself would settle the matter, and in the second instance, the Constitutional Court would directly hear the amparo proceeding. This solution would allow for prompter, specialized justice that would give the election process greater certainty. Here, it would also be desirable to rescue the initiative of the amendment of Article 192 of the LEPP, so that only the constitutional court would hear legal aspects involving constitutionality.
- Establish judicial and legal mechanisms to enable all documents issued during the different stages of an election to be resolved in time and to be definitive, so that there is a full guarantee for the exercise of fundamental rights and at the same time the electoral process is endowed with legal certainty and security.

¹⁹ On this point, it is important to note that there is a legal vacuum as to whether the persons who were elected should maintain their immunity until they actually take office, and as to the authority competent to hear a petition for a preliminary hearing during that period.



- Establish in clear terms the interpretation to be used in determining compliance with the requirement of eligibility of candidates.
- Reconsider the requirements for and impediments to registration of candidates, in order to strengthen anti-corruption efforts, while at the same time respecting human rights, especially guarantees of due legal process and the principle of presumption of innocence.
- Contemplate mechanisms for substitution of candidates in specific instances, in order to protect the right of political organizations to compete in elections.
- Establish systems for control of documents and information on the various methods for filing challenges, so that reports and statistics can be generated.

Transfuguismo [Switching party affiliation]

According to information given to the Mission, approximately 70 deputies changed party affiliation²⁰ between January and April 2016, which makes Guatemala one of the three countries with the highest levels of *transfuguismo* in Latin America.²¹ In view of the disillusionment this causes among citizens, the 2016 political and electoral reform incorporated a provision to prohibit and sanction *transfuguismo* for deputies to the National Congress.²² The Mission welcomes this progressive change in the law, which also is in keeping with a recommendation made by the OAS in 2015.

Nonetheless, the Mission noted some challenges in the interpretation and application of this new law. It noticed that there was a discrepancy in the criteria for decision-making among the various bodies in charge of registering candidates. The Citizens' Registration Department rejected the registration of candidates for deputy who belonged to parties different from the one that nominated them for this election. This decision was revoked by a plenary session of the TSE, on the grounds that the prohibition has merely parliamentary effects and that there is no specific

²⁰ Jessica Gramajo. April 2016. Available at: <https://www.prensalibre.com/guatemala/politica/el-44-de-los-diputados-son-transfugas/>

²¹ Rosón 2016; Marques and Brito 2014.

²² Article 205 Ter. Transfuguismo. LEPP:

“Trasfuguismo is understood to refer to the act whereby a deputy withdraws or resigns from a political party after having been elected or when already serving in the post to which he/she was elected by universal suffrage for a given term, and was appointed to one of the established congressional organs, and automatically ceases to serve in the post of the Congressional organ he/she belonged to, which will then be occupied by a deputy of the represented party; the person who so resigns or withdraws may not occupy any post within the organs of the National Congress.

Political organizations and legislative groups in the National Congress are prohibited from receiving or incorporating deputies who were elected by another political organization.”

provision prohibiting citizens from being nominated by a different party from the one that elected them in 2015.

An equally important aspect, involving interpretation of the prohibition from receiving or incorporating deputies who were elected by another political organization, is that there is uncertainty regarding its application to persons who were nominated by a political party that lost its registration. This could result in an unjustified limitation to their political electoral rights.

Therefore, the Mission recommends that:

- The criteria for application of Art. 205 ter. regulating *transfuguismo*, be clarified, unified, and circulated;
- The possibility of amending that article be considered, in order to establish that in the event that the political party for which a deputy was elected loses its registration, that person may join another legislative group and in that way may hold posts within the organs of Congress.

Electoral organization

- **Institutional communication**

The OAS/EOM observed that the TSE had difficulties communicating its decisions to both the citizenry and political parties. Although this situation improved for the second round, it has created a problem of added uncertainty throughout the electoral process.

The Mission therefore recommends as follows:

- An overall communication plan be drawn up, to enable the TSE to report in an opportune and effective manner during both the electoral stage and non-electoral periods.
- **Voter Registry**

To exercise the right to vote, a person must be listed in the register of citizens at least three months prior to the election and be in possession of the Personal Identification Document (PID), which is issued by the National Registry of Persons (RENAP). For these elections, the voter registry increased by over 590,000 voters, for a total of 8,150,012, or about 7.2% more than for the 2015 general elections. However, lack of information and ignorance, together with possible apathy toward voting, have resulted in a large number of persons who are not registered to vote. The Mission was informed that more than two million Guatemalans who have their PID are not registered to vote.

In this case, the Mission recommends:

- Consideration be given to automatically registering in the voter registry all citizens who obtain their PID, to simplify and render automatic their inscription in the voter register. This would require joint cooperation between RENAP and TSE, which would facilitate this procedure, without affecting their separate fields of competence;
- An audit of the voter registry be conducted, to determine its coverage and the degree to which it is up to date.
- Representatives for political organizations

Representatives for political organizations play an important role of ensuring oversight and transparency throughout the stages of the electoral process. In this respect, the Mission pointed out that in both the first and second rounds, it observed a high presence of party representatives at the polling stations.²³

However, for the June 16 general elections, the Mission observed that the representatives did not have sufficient information on the decisions adopted by the electoral authorities on various aspects of the process. The most problematic case involved the representatives overseeing voting technology, who, up to the day of the election, did not know how the system for transmitting the preliminary results operated.

Moreover, the representatives at the polling stations have the authority and right to file challenges or objections in the face of irregularities at the stations. However, various political organizations have acknowledged that the party representatives are not trained for that purpose.

Consequently, the Mission recommends that:

- The communication channels between the TSE and the representatives of candidates and political parties be improved, so that the latter can have timely access to the information needed to oversee the various stages of preparation for the elections.
- The party representatives be better trained, especially the ones fulfilling that role at the polling stations, so that they have a grasp of the corresponding legal instruments and their authority to ensure proper oversight of the process.

²³ For the first round, 85% of the public prosecutors were at the polling stations, and for the second round that figure increased to 90%.

Electoral technology

The electoral process during the first round was heavily affected by the failings of the System for Integrated Transmission of Preliminary Electoral Results (SITREP). The problems and the errors committed during the general elections undermined confidence in the process.

The Mission notes that various political parties, once the June 16 elections were over, complained of inconsistencies between the published records and the data in the preliminary system. The TSE confirmed that the vote-counting system had not been correctly configured. Although this mistake did affect the *preliminary* results of some of the elections of congressional deputies and the elections to the Central American Parliament, the situation generated a lack of confidence in the process as a whole and in the electoral authorities.

For the second round, the TSE made a major effort to provide greater security and transparency in the transmission of data, including the implementation of recommendations made by the Mission following the first round.

The EOM observed that as a result of the measures taken, during the second electoral round, SITREP, with the exception of a few errors in publishing the vote abroad, functioned correctly and managed to provide citizens with rapid and timely information.

However, the Mission noted that various aspects of the underlying structure of the system for transmission of preliminary electoral results do not contribute to generating confidence, since, either directly or indirectly, they provide leeway for errors or even manipulation, inherent in the vulnerabilities of the operating system.

Looking ahead, the TSE should conduct a comprehensive evaluation of the defects detected. The Mission recommends that it adopt a series of measures related to use of the technology, to ensure that future electoral processes do not experience the same difficulties that undermine the credibility and functioning of the electoral process.

Therefore, the Mission recommends as follows:

- That the system for transmitting the preliminary results be redesigned, and that technologies that guarantee more secure results be considered. In so doing, the following elements should be taken into account:
 - Modifying the digitization of records to make it a centralized process, so that the TSE can better control and supervise this process.



- Performing the digitization process only on the basis of scanned images of the records, thereby reducing the possibility of alteration or manipulation of the records.
 - Incorporating techniques for anonymous digitization, so that the party or candidate to whom votes are being allocated cannot be identified.
 - Incorporating intelligent character recognition (ICR) into the digitization process. This adds an automatic interpretation of the results to the digitization process and thereby reduces the time and the human effort involved in this process.
 - Ensuring that the records which are incorporated into the process of consolidation and publication of the results undergo the necessary controls to ensure the data have been correctly digitized.
 - Conducting tests and trials on the functionality, capacity, and integrity of the data processing system sufficiently in advance of the process. It is also recommended that, in planning the tests, at least one is performed at the national level with the transmission and digitization of one hundred percent of the voting records.
- That steps be taken to ensure that the political parties' public prosecutors are able to participate in and monitor more closely the activities to organize data processing by the TSE.
 - That the operations of the TSE's Data Processing Department be strengthened, and that it be given increased human, financial, and technological resources in the different areas of its work. To this end, the current technological infrastructure and personnel structure should be evaluated, to ensure that all of the elements needed for future elections have been considered, including steps to protect the systems from cyber-attacks.

Voting abroad

The Mission points out that Guatemala has recognized the right to vote of Guatemalans residing abroad, and this right was exercised for the first time during the 2019 presidential elections. However, it noted that in implementing this reform, there was a certain lack of planning, and this led to improvisations and numerous changes, which occurred even after the electoral process was under way.



To implement this voting process, the TSE created²⁴ the Specialized Unit on Voting Abroad, which began operating only 7 months prior to the elections. This delay had a negative impact on implementation of its mandate.

As regards the places where the voting would take place, the TSE decided that it would occur in only four cities in the United States,²⁵ a measure that created discontent among citizens. Among the complaints heard by the Mission were a lack of transparency with regard to the criteria used to select the cities for the voting, since they did not necessarily correspond to the areas with the largest Guatemalan population, or to the fact that there were at least 17 consulates where the voting could have taken place.

To include the Guatemalans residing abroad in the voter register, the TSE adopted two technological solutions, one using computers, and the other using mobile phones. Both instruments ended up being complicated to use and relatively impractical. Proof of this is in the scant number of citizens registered to vote using these methods: only 77 persons registered using the desktop application, and 818 using mobile phones. At the end of the registration period, the TSE reported that a total of 895 citizens were authorized to vote abroad.

In view of the small number of registered citizens, representatives of the Specialized Unit for Voting Abroad decided to go to the National Register of Persons (RENAP), which informed them that 62,372 persons who had been previously registered to vote in Guatemala had either made use of their PID and/or had updated their electoral domicile in the four cities selected for the out-of-country vote. These persons were added to the register for persons voting out of the country, since they had already complied with the registration requirement.

This move gave rise to many questions, since the persons who had used their PID or updated their domicile had not expressly indicated their desire to be included in the voter register, and so they did not know that they were eligible to vote.

To correct this situation and promote participation of citizens abroad, the Specialized Unit for Voting Abroad set up a call center to find those citizens and inform them of their voter registration and invite them to vote. Since these citizens had not provided their telephone number for that purpose, many persons who were contacted were uncomfortable and did not trust the persons who called them.

²⁴ Agreement 180-2018.

²⁵ Voting abroad took place in the cities of Los Angeles, California; Silver Spring, Maryland; New York, New York; and Houston, Texas.



The many challenges to implementing the vote abroad were reflected in the scant participation. In the general elections, only 724 votes were received, and in the second presidential round, this number dropped to 521 votes.

In view of this situation, the Mission urges the electoral authorities and the government to join efforts to encourage an increasing number of Guatemalans to exercise their political rights, even if they are living outside the country. To make progress in this area, the Mission recommends:

- Planning the promotion and organization of the vote abroad sufficiently in advance.
- Conducting massive voter registration drives to encourage greater participation in future elections.
- Making a more transparent selection of the cities where voting will take place and expanding the number of countries, using criteria such as the areas most heavily populated by Guatemalans, based on information from the General Directorate of Consular and Migratory Affairs of the Ministry of Foreign Affairs.
- Inviting citizens to register to vote and updating their electoral domicile, every time they use their passport, consular identification card, and/or PID.
- Coordinating and establishing the collaborative relations mandated by law with the Ministry of Foreign Affairs, to ensure its support and use of consulates and diplomatic installations as voting centers.
- Establishing cooperative arrangements between the TSE, Ministry of Foreign Affairs, and Guatemalan organizations abroad, with a view to generating synergies that will help increase electoral participation.

Political participation of women

After the general elections in June, 19.38% of the members of the 2020-2024 Congress will be women. The percentage of female legislators is well below the regional average of 30.6%.²⁶ These figures point to pending challenges for the political participation and representation of women, who currently account for the majority (54%) of registered voters.

The fact that Guatemala is one of the two Latin American countries that has no affirmative action programs largely explains the scant number of women in positions of power. Added to this is the

²⁶ Information accessible on the webpage of the Interparliamentary Union: <http://archive.ipu.org/wmn-e/world.htm>



lack of resources to be able to compete on equal terms. The Mission observed that current laws do not include directives on how to orient public financing within the parties.

The Mission received complaints from candidates, including indigenous women and female public officials, who indicated that they had been subject to discrimination and racism, both in person and through the social media. Although the Law against Femicide and other Forms of Violence against Women provides for protective measures, the Mission observed that it is not specifically designed to address cases of political violence.

The EOM's in 1999, 2007, 2011, and 2015 observed the challenges facing Guatemalan women. To address this, the OAS has repeatedly recommended including affirmative action measures to guarantee the full participation and representation of women in politics. The Mission regrets that to date, its recommendations have not been acted on, and it considers it appropriate to inform the Inter-American Commission of Women of this situation.

On these points, the Mission recommends:

- Establishing affirmative action measures to increase the number of women political representatives in legislative bodies, on the basis of a quota that is gradually increased to parity.
- Include a position mandate for the lists, to guarantee that, if for any reason women must give up their seats once they are elected, they must be replaced by another woman.
- Provide for clear sanctions that establish impediments to registration of lists of candidates in the event that the quota established by law is not met.
- Arrange for a percentage of public financing to go to training women for political participation.

On the subject of gender-based political violence, the EOM recommends:

- Legislation on gender-based political violence. The Inter-American Model Law on Political Violence against Women can be used as a guide in this process.
- That the TSE adopt a protocol to deal with cases of political violence.



Indigenous peoples and Afrodescendants

Guatemala is one of the countries with the largest proportion of indigenous people in the region. With regard to the Afrodescendent population, there are no official statistics on the percentage of the population they represent, and they have generally been considered as part of the Garifuna indigenous people.

The Mission has noted that the participation of the members of indigenous communities in representative bodies continues to be low, and that there are no mechanisms to encourage an increase in their numbers. However, it is impossible to have a detailed picture of this situation, since the TSE does not have information disaggregated by ethnicity on candidates.

The Mission is concerned over a current law that requires of political parties that half of their members know how to read and write.²⁷ In view of the high rates of illiteracy among indigenous people, this requirement places a limit on the participation of these people in politics.

Although the Personal Identification Documents (PID) include data on ethnicity and linguistic groups, the TSE does not include that information in the voter register. Therefore, it is impossible to know the percentage of indigenous citizens who are registered to vote.

Moreover, the Mission was informed that the process to obtain the PID, an indispensable document for voting, costs 85 quetzales (approximately \$11). The cost of this process could pose an obstacle to indigenous people, who according to official statistics live in a special situation of poverty.²⁸ In this regard, the Mission is of the opinion that poverty should not be an obstacle to the full exercise of the right to identification and the right to political participation.

The Mission has, on a number of occasions, requested meetings with the National Registry of Persons (RENAP), in order to obtain detailed information on the high cost of the PID. However, the institution has not responded to this request.

The situation is exacerbated by the fact that in the departments with the largest indigenous population, the Mission observed that the polling centers were not accessible. This is primarily due to the fact that the indigenous people live in rural areas, which are difficult to access and located far from the voting centers.

Finally, the Mission noted that there are not adequate information mechanisms to ensure that indigenous people know where and how to vote. Nor were campaigns conducted or electoral

²⁷ Article 19. Requirements for the existence and operation of political parties. LEPP.

²⁸ IACHR report on the "Human rights situation in Guatemala," 2017, OEA/Ser.L/V/II.Doc. 208/17, p. 30.

materials published in any languages other than Spanish,²⁹ which would facilitate access to electoral information on the part of this population.

The Mission therefore recommends that:

- Affirmative action measures be implemented to increase the representation of indigenous peoples in political participation and representative bodies.
- Information on the ethnic identity of candidates be gathered to determine the exact degree of representation of these communities at the different levels of government.
- The ethnic variable be included in the voter register in order to have official data on their electoral behavior. This would make it possible to design and implement public policies oriented to the full political participation of indigenous people in democratic processes.
- Measures designed to reduce the cost of the process of obtaining the Personal Identification Document (PID) be evaluated, or a subsidy be established for those persons who cannot afford this expense.
- Information campaigns be conducted on where and how to cast votes.
- The possibility of printing ballots in indigenous languages be evaluated, especially in the departments and municipalities with a large indigenous population.
- The requirement for forming a political party which establishes that 50% of its members must know how to read and write be eliminated.
- An area be created in the TSE devoted to working on the inclusion of indigenous people and an intercultural focus be incorporated in the activities and programs developed for elections.

Electoral violence

During this electoral process, the Mission was informed of threats and aggression prior to, during, and after election day against electoral authorities, candidates, and politicians.³⁰ These reports included records of at least seven murders,³¹ and the presence of armed groups and criminal

²⁹ The cultural diversity of Guatemala is reflected in the 25 languages spoken in its territory: Spanish and 24 indigenous languages.

³⁰ Press Release. Office of the Rapporteur on Freedom of Expression (RELE), Inter-American Commission on Human Rights (IACHR). Guatemala: The freedom of expression and the role of the press are essential to ensuring free and transparent elections this June 16. R147/19. June 12, 2019.

³¹ The National Civil Police recorded a total of 12 cases of violence against candidates, in which 8 victims died and 4 were seriously wounded. The *Procuraduría de los Derechos Humanos* [Office of the Attorney for Human Rights] indicated that 16 acts of violence had been counted, 7 of which were murders.



organizations which in some cases sought to influence local elections.³² In addition, a group of former members of the military sought to boycott the general elections,³³ and a few days prior to the June 16 election, Óscar Schadd, the Public Prosecutor for Electoral Crimes in the Guatemalan *Ministerio Público* had to leave the country after he and his family received threats.

In this context, it is important to mention that, in San Jorge, Zacapa, the general elections could not take place due to the resignation of the officials of the Municipal Electoral Board, who received death threats. Moreover, votes were declared null and void due to violent incidents in four municipalities: Iztapa (Escuintla), Tajumulco (San Marcos), Esquipulas Palo Gordo (San Marcos), and San Antonio Ilotenango (Quiché). These elections were repeated last Sunday, on August 11. Finally, for the second electoral round, the TSE decided not to hold elections in San Mateo Ixtatán (Huehuetenango), due to the absence of “an atmosphere conducive to freedom and the full exercise of constitutional rights.”³⁴ According to the June 16 TSE report on the unrest, in that municipality ten TSE workers were held and beaten.

The Mission recognizes the institutional efforts made to prevent electoral violence. They included, among other actions: preparation by the TSE of maps showing places at risk of electoral unrest, and the creation of a Technical Interinstitutional Board for Electoral Security, comprising various government institutions. In addition, a national agreement for a transparent, ethical, and peaceful electoral process was prepared and signed by various political parties, and similar instruments were established at the municipal level. Moreover, the Security Plan for the 2019 General Elections, prepared by the National Civil Police, was implemented.

Despite these measures, the Mission noted that, in practice, every institution worked independently, so there was a lack of coordination. The Mission had access to electoral maps showing areas of risk or electoral unrest, which were prepared by the National Civil Police, the Supreme Electoral Tribunal (TSE), and the Technical Secretariat of the National Security Council, and it further noted a discrepancy in the methodologies used and differences in the classification of risks among these bodies. Moreover, during the actual elections, the Mission observed the

³² On June 8, 2019, the TSE revoked the candidacies of one candidate for the Municipality of Ayutla, San Marcos (R-02-2019- Ampliación- CM885-CCE) and another for Nueva Concepción, Escuintla (R-135-2019-Ampliación-CM3907), for presumed links with narcotrafficking.

³³ The OAS Observation Mission in Guatemala rejects the threats of electoral boycott and points to the lack of certainty in the candidacies, Press Release C-034-19, May 20, 2019, Organization of American States. https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-034/19.

³⁴ Decree N° 5-2019.

absence of an official, interinstitutional methodology for recording and characterizing acts of electoral violence.³⁵

According to the electoral risk map prepared by the TSE for the general elections, 91 municipalities were identified at high risk for electoral unrest. However, it was only in 13 municipalities, or just 14.3% of the municipalities considered as high risk, where an electoral conflict occurred. On the other hand, 76.4% of the municipalities which experienced electoral conflicts and were reported by the PNC³⁶ were not mapped as high risk municipalities by the TSE. Similarly, the Mission observed that none of the five municipalities which were unable to hold the elections of last June 16, 2019³⁷ because of electoral unrest³⁸ had been listed as high risk areas on the TSE map. These data point to an immediate need to improve interinstitutional coordination.

The Mission therefore recommends as follows:

- A consistent methodology and single registry be designed for appropriate classification, identification, and accounting of electoral conflicts and unrest.
- The mechanisms used to prepare the risk and/or electoral conflict maps be evaluated, to ensure that they identify more effectively the municipalities that should receive priority attention and larger deployments of police.
- The coordination and communication channels among the different government bodies responsible for guaranteeing security during the electoral process be strengthened.
- Security plans consider protection of the physical safety of electoral officials who are working in the field during the post-election period.

³⁵ The Civil Police stated that up to June 17, 2019, there had been a total of 69 electoral conflicts. The TSE, for its part, reported a total of 99 conflicts as of June 19, 2019.

³⁶ According to the preliminary report of election conflict prepared by the National Civil Police, between June 14 and the morning of June 17, there were 69 events of electoral conflict, which were concentrated in 54 municipalities in the country.

³⁷ The municipalities were Iztapa, Escuintla, Tajumulco, San Marcos, Esquipulas Palo Gordo, San Marcos, San Antonio Ilotenango, Quiché and San Jorge, Zacapa.

³⁸ <https://www.prensalibre.com/guatemala/politica/en-estos-5-municipios-se-repetiran-las-elecciones-el-11-de-agosto/>



Political-electoral financing

The 2016 reforms³⁹ had a major impact on Guatemala's political financing model. Although challenges still persist, the Mission observed positive results in strengthening equity and transparency in electoral financing.

One of the primary effects of the reform was the reduction of electoral expenditure achieved through a series of measures: reduction of campaigning time;⁴⁰ setting of reasonable electoral ceilings⁴¹ and limits on private donations; and greater capacity to control and sanction instances of noncompliance with the law.

The primary factor in reducing electoral spending had to do with changes in indirect public financing. Equitable access by political organizations to the media was promoted,⁴² and a budgetary allocation to cover these expenses was set at the equivalent of 0.25%⁴³ of the government's current revenue. This measure was accompanied by a measure prohibiting parties and candidates from buying electoral advertising directly or through third parties.⁴⁴

Implementation of these measures was beset by major challenges. According to the law,⁴⁵ the electoral rate is established at the equivalent to 20% of the average commercial value. This average is calculated by the media and is applied to all equally, without regard for their size or importance. This situation led to the refusal on the part of the major media companies to participate in distribution of electoral ads. Although this measure broke up the media's influence over the electoral agenda, it had a negative impact both on the parties, which felt they were harmed by the fact that they could not use the most popular media, and on citizens, who lost opportunities to be informed about the electoral debate.

On direct public financing, the law in force establishes the percentage of funds, as well as the activities and specific expenditures for which political organizations must use the direct financing they receive from the government.⁴⁶ Although this measure contributes to the

³⁹ Amendments to Decree I-85 or the Law on Elections and Political Parties (LEPP) were approved by the National Congress in Decree 26-2016.

⁴⁰ Article 69. Time limits. LEPP.

⁴¹ Article 21 Ter. Regulations on financing. LEPP. For the 2019 election, the ceiling of election spending per party was Q 29,669,862 (approximately \$4 million).

⁴² Article 220. Equitable distribution of public funds for space and time in the media. LEPP.

⁴³ Equivalent to Q 78,100,000 million (about US\$ 10,400,000). Article 220. F) Equitable distribution of public funds for space and time in the media. LEPP.

⁴⁴ Article 221. Prohibitions. LEPP.

⁴⁵ Article 220. LEPP.

⁴⁶ Article 21 Bis. On public financing of the regular activities of political organizations. LEPP.

institutionalization of the political parties, it does not contemplate an allocation of funds for the promotion of the political representation of women and youth, or indigenous peoples.

The restriction on private financing was another significant change in the electoral reforms which were put in force for the 2019 campaign and elections. This restriction was implemented primarily by establishing a 10% limit on electoral financing by natural persons, and a prohibition on donations by foreign governments and natural and legal persons.⁴⁷ In addition, parties and donors were required to register accounting operations, and contributors had to be registered in a ledger in the electoral tribunal. This applies to all donors, including those contributing negligible amounts. The Mission urges the authorities to pay special attention to ensure that excessive restrictions on the subject do not end up facilitating the indiscriminate entry of illicit money.

The 2016 reforms also had a positive impact on transparency. The Mission points to the creation of the unit for control and oversight of the finances of political parties,⁴⁸ whose main achievement was launching the computer application entitled “*Cuentas Claras*” [“Clear Accounts”], through which parties are required to record their income and expenditures. It also singles out the creation of the specialized unit on the media and opinion studies. However, the Mission notes the difficulties faced by both groups, including a delay in putting them into operation, financing problems, a lack of personnel, and consequent challenges to have a presence throughout the country.

In the case of the Media Unit, the budget for monitoring 200 broadcasters (out of a total of 4,000) was never delivered, so an internal team of the unit did the monitoring.⁴⁹ The unit told the Mission that there was a large number of violations of the ban on advertising on social networks. Between February and May, 225 cases of violations of the law were identified, and transferred to the office of the inspector general.

Thus the Mission recommends as follows:

- That an obligation to allocate a specific percentage of funds for promotion of the political inclusion of groups historically subject to discrimination, and especially women and indigenous peoples, be included in direct public financing rules and regulations.
- That the practice of campaign advertising be made obligatory for all licensed media or media using the government’s public assets.

⁴⁷ Article 21 Ter. Regulations on financing. LEPP.

⁴⁸ Agreement 304-2016. TSE.

⁴⁹ Three persons were assigned to monitor traditional media and three persons for online media and social networks.



- That the mechanisms for computing the value of electoral advertising be revised, to guarantee that compensation is proportional to the nature and coverage of the media.
- That the process for receiving small donations be simplified, so that, without allowing anonymity, they are distinguished from large amounts that should be covered by a donor registration system.
- That the finances and human capital of the specialized unit on media and opinion studies and the unit for control and oversight of the finances of political parties be strengthened, to guarantee their work throughout Guatemalan territory.

FINAL CONSIDERATIONS

The report presented today speaks to the need to carry out a profound national discussion on the Guatemalan electoral system, with the participation of all sectors. This will make it possible to assess progress achieved by the electoral process and to identify persistent weaknesses. This discussion serves as a great opportunity to make the Commission for Electoral Updating and Modernization, introduced with the 2016 electoral reform, operational for the first time.

The comments and recommendations presented in this document show the relevance of the Commission to deal with the challenges emerging from the recent electoral process. These issues should form a key part of the political and legislative agenda in the coming years. The Guatemalan people deserve substantially improved electoral processes. Let the low voter turnout in the second round and the magnitude of the low turnout in the first round serve as a call for action in this sense.

Finally, the Mission launches an appeal that the public institutions involved in the electoral process work together in a synchronized manner, to guarantee that the Guatemalan citizenry exercises its right to vote. The executive, legislative, and judicial branches of government, the police forces, the Supreme Electoral Tribunal, and other government institutions must reinforce interinstitutional coordination and cooperation. The electoral process is for all Guatemalans, but it is also for all the institutions.

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