



Organization of
American States

REPORT TO THE PERMANENT COUNCIL¹
Electoral Observation Mission – El Salvador
Elections for Legislative Assembly, Central American Parliament,
and Municipal Council seats
March 1, 2015

Ambassador Neil Parsan, Chair of the Permanent Council
Ambassador Francisco Laínez, Permanent Representative of El Salvador to the OAS
Mr. José Miguel Insulza, Secretary General
Mr. Albert Ramdin, Assistant Secretary General
Representatives of the member states and permanent observers to the OAS

Background

On October 2, 2014, the Supreme Electoral Tribunal (TSE) of El Salvador requested the Secretary General of the Organization of American States (OAS), José Miguel Insulza, to arrange for the deployment of an Electoral Observation Mission (EOM) for the elections of deputies to the Central American Parliament (PARLACEN) and Legislative Assembly, and of members to Municipal Councils, scheduled for March 1, 2015. For these elections, 4,911,672 Salvadorans were authorized to vote, at 10,621 polling stations (*junta receptoras de votos* - JRVs) installed in 1,595 polling places. A total of 10 parties registered to participate in the elections.

The Secretary General designated Gustavo Fernández, former Minister of Foreign Affairs of Bolivia, as Chief of Mission, lending continuity to the observation process for the 2014 presidential elections. The EOM/OAS was composed of 60 observers, 31 men and 29 women, from 21 OAS member states and observers of the OAS. Three weeks prior to the elections, a mobile group was deployed throughout El Salvador to observe the process conducted in its different departments. The Chief of Mission also headed two preliminary visits to the country, in December 2014 and in February of this year, during which meetings were held with election and government officials, political actors, the media, and members of the country's accredited diplomatic community. The core group of the EOM included specialists in the areas of electoral organization, voting technology, gender equity, political financing, election security, electoral offenses, dispute resolution, and statistics, as well as other officials.

Pre-election stage

Different innovations were introduced for El Salvador's March 2015 elections. For the first time pluralistic municipal councils would be elected, putting an end to the existing single-party model by allowing participation in local government elections by the different contending political forces. Secondly, the deputies for the Central American Parliament would be chosen by direct ballot. Thirdly,

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a stipulation was introduced for a 30% quota of women on the electoral lists. Lastly, in August 2014, a new bench of Supreme Electoral Tribunal justices assumed their functions, one that was for the first time composed of persons without party affiliation, in implementation of a judgment of the Constitutional Chamber of the Supreme Court.

The aforesaid elements notwithstanding, the main innovation was introduced a few months prior to the elections when, the elections having been called, the Constitutional Chamber ruled as unconstitutional the Electoral Code provision that prohibited crossover voting, thus instituting a new voting rule based on open lists. The introduction of cross-party voting raised concerns as to the timeliness of this change to the electoral system, since the change of rules a mere three months prior to the elections made it difficult to fulfill the election schedule and altered the planning for an electoral process already under way. Cross-party voting allows electors to vote for two or more candidates on different lists, up to the maximum number of seats up for election in the respective department. Without entering into the substance of the measure, the change meant that elements had to be defined for its implementation, such as determining the value of the marks for candidates [if an elector does not cast a vote for all candidates, the sum of his marks will still be equal to one], as well as the measure's implementation mechanisms, and impacted different areas of the process, such as electoral training, the preparation of election materials, the vote tabulation procedure, and the system for reporting preliminary electoral results. The first obstacle was the lack of agreement in the Legislative Assembly that would have made it possible to enact legislation for the application of the measure. Ultimately, it was the electoral body that, on December 26, 2014, had to take responsibility for adopting the necessary provisions to govern the process.

As regards the organization and administration of the process, the Supreme Electoral Tribunal had to address difficulties in different areas. The most sensitive, which would have negative impact on Election Day, was the system for reporting preliminary results. As a departure from the two preceding electoral processes, the TSE decided to take direct responsibility for the implementation of the instant process. To that end, it directed efforts towards developing its own software and the subcontracting of supplementary services. However, the system never inspired confidence prior to the elections. Only on February 22 was a first national simulation exercise conducted to evaluate the operation of the system's different processes. Technical and logistical problems were noted, also making it impossible to conduct tests to correct some of these. No test of the system ever showed that it fully operational.

In addition, at the pre-electoral stage, the Mission noted some disorganization, improvisation, and lack of coordination on the part of the TSE, which led to delays in printing the ballots and tabulation sheets and in distributing electoral packets. This resulted in uncertainty in the departmental and municipal councils owing to the rampant misinformation, reflecting the lack of communication between the central body and the temporary electoral bodies. Nonetheless, the materials were delivered in time for the elections to be held. Resulting mainly from the late-in-the-day changes to the voting system, the Mission also noted limitations in electoral training and instruction, in connection with both informing the citizenry of the different ways of exercising the right to vote and in poll worker training. In any event, it should be noted that the electoral body was faced with a budget cut, which limited its capacity to act effectively and efficiently in carrying out the activities of the process, such as those mentioned above.

Election day

Election day, March 1, was generally peaceful. Some delay was noted in the opening the polling, which was at 7:34 a.m. on average. All polling places had the essential election materials. A heavy presence of opposition party poll watchers was noted, the largest parties covering nearly all JRVs. Also to be mentioned was the presence of security forces to safeguard the precincts. On Election Day, no threats and/or violence targeted at electors were evident. However, in 53% of cases, propagandizing at polling places was observed. The JRVs observed closed at 5:03 p.m. on average.

The main problems that day occurred after the polling places closed. During the tabulation process, administrative and organizational defects or problems were noted in 72% of the JRVs observed, a particularly high figure. In many cases, lack of knowledge of the tabulation procedure and how to enter information on the tabulation sheets was noted. The average hour at which tabulation was completed at the JRVs observed was 12:37 a.m. Some observers witnessed the completion of tabulation after 3 a.m., making evident that this stage continued until the early hours of Monday morning.

The OAS observers deployed in the national territory visited a total of 375 polling places. In 60% of cases, in the JRVs observed, they characterized as good the voting process, and in 19% as very good. Nonetheless, in 15%, they characterized it as poor, and in 6% as very poor.

In parallel, during the day, the system for reporting preliminary election results experienced different technical difficulties. The main defects arose in the consolidation and reporting modules, which prevented the publication of preliminary results on Election Day, thereby confirming the concerns that had arisen about the system. The delicate situation notwithstanding, ultimately meaning that the results were not known for several weeks, the political parties, institutions, and general public showed civic maturity, avoiding the introduction of further tension to the mood of a process in which, although highly complex and uncertain, behavior designed to alter the election results was not evident.

Post-election stage

Owing to the defect in the system for reporting preliminary election results, the final tabulation process took on fundamental importance. Due to the technical problems in the data processing system and the delay in compiling the necessary election materials, this process started only on Thursday, March 5. Along with the initial technical and logistical problems in beginning the final tabulation were discovered inconsistencies on a large number of tabulation sheets resulting from incorrectly entered data and tabulation information by many of the JRVs. The panels created to prepare the final tabulation strove to resolve those inconsistencies but, in many cases, it was virtually impossible to do so with the available information. On occasions, these efforts led to heated arguments among panel members.

Despite the interruptions and delays, the atmosphere was generally peaceful, and the mood of the political parties reflected maturity and caution. Also to be mentioned is the transparency with which this electoral stage was conducted. In addition to the presence on each panel of representatives of the parties, the public prosecutor, and the human rights ombudsman, its work was broadcast live on the TSE web portal.

The final tabulation process, which ended on March 22, revealed tremendous legal lacunae, which allowed for discretion in resolving certain inconsistencies. When the process was completed, different actions were brought that were disallowed by the electoral body. However, the institution of applications for amparo before the Constitutional Chamber led that judicial body to issue a precautionary measure ordering the opening of the electoral packages for a full recount of the votes for the seats up for election in the Legislative Assembly of San Salvador Department. This stage proceeded peacefully, but, owing to logistical and budgetary limitations, it took 18 days to complete. In that context, the Constitutional Chamber issued another precautionary measure suspending the assumption of office by the “alleged” deputies elected for San Salvador until the recount process was completed.

As finally tabulated, 35 candidates from the RENA party, 31 from the FMLN, 11 from GANA, six from the PCN, and one from the PDC were elected as Legislation Assembly deputies. No political force obtained a congressional majority. As for the Central American Parliament, eight candidates each from ARENA and the FMLN, two from GANA, and one each from the PCN and PDC were elected as representatives. Lastly, in the municipal elections, ARENA received the largest number of

votes, winning in 129 municipalities, followed by the FMLN, which obtained a majority in 85 town councils.

Conclusions and recommendations

Different factors impacted the smooth conduct of the elections. Nonetheless, despite serious difficulties, which put excessive demands on and tested the electoral process, the political maturity of the different contending actors and the efforts of the TSE enabled events to be directed and problems overcome, providing the citizenry with certainty regarding the results of the elections.

The EOM/OAS wishes to emphasize the public spirit and calm with which Salvadoran came to the polls to exercise their right to vote. That same spirit was reflected in the thousands who assumed electoral functions, many of whom endured an election day that lasted nearly 24 hours. We also recognize the circumspection of the President of the Republic, who did not intervene in the process, thereby avoiding the scenarios of polarization noted in earlier elections.

The OAS Electoral Observation Mission submits to the Salvadoran authorities for their consideration the following recommendations, with the aim of contributing to improving the country's electoral system.

Stability and consistency of electoral rules

The changes to the election rules shortly before the elections, with their consequences for the electoral process as a whole, were a major factor contributing to some of its evident problems. This decision had direct impact on the Salvadoran electoral system a scant few months prior to the elections, disrupting a process already under way. Different international election standards suggest that changes to rules should be avoided within a specified period prior to an election. The OAS Mission recommends that this restriction be established in the Constitution, as has been done in other countries, so as to provide legal certainty to the contending actors, the citizenry, and the different institutions involved in the process.

Electoral system

The complexity of the voting system that ensued, negatively impacting vote tabulation, entry of data in the tabulation sheets and information in voting records, and the final tabulation process to make official the results, creates an opportunity to evaluate mechanisms, forms, and procedures, with the aim of simplifying the different stages of the process. It is important to prevent the electoral system from being the outcome of provisions based solely on judicial decisions, since this impedes the adequate and consistent integration of those rules into the legal system as a whole. The Mission recommends the adoption of the measures necessary, both legal and administrative, to promote a simpler system, safeguarding the rights and principles established in the Constitution and laws, and to implement the judgments of the Constitutional Chamber in this area.

Composition of the electoral body

During the most recent electoral processes, the OAS Electoral Observation Missions in El Salvador recommended modifications to the electoral institutional structure. Although one recent change is that the authorities of the highest electoral body no longer have party affiliation-- a step in the right direction—, said lack of party affiliation is of limited impact since the designation mechanism has been maintained and largely reflects the nominations of the parties with the most votes. Therefore, it is recommended in the future to explore the institution of a designation mechanism representing a departure from the logic of the past. It is also suggested to introduce citizen control of the temporary electoral bodies in order to replicate the aforesaid system in all electoral institutions.

Separation of administrative and jurisdictional functions

In that regard, earlier recommendations of the OAS have also emphasized the importance of separating the exercise of administrative and jurisdictional functions. This recommendation is still

more sensible in the context of the developments in this process. A system of this type would make it possible to have one institution solely responsible for the organization of the different stages of the electoral process, and another, jurisdictional, entity to resolve disputes arising in the context of the race and to hear actors' complaints regarding decisions or resolutions of the institution administering the process.

Definition of electoral jurisdictions

Constitutional control is one of the main expressions of the rule of law, of the independence and separation of powers, and of the effective operation of the republican system. However, the incidents described in this report point to a pressing need for El Salvador to define precisely the authorities of the different bodies participating in the electoral process in order to avoid the risk of conflicts among branches of government; weakening in practice the legislative, jurisdictional, and administrative functions of other institutions; introducing uncertainty in elections; and impacting the stability of the democratic system. The lack of such definition has called into question the role of the TSE as the highest electoral authority and led to uncertainty in a process that ought to be governed by laws resulting from political negotiation and popular representation.

Electoral political financing

Major progress has been made in El Salvador in the area of regulation of political financing. The reforms to the Electoral Code of 2013 and the enactment of the Political Parties Law are two major milestones in this area. However, they do not include a series of measures that would ensure fair competition. In that regard, it is recommended that the Law establish limits, not only on donations but also on publicity expenditure. Accountability mechanisms should also be made more explicit and the Supreme Electoral Tribunal should have greater authority to control party and candidate financing.

Gender equity

The stipulation of a 30% quota of women has contributed positively to positioning the issue of women's representation, obliging the parties to include women on candidate lists. However, this quota applies to the list as a whole, both principal candidates and alternates. Therefore, it is recommended for the 30% quota to apply separately to each type of candidate--principals and alternates--, so that at least 30% of the candidates are women. At the same time, we urge the TSE to strengthen its Gender Unit in both the human resource and budget areas.

Electoral organization and electoral technology

The electoral organizational and logistical problems noted in both the pre- and post-electoral stages stem in part from poor management. The EOM noted that in different cases no procedures are in place for carrying out organizational tasks. It is therefore recommended to prepare management documents for the efficient and orderly implementation of the actions and activities of the process. It is further suggested that the TSE adopt a formula for the coordination of the activities of its different areas so as to make optimal use of time and resources. The election's logistical and organizational problems were exacerbated by the inability to implement correctly the system for reporting preliminary election results. The system's weakness stemmed from information technology, logistical, and training deficiencies. The EOM recommends that the TSE evaluate and analyze the difficulties encountered by this process. Based thereon, early planning for the next elections should be take place so that there is sufficient time to install the system and conduct the relevant tests and exercises. This planning should not be left until the next elections are close, but should begin now, with a dedicated team that designs a plan specifying the technical, logistical, human, and financial elements needed for its future implementation.

Purging the electoral register

The electoral register remains a weakness of Salvadoran electoral processes. Although efforts have been made that have helped to strengthen this important component, it is recommended to review the mechanisms for its update and purging so that a more reliable and accurate register is maintained.

Acknowledgements

The EOM/OAS underscores the exemplary conduct of the citizenry, for both the calm in which the right to vote was exercised and its patience in awaiting the consolidated results. We also wish to emphasize the commitment and public spirit of the JRV members, the opposition party poll watchers, the final tabulation panel members, and the different institutions that participated in that process.

The Mission was present in El Salvador for 76 days from December to May. We witnessed all vote tabulation, final tabulation, challenge, and recount processes. In that regard, we wish to thank the authorities of the Supreme Electoral Tribunal and its staff for their ongoing assistance with and support for the observation efforts. Moreover, despite the information technology, logistical, and organization difficulties, we recognize the institutional effort made to implement this process. The TSE had to deal with elections that were highly complex, owing to the number of offices up for election and the new electoral system, and that were impacted by external factors beyond its responsibility and complicating its task.

We also wish to thank the political parties, civil society organizations, government authorities, authorities of other institutions, and the country's accredited diplomatic community for their cooperation with our work.

Lastly, the Mission wishes to express appreciation for the financial contributions from Argentina, Spain, United States, France, Israel, and Luxembourg that made possible this Mission's deployment to and presence in El Salvador.