



Organization of
American States
More rights for more people

REPORT TO THE PERMANENT COUNCIL¹
Electoral Observation Mission – Guatemala
Presidential, Legislative, Municipal, and Central American Parliamentary Elections
September 6 and October 25, 2015

Ambassador Ronald Michael Sanders, Chairman of the Permanent Council
Ambassador Luis Raúl Estévez López, Permanent Representative of Guatemala to the OAS
Luis Almagro, Secretary General
Néstor Méndez, Assistant Secretary General
Representatives of Member States and Permanent Observers to the OAS

Background

On March 16, 2015, the Supreme Electoral Tribunal (TSE) of Guatemala requested that the General Secretariat of the Organization of American States (OAS) send an Electoral Observation Mission (EOM) to Guatemala for the general elections to be held on September 6 of that year. At these elections, Guatemalan citizens were to elect the President and Vice-President of the Republic, 158 Deputies to the National Congress, 338 Municipal Councils [*Corporaciones Municipales*], and 20 Deputies for the Central American Parliament. The OAS General Secretariat accepted the request, and Secretary General Luis Almagro appointed Juan Pablo Corlazzoli to head the Mission.

A total of 7,556,873 Guatemalans were declared eligible to vote at 19,582 polling stations set up throughout the country. For the presidential elections, 14 pairs of candidates registered to compete for the highest post in the country. The Guatemalan electoral process promised to be complicated. Corruption cases involving top government officials, accusations levelled at candidates at various levels, and an empowered citizenry which took to the streets to hold peaceful demonstrations and express their discontent over the acts of corruption and the political system were some of the elements permeating the election process.

On April 16, 2015, the International Commission against Impunity in Guatemala (CICIG) released a report on the case known as “La Línea,” in which it implicated high government officials. One of the first consequences of this report was the resignation in early May of Vice President Roxana Baldetti, who was replaced by Alejandro Maldonado. Social and political pressures also included demands for the resignation of the President of the Republic. In addition, the main presidential candidates were being questioned, and a number of them were the object of petitions for *antejuicio* [a preliminary hearing granted to public officials to establish cause prior to a criminal trial] or of ongoing judicial proceedings. In July, the CICIG also issued a report entitled “Financing of Politics in Guatemala,” which pointed out that “most of the money financing politics is illicit,” since the parties do not comply with income and expenditure regulations, and the origin of most of these funds is unknown. The displeasure of the citizenry was seen from the outset in social protests. In addition to calls to combat corruption, social movements also called for a profound reform of the government and amendments to the Law on Elections and Political Parties. In the latter case, this appeal took the form of a proposed reform presented by the TSE to Congress.

1st Round

Pre-Election Period

A delegation led by the Chief of Mission conducted a preliminary visit to the country between July 26 and July 30, 2015. On that occasion, an Agreement on Observation Procedures was signed with the Supreme Electoral Tribunal, guaranteeing the OAS/EOM freedom to move around the country and access to information and offices or units of the Guatemalan Supreme Electoral Tribunal. In addition to meeting with electoral officials, the EOM met with important authorities, political and social actors, civil society organizations, and members of

¹ Presentation to the Permanent Council of the Organization of American States – February 19, 2016 (Original in Spanish)

the diplomatic community, and initiated a round of interviews with all the presidential and vice-presidential candidates.

The Mission noted with concern attempts to postpone the elections scheduled for September 6, and even, in some cases, attempts to install a transition government. Regardless of the reasons given for these attempts, in all instances the OAS/EOM, echoing what was previously said by the OAS Secretary General, emphasized the importance of observing the election schedule and moving the process forward in accordance with the Constitution and the Law.

During that visit, the EOM also observed that the political climate and tensions in the country were flaring up due to the campaign itself, and especially in reaction to the violation of election financing regulations by some candidates, which added to the discontent of broad sectors of the population. The TSE penalized these violations.

Finally, some stakeholders expressed concern over the capability of the Supreme Electoral Tribunal to adequately manage the process, for the following reasons: in the first place, because it was made up of magistrates with no experience in elections; secondly, because of delays in completing certain stages of the process, such as setting up the Electoral Boards; and, in the third place, because of doubts regarding technical and organizational aspects, leading to worries over the proper functioning of the system for transmitting the preliminary polling results on election day. These concerns related to questions pertaining to the security of the system and its capacity to process the large number of records and the information to be taken from them, as well as the delayed installation of the datacenter. Subsequently, as a result of our observation, the Mission told the TSE of its apprehension over the delay in setting up the system and the lack of a complete transmission and processing simulation. All the same, the EOM also recognized the budgetary restrictions facing the electoral body, resulting from both the funds allocated and the delay in receiving the funds needed to carry out its responsibilities.

After the preliminary visit, the Mission set up its permanent presence in the country, with a mobile group that traveled throughout the country beginning on August 10, to ascertain the status of the electoral process in the different departments and the development of the campaign leading up to the elections. Subsequently, the Mission brought together a core group of specialists in electoral organization, electoral technology, electoral security, electoral crimes, electoral courts, gender equity, campaign financing, indigenous peoples and Afrodescendants, and statistics and political analysis, among other areas, in addition to a group of regional coordinators and international observers.

Sixteen days before the elections, an arrest warrant was issued against former Vice-President Roxana Baldetti, who was detained, and the *Ministerio Público* [Office of Attorney General], together with the CICIG, filed a petition for *antejuicio* against President Pérez Molina. The political and judicial situation facing the President, the *antejuicios* opened against certain candidates, and the lack of information on the outcome of certain proceedings all exacerbated the climate of uncertainty that reigned in the country. Finally, on September 2, a session of the National Congress attended by 132 deputies was held and voted unanimously to withdraw the then-President's immunity and to issue a writ of *ne exeat* against him. The Constitutionality Court denied the amparo actions filed on his behalf, and that night the then president submitted his resignation to Congress, which accepted it on September 3, a few days prior to the elections. In his place, Vice-President Alejandro Maldonado took the oath of office as President. These acts greatly eased the situation prior to the elections.

Election Day

The Electoral Observation Mission deployed for the September 6, 2015 elections was made up of 76 experts and observers with 24 different nationalities, 47.3% of whom were women, and 52.7% men. Manuel Alcántara and Secundino González, specialists in Latin American electoral systems, also participated in the EOM.

On September 6, the average time of the opening of the polling stations observed was 7:08 a.m. During the day, observers noted that the average time used to vote by each voter was 4 minutes, due to the number of elections being held at the same time. From a logistical standpoint, minor problems were noted in the shipment of certain incorrect ballots, but this was resolved promptly by the TSE. The average time for closing the polls was noted as 6:03 p.m. OAS observers visited 563 voting centers throughout the day. The preliminary results of the vote were transmitted effectively. By 12 midnight, nearly 60% of the presidential votes had been processed.

In general terms, the members of the Mission rated the election day as very good or good at 89% of the polling stations they observed. The Mission received 11 complaints that were channeled to the appropriate bodies.

Although the elections proceeded in a peaceful manner in most of the country, isolated but worrisome incidents occurred in certain municipalities in cases involving sharply disputed municipal seats. As a result of the burning of ballot boxes and ballots, along with confrontations with security forces, new elections were ordered in a good number of those places. However, that did not cloud the successful electoral process throughout most of Guatemalan territory. Voter participation was registered at an historic high of 71%.

Since none of the pairs of candidates for president and vice-president of the Republic received an absolute majority of the votes, a second round of voting was scheduled for October 25. Because of the close results between the second and third place candidates, the decision as to who would compete in the new round was delayed until administrative procedures were completed. Finally, the first two presidential tickets with the highest number of votes were determined as Jimmy Morales and Jafeth Cabrera of the *Frente de Convergencia Nacional* party (*FCN-Nación*), who obtained 23.85% of validly issued votes, and by Sandra Torres and Mario Leal, of the *Unidad Nacional de la Esperanza* (*UNE*), with 19.76% of the vote. The figures showed the volatility of the prior surveys of the elections, and triggered surprise over the fact that the party which had spent the most money on its election campaign had been excluded from the second round.

2nd Round

Pre-election period

The second round took place in a less tense atmosphere, which left space for a greater debate of ideas and a broader dissemination of the candidates' positions. As in the first round, beginning on October 4, the OAS/EOM deployed a mobile group to travel to the country's departments and assess the status of organization of the election and meet with various regional officials.

Concerns were considerably alleviated in comparison with the complex climate that prevailed during the first round of elections. The candidates themselves contributed to this atmosphere, since beyond the usual friction of an election campaign, they made public appearances together to launch appeals for a peaceful, transparent, and honest contest. In one of these appearances, at the request of the TSE, the OAS/EOM itself, represented by the Mission Chief, took steps to ensure the presence of the candidates and urged a peaceful electoral process. The next day, the President of the Republic himself also conducted a ceremony with the candidates in the same spirit.

In addition, there were fewer risk factors in this new round, since there was only one election, one ballot and two candidates, except for the 11 municipalities that were repeating the original elections. In this latter case, there was tight coordination among the institutions to prevent and deal with any acts of violence, in addition to the coordinated efforts to provide security for the process as a whole.

For this second round, the OAS/EOM deployed 70 experts and observers from 20 countries, 54.2% of whom were women and 45.8% men. The core group included specialists in electoral organization, electoral technology, political analysis, and statistics, among other fields.

Election day

The elections on October 25 were peaceful. The OAS/EOM observed that the polling stations opened on time and had the materials needed to conduct the election. During the day, both parties in the contest had guards at most of the polling stations observed. The balloting required considerably less time than in the first round, which expedited the vote-counting process. On average, vote-counting took no more than 40 minutes at the polling stations observed. The computer center began to receive and disseminate the results quickly, and a few hours after the voting was concluded, the candidates acknowledged the results. 56.32% of the electorate participated in this second round.

On October 25, OAS observers visited a total of 668 voting centers, and evaluated the process in the observed polling stations as good or very good in 98% of the cases, an improvement over the rating given for the first electoral round. In the second round, a total of two complaints were received and sent to the TSE for processing.

Post-Election Period

The wide difference in the results simplified the work to complete the final vote count and announce the final election results. The TSE officially reported the results on November 6, 2015, and declared that Jimmy Morales and Jafeth Cabrera had been elected as President and Vice-President of the Republic, respectively, for the term of office running from January 14, 2016 to January 14, 2020. The final results gave them 67.44% of the validly issued votes.

Conclusions and Recommendations

The OAS/EOM congratulates the Guatemalan people and institutions on their successful general elections. In addition to the TSE, various entities such as the Office of the Attorney for Human Rights [*Procuraduría de los Derechos Humanos*], the National Prosecutor's Office [*Fiscalía Nacional*], the courts, the Constitutionality Court, the CICIG, civil society members and groups, and international organizations, among many others, made important contributions to the peaceful development of the electoral process.

The events leading up to the elections should be cause for reflection on the part of Guatemalan society. Citizen discontent, reflected in the extensive demonstrations throughout 2015, provides an opportunity for politicians to promote initiatives to enhance inclusion, political participation, transparency, equity, oversight, and accountability. To this end, the OAS Electoral Observation Mission gives the Guatemalan authorities the following recommendations to strengthen electoral processes in Guatemala.

Electoral Body

The ability of the Supreme Electoral Tribunal to act was reduced by budgetary restrictions and delays in delivery of funds. The OAS/EOM recommends that the autonomy of the TSE be strengthened by provisions to guarantee an adequate budget and timely receipt of funds. The electoral body should have the human, technical, and financial capacity to duly plan and execute the electoral process.

Electoral Technology

The Supreme Electoral Tribunal worked hard to develop a system to ensure that the preliminary election results would be transmitted efficiently and effectively. Barring certain difficulties, it was successful in completing this task. To reinforce this critical component in future elections, the EOM suggests that a plan of action and technical schedule be developed and adopted for implementation of the TREP system. This plan of action should include simulations of all components, to assess the operations of the various elements comprising it, such as the network, servers, databases, and computer security. It is also recommended that the scope and objectives of these simulation tests be documented, in order to appropriately measure the results and determine any needed improvements.

Electoral Organization

It is recommended that registration of citizens in the Voters' Register be simplified and computerized. The lack of information and knowledge on the part of citizens leads to a situation in which a large number of persons do not register to vote. To promote inclusion and participation, it is recommended that the Supreme Electoral Tribunal, responsible for registration of citizens on the electoral rolls, and the National Registry of Persons, which grants personal identification documents, cooperate on a joint undertaking, without affecting the autonomy of either entity, to facilitate registration to vote.

Inclusion

For the 2015 elections, women accounted for the majority of registered voters. However, their weight in the elections was not reflected in political representation. Only 13% of the persons elected to the National Congress were women. In Guatemala, women have not accounted for more than 15% of parliamentarians since 1986. The OAS/EOM recommends that affirmative action measures be adopted to favor the inclusion of women as political representatives, by means of a progressive quota moving towards parity. This would add Guatemala to those countries in Latin America which have made important efforts in this direction over the past decade. The measures implemented should be accompanied by a clear stipulation of penalties to be imposed in the event of noncompliance with these affirmative actions.

Like women, indigenous peoples also experience exclusion from political decision-making spheres. Their participation in elections is low, and they seldom figure among the candidates for election. Of the 158 deputies elected, only 18 were members of indigenous peoples in a country where they account for over 40% of the total

population. The OAS/EOM attaches importance to working on inclusion policies that will increase the participation of indigenous people in electoral processes, to ensure that they fully exercise their right to vote, have access to entities representing the people, and participate in the public life of the country, taking into account the multicultural, multiethnic, and multilingual nature of Guatemala. These policies include incorporation of the ethnic variable in voter registration, campaigns to disseminate electoral processes and encourage voting in indigenous communities, use of indigenous languages, and measures for affirmative action to guarantee access of indigenous peoples to posts of popular representation and to electoral institutions.

In the third place, the OAS/EOM appreciates efforts made to promote and facilitate voting by persons with disabilities. However, it recommends furthering the initiatives already undertaken, such as ballots in Braille, ensuring the voting centers are free of physical or natural barriers, and improving training of the polling station workers in this area.

Finally, the Mission recommends that the Guatemalan government facilitate voting by Guatemalan citizens abroad. It is important to recognize the value of nationals living abroad, and to facilitate their participation in their country's political processes.

Campaign financing

The Supreme Electoral Tribunal has made substantial efforts to monitor and punish violations of the campaign financing law. Nonetheless, the OAS/EOM observed that the Guatemalan legal system lacks the laws and tools to promote equity in the contest and transparency in the use of funds. Political-electoral financing regulations are limited, and the Supreme Electoral Tribunal does not have any suitable or adequate ways to monitor and supervise income and expenditures of political groups during campaigns. This is nothing new. As already indicated, a report by the International Commission against Impunity in Guatemala showed that parties do not comply with regulations governing income and expenditures, and that a large part of the funds used in campaigns is of unknown origin. The 2011 OAS/EOM also referred to these issues.

Therefore, the OAS Electoral Observation Mission recommends giving the electoral authority greater powers to monitor and penalize political parties and candidates that break the law, especially with regard to compliance with obligations in the area of expenditure ceilings, limits on, and the origin of, contributions, and the use of funds. To accomplish this, it suggests that the TSE set up an internal structure specifically dedicated to reviewing and auditing income and expenditures of parties, their accounting, and their activities, and that it provide technical support in this area to the judges. Improving the institutional capacity in this area should be accompanied by a strict system of sanctions, which will make it possible to ensure compliance with the law, and by the necessary human and financial resources.

To ensure greater access to the media, it is recommended that the government have an advertising space with radio and television networks so that parties and candidates may have free access to time slots on an equitable basis during electoral processes.

Finally, it is important that reforms in this area are designed to strengthen public financing of campaigns and parties and to limit private financing. This will foster greater equity in the contest and help sustain party activities.

Party System

A stable democratic system requires strong political parties, which have well-defined platforms, represent a vision or ideal of society, practice democracy internally, and contribute to political training and civic education. In Guatemala, the OAS/EOM observed that the people were highly dissatisfied with the current party system. This disaffection is exacerbated by practices such as changes in party affiliation. Within a day of taking office, virtually one of every three deputies changed parties or joined a new organization, and the number increased later on. This type of practice should be penalized and eliminated. The OAS Mission underscores the importance of undertaking reforms to strengthen the party system, and to promote identification of citizens with their leaders, new leadership, training of party members, financial transparency, accountability and internal democratic practices, as well as the participation of women, youth, and indigenous people in the power structure. It further recommends revising the indefinite re-election of deputies and mayors. Although continuity in public policies is important, changes in the power structures are a sign of a strong democracy.

Electoral Justice

The Supreme Electoral Tribunal, the Supreme Court of Justice, and the Constitutional Court play an important role in imparting electoral justice. This is a sign of institutional strength and of independence of powers. However, this model diminishes the supremacy and independence of the TSE. Electoral affairs require expeditious processes for various matters, so that the smooth running of the process is not hampered. The EOM observed how various cases, the resolution of which had the potential for having an impact on elections, were delayed and generated uncertainty for the parties, candidates, and the citizenry in general. The Mission recommends that judicial electoral processes be simplified to guarantee timely justice in electoral processes, while protecting the rules of due process and protection for fundamental rights. It therefore recommends that in the long run, the jurisdictional function of the TSE be separated out and delegated to an organ exclusively devoted to imparting justice in this area. That would make it possible to have a dedicated, expeditious system for resolving electoral disputes.

Substitution of Candidates and the Right to a *Pre-trial (Antejuicio)*

The Mission observed that there were no legal provisions regulating the substitution of candidates when one of the members of a presidential pair of candidates is disqualified or unable to compete. Although candidates are registered in pairs, the individual right of any person to compete in the elections should be guaranteed, and so it is recommended that a replacement mechanism be defined by law. During the campaign, the OAS/EOM noted that there were a large number of *antejuicio* actions involving candidates at various levels, filed in accordance with their right under the law. In this regard, it suggested that their scope be limited so that persons are not protected in the event of acts unrelated to electoral matters.

Prosecution of Election Offenses

The *Ministerio Público* contributed significantly to development of the process by creating a Prosecution Unit specializing in electoral offenses, which exclusively investigated and prosecuted criminal conduct related to the electoral process. The EOM recommends that this unit be institutionalized and given the human and financial resources needed to function effectively.

Words of Appreciation

The Electoral Observation Mission of the Organization of American States deployed for the Guatemalan electoral process in 2015 thanks the Supreme Electoral Tribunal for its courtesy and openness during the successful performance of our work. Our appreciation extends to all of the electoral authorities and workers in the country.

Moreover, the OAS/EOM expresses its gratitude to the political authorities and the various government institutions and their staff, who assisted us in our work and facilitated our observation in a complex political and electoral environment. This recognition also goes to civil society organizations, the media, and the diplomatic corps accredited to that country.

Finally, we would like to thank the governments of Argentina, Canada, Chile, France, Italy, Japan, Serbia, Spain, Switzerland, and the United States, whose contributions made the deployment of our Mission and its work possible.