



## **OAS Electoral Observation Mission congratulates the people of Guatemala on their civic commitment in the second round of elections**

August 22, 2023

The Electoral Observation Mission (EOM) of the Organization of American States (OAS) for the presidential run-off election of August 20, 2023, headed by former Paraguayan Foreign Minister Eladio Loizaga, congratulates the Guatemalan people for their civic commitment, which was reflected in an exemplary election day. The Mission salutes the elected authorities, while recognizing the efforts and democratic commitment of the Supreme Electoral Tribunal (TSE) and the temporary electoral bodies, which performed their civic functions in an exemplary fashion and with a sense of historical responsibility, in an atmosphere of high political tension. The Mission highlights the broad participation of political party monitors, national and international observers, and other actors and organizations that contributed to the successful holding of the elections.

The OAS has continuously monitored the current Guatemalan electoral process, with five deployments since May 2023. For the presidential runoff, the Mission was composed of 86 observers and specialists of 23 nationalities, who were present in the 22 departments of the country, Guatemala City, and Washington, D.C., United States. The OAS/EOM observed the preparations for the election and held meetings with electoral and government authorities, political figures, and representatives of party organizations, civil society, academia, and the diplomatic corps accredited in the country. On Election Day, the Mission team visited 1,345 polling stations (JRVs), observing from the moment of their installation until the conclusion of the vote count and the withdrawal of electoral material.

The General Elections of 2023 marked one of the most complex episodes in Guatemala's recent history. After a pre-electoral stage characterized by a climate of political polarization and judicialization and in the face of clear threats to the integrity of the process and attempts to disregard the popular will expressed at the ballot box on June 25, the period between the first and second round of elections pushed the country's democratic institutions to the limit and brought Guatemala to the attention of the international community.

In addition to the facts covered in this report, the OAS/EOM wishes to emphasize the seriousness of the situation surrounding the electoral process. In multiple communiqués and official statements, the OAS expressed its concern about different aspects of the elections, from the uncertainty and tension surrounding the candidate registration process in the pre-electoral stage,<sup>1</sup> to the extreme judicialization

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<sup>1</sup>Communiqué of the OAS Secretariat for Strengthening Democracy, March 22, 2023. Available at: [https://www.oas.org/en/iachr/media\\_center/PReleases/2018/223.asp](https://www.oas.org/en/iachr/media_center/PReleases/2018/223.asp)



of the results after June 25.<sup>2</sup> The Mission strongly rejected the raids by the Public Prosecutors' Office in the framework of the process, which it observed directly, and condemned "the political persecution of public officials and party activists by State entities that violated minimum guarantees for citizens and ignored the presumption of innocence and due process."<sup>3</sup> The OAS/EOM added that this "could constitute serious violations of the fundamental rights enshrined in national legislation, the Constitution of the Republic, and international instruments."<sup>4</sup>

At all times, the Mission insisted on the indispensable condition of respecting the will of the citizenry as expressed in the vote.<sup>5</sup> Acceptance of electoral results is not only a democratic imperative, but the very basis for peaceful coexistence in plurality. Since its Preliminary Report after the first round of elections,<sup>6</sup> the OAS/EOM was clear in stating that the June 25 elections were generally calm, with great civic commitment on the part of the members of the pollingsStations (JRVs) and a high level of participation by political party monitors. The Transmission of Preliminary Electoral Results (TREP) system worked properly, with a constant and uninterrupted flow of tally sheets during the night and early morning after the election. The Mission confirmed and reaffirmed that the results of the TREP on June 25 coincided with those ascertained by the OAS/EOM and by national observation of the EOM-GT. At no time, during Election Day or in the days following, did the Mission observe or receive evidence that would call into question the integrity of the process or the order of the preferences emanating from the ballot boxes.

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<sup>2</sup>Report by Secretary General Luis Almagro to the Permanent Council at its meeting on August 10, 2023. Available at:

[https://www.oas.org/en/iachr/media\\_center/PReleases/2018/223.asp](https://www.oas.org/en/iachr/media_center/PReleases/2018/223.asp)

Communiqués of the OAS Electoral Observation Missions:

- July 2, 2023. Available at: [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-035/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-035/23)

- July 12, 2023: Available at: [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-038/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-038/23)

- August 18, 2023. Available at: [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-046/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-046/23)

<sup>3</sup> Press release of the OAS Electoral Observation Mission, July 22, 2023. Available at:

[https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-039/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-039/23)

<sup>4</sup> Press release of the OAS Electoral Observation Mission, July 22, 2023. Available at:

[https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-039/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-039/23)

<sup>5</sup> In addition to the above communications:

-Statement by the OAS General Secretariat, July 1, 2023. Available at:

[https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-034/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-034/23)

Communiqués of the OAS Electoral Observation Mission:

June 30, 2023: Available at:

[https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-033/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-033/23)

July 3, 2023: Available at:

[https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-036/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-036/23)

<sup>6</sup>Preliminary Report of the Electoral Observation Mission for the General Elections and Elections of Deputies to the Central American Parliament, June 27, 2023. Available at: <https://www.oas.org/fpdb/press/PRELIMINARY-REPORT--OAS-Electoral-Observation-MISSION-in-Guatemala-1st-Round.pdf>



The OAS Permanent Council addressed the situation of the electoral process in Guatemala on at least three occasions.<sup>7</sup> Due to concerns of the Organization's member states, the Magistrate President of the TSE, Irma Palencia, appeared virtually before the Permanent Council. It was the first time in the history of the OAS that a president of an electoral authority made a presentation before the Permanent Council at the request of an Electoral Observation Mission, and not at the request of the State to which he/she belongs.

In response to the growing concern over the situation in Guatemala, Secretary General Luis Almagro accepted the invitation of the President of the Republic, Alejandro Giammattei, to visit the country. That visit took place between August 1 and 4. Secretary Almagro met with State agencies, the competing candidates, business leaders, indigenous movements, representatives of civil society, human rights organizations, religious congregations, and other electoral observation missions. During his visit, Secretary Almagro received a commitment from all parties to respect the holding of the second round of elections on August 20, with the two presidential tickets led by Sandra Torres and Bernardo Arévalo. The Secretary General also announced the willingness of the OAS/EOM to accompany the transition process until January 14.

In his report to the Permanent Council following the visit,<sup>8</sup> Secretary Almagro expressed concern about the actions against the Supreme Electoral Tribunal, the arrest warrants issued for electoral officials, the judicial requests for electoral records, the summons to testify for persons linked to the process or close to the parties, among other intimidating acts. He was clear in stating that "the TSE cannot be under harassment." He also stressed that working out agreements during the transition process "will be essential for the governability of the country, but essentially for the stability of democracy." He also underscored the importance of the process "having fair, adequate, and appropriate levels of representation of the country's indigenous population, which is totally underrepresented." Prior to the presidential runoff, Secretary Almagro recommended to the TSE that it make the electoral process

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<sup>7</sup> OAS Permanent Council receives preliminary report of the EOM in Guatemala and second report of the Working Group for Haiti, July 19, 2023. Press Release and agenda available at:

[https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=AVI-129/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=AVI-129/23)

OAS Permanent Council considers the situation in Guatemala, July 26, 2023. Press Release and agenda available at:

[https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=AVI-133/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=AVI-133/23)

Permanent Council receives report on the Secretary General's visit to Guatemala, July 10, 2023. Press Release and agenda available at: [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=AVI-144/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=AVI-144/23)

Report of the Secretary General of the OAS, Luis Almagro, to the Permanent Council on the situation in the Republic of Guatemala, after leading a Mission that visited the country between August 1 and 4, 2023. Available at:

[https://www.oas.org/en/iachr/media\\_center/PReleases/2018/223.asp](https://www.oas.org/en/iachr/media_center/PReleases/2018/223.asp)

<sup>8</sup>Presentation by Secretary General Luis Almagro to the Permanent Council of the OAS, August 10, 2023. Available at:

[https://www.oas.org/en/iachr/media\\_center/PReleases/2018/223.asp](https://www.oas.org/en/iachr/media_center/PReleases/2018/223.asp)



transparent through mechanisms such as authorizing party agents to take photographs of Document No. 4 (final tally sheets of the polling station's closing and vote counts) and that the JRVs provide them with a copy of Document No. 5 (certification of vote counts). This was recommended so that the political parties would have "physical evidence of the results, in addition to technological evidence", in order to "dispel any doubts that may exist about the results transmission system." Both recommendations were implemented by the TSE on August 20.

This report includes the Mission's preliminary findings and recommendations, without prejudice to the observations that continue to be made by the OAS observers present at the various vote count review hearings, which by law are conducted by the Departmental Electoral Boards (JED) and which will be reflected in the Final Report to the OAS Permanent Council.

## **PERIOD BETWEEN THE FIRST AND THE SECOND ROUND OF PRESIDENTIAL ELECTIONS**

Guatemala's democratic stability was under intense and constant pressure in the period between the first and the second presidential round, with interventions by a variety of actors who sought to: ignore, delay, or reverse the official certification of results; suspend one of the parties in contention, *Movimiento Semilla* and prevent the awarding of positions to its elected authorities; intimidate the electoral bodies and the technical personnel hired for the process, as well as supporters of *Movimiento Semilla*; misinform and plant doubts in the population where there were no reasons for suspicion; and in general delegitimize and erode the democratic process. Despite these serious threats, multiple institutional, political, economic, and social actors came out to protect the will of the citizens expressed at the polls. The Mission welcomes the defense of democracy by the Guatemalan population and also recognizes the various expressions of support for the electoral process by the international community.

### **I. *New hearings to review vote counts and certification of results***

As the OAS/EOM has reiterated in its reports and communiqués, on June 25, political party agents presented an insignificant number of challenges to the JRVs, despite their extensive presence at the voting tables. In addition, the TSE reported that the Transmission of Preliminary Electoral Results (TREP) system processed 99.13% of the documents generated in the JRVs.<sup>9</sup> The official tally sheets were fully available for download and analysis on the TREP platform and were indeed widely downloaded and disseminated to the population.

However, in the days following the election, some actors opted for strategies to question the tallying and transmission of results, based on the tendentious use of very isolated cases of errors in the tally sheets to

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<sup>9</sup>TSE (2023). Available at: [https://www.facebook.com/watch/live/?ref=watch\\_permalink&v=660304615556666](https://www.facebook.com/watch/live/?ref=watch_permalink&v=660304615556666)



induce a narrative according to which there could have been systematic problems in the tallying or the results in the JRVs that might not correspond with those published by the TREP.

On June 30, 2023, nine political parties filed an injunction before the Constitutional Court (CC), alleging defects in the "vote counting procedure, the splitting of final tally sheets and results, data entry, and presentation of results to the population." The CC granted a provisional injunction on July 1,<sup>10</sup> ordering the JEDs to convene a new vote count review hearing (regardless of whether they had already held the review provided for in the legislation) and subsequent cross-checking of tally sheets; a procedure that is not considered in the electoral regulations. To observe this stage, which was not contemplated in the original electoral calendar, the OAS/EOM assembled a technical team of 12 people of nine nationalities that was newly deployed to Guatemala.<sup>11</sup>

Between July 4 and 6, the Mission was present at the extraordinary vote count review hearings held at the Center for Operations of the Electoral Process (COPE), located in the Parque de la Industria, Guatemala City. The OAS/EOM observed a lack of standardization in the processes implemented by the different JEDs. In some cases, the boxes containing electoral material were opened to review the challenged tally sheets. In others, it was determined that this was not appropriate. The Departmental Board of the Central District ordered cross-checking of all the official tally sheets and not just the challenged ones, which meant reviewing more than 10,000 documents. The Mission reiterates that, without prejudice to the autonomy granted by law to the JEDs, the Political Constitution is clear in establishing that the TSE is the highest authority in electoral matters. That status should include the power to provide general guidelines and directives to help orient the work of the boards, as well as legal advice, especially considering that the temporary bodies are formed on a voluntary basis, by citizens of recognized honorability, but who are not necessarily experts in Electoral Law and sometimes have to deal with technical suggestions from lawyers of the political parties.

Although in general the hearings passed without major setbacks, it was observed in the media that political party monitors at some points addressed the members of the JEDs in a threatening tone, incompatible with the way an electoral authority should be treated.

The OAS/EOM was able to verify the efforts of the JEDs to comply with the CC resolution in the tight timeframe granted and under considerable pressure. This involved long workdays, transmitted live to the population, in the presence of a large number of poll watchers representing different political positions, and national and international observers, as well as the media. The Mission reported that the hearings

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<sup>10</sup> Constitutional Court (2023). Available at:

[https://twitter.com/CC\\_Guatemala/status/1675304124814950400?s=20](https://twitter.com/CC_Guatemala/status/1675304124814950400?s=20)

<sup>11</sup> Press release of the OAS Electoral Observation Mission, July 3, 2023. Available at:

[https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-036/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-036/23)



were held in compliance with the principles of maximum publicity and transparency and that after the process no serious irregularities were revealed, nor were there any significant changes with respect to the preliminary results of Sunday, June 25.<sup>12</sup>

This did not prevent some actors from continuing to judicialize the process.<sup>13</sup> From the beginning of the second review hearings, some political organizations expressed disagreement with the procedure to be followed and demanded a vote-by-vote recount of all ballots. The OAS/EOM reiterates that, in large measure, these demands were promoted by the political groups with the largest number of poll watchers present on election day, whose representatives did not raise those complaints at the polling stations or in the first hearings for the review of the vote counts held in the JED.

The abuse of legal instruments by those who did not agree with the process led to a delay in the official certification of the results of the presidential election until July 12,<sup>14</sup> generating unnecessary confusion and uncertainty among citizens. In the end, it was confirmed that the Unidad Nacional de la Esperanza (UNE) party and the Movimiento Semilla party would advance to the second round of the presidential election on August 20.

## ***II. Proceedings of the Public Prosecutors' Office and the criminal jurisdiction***

Coinciding with the official certification of the results of the presidential election, the Public Prosecutors' Office<sup>15</sup> and a judge of the criminal jurisdiction<sup>16</sup> initiated a series of actions that amounted to harassment of the electoral authorities and political persecution against one of the contending options. These actions included a court order by the criminal judge to suspend the legal status (*personalidad jurídica*) of the

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<sup>12</sup> Press release of the OAS Electoral Observation Mission, July 8, 2023. Available at: [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-037/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-037/23)

<sup>13</sup> Notable, among other actions, was the request for enforcement assistance filed by several political parties before the Supreme Court of Justice (CSJ). This request led the President of the CSJ on July 7 to request a report from the TSE on the execution of the provisional injunction, while continuing to suspend the official certification of results and the awarding of positions. After the TSE submitted the respective report, the CSJ resolved on July 10 that the TSE had complied with the resolution of the CC.

Supreme Court of Justice (2023). Available at: [https://fb.watch/mxo0\\_iTkfP/](https://fb.watch/mxo0_iTkfP/)

<sup>14</sup> TSE (2023). Decision 1328-2023 of July 12, 2023. Available at: <https://www.tse.org.gt/images/Acuerdos2023/1328-2023.pdf>

<sup>15</sup> During the 2023 electoral process, the Public Prosecutors' Office was headed by the Attorney General of the Republic, Dr. María Consuelo Porras Argueta. The Special Prosecutor's Office against Impunity (FECI) was headed by the Section Prosecutor, Rafael Curruchiche.

<sup>16</sup> Judge Fredy Orellana Martínez, Seventh Court of First Instance on Criminal Matters, Drug Trafficking, and Environmental Crimes of the Department of Guatemala.



Movimiento Semilla and to prevent the awarding of positions to candidates of that party; three raids, two at the TSE headquarters and one at the headquarters of the Movimiento Semilla; at least three arrest warrants against electoral officials and former members of the Movimiento Semilla; proceedings to request certified copies of the electoral records and the list of TREP data entry clerks, and summonses to testify to electoral officials and other persons linked to the process.

According to the Special Prosecutor's Office against Impunity (FECI), these actions were carried out as part of an investigation that originally dealt with an alleged falsification of signatures when the party was formed, but was later expanded to include elements related to the computer system used in the election. The Mission takes note of the statements made by the FECI to the effect that the investigation into the formation of the political party precedes the first round of elections and therefore does not meet the "political times" requirement.<sup>17</sup> However, the evidence points to an escalation of judicial actions due to the advance of the Movimiento Semilla to the second round of the elections. As stated by Secretary Almagro: "the facts showed that after the second round, there was only one party that was attacked."<sup>18</sup> The Mission noted that the official communication from the Public Prosecutors' Office referred to the investigation as the Seed Corruption Case ("*Caso Corrupción Semilla*")<sup>19</sup> which is an ill-advised practice in criminal law, and one that is especially objectionable when applied to a party competing in an electoral process. It is worth noting that on July 18, the OAS/EOM received a formal complaint from the presidential candidate of the Movimiento Semilla, in which he stated that there is "persecution and criminalization of the affiliates and members of the Movimiento Semilla political party, for the purpose of intimidation."

On July 12, 2023, the same day the results of the presidential election were officially certified, the FECI announced<sup>20</sup> that the Seventh Judge of First Criminal Instance, Drug Trafficking, and Crimes against the Environment of the Department of Guatemala (Seventh Criminal Judge) sent an official notice to the General Directorate of the Registry of Citizens of the TSE, ordering the provisional suspension of the registration of Movimiento Semilla as a legal entity, at the request of the Public Prosecutors' Office. According to the judge's communication, the party could not "participate in any subsequent political act", nor could "positions be awarded to party candidates." The judge granted the General Directorate of the

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<sup>17</sup> Interview with the Special Prosecutor against Impunity, available at:

<https://www.youtube.com/watch?v=7vvQc72OVks>

<sup>18</sup> Report by Secretary General Luis Almagro to the OAS Permanent Council at its meeting on August 10, 2023.

Available at:

[https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=S-010/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=S-010/23)

<sup>19</sup> As examples: <https://www.mp.gob.gt/noticia/ministerio-publico-da-a-conocer-detalles-sobre-el-caso-corrupcion-semilla/> <https://www.facebook.com/mpguatemala/videos/caso-corrupción-semilla/3197344323896235/>

<https://www.mp.gob.gt/wp-content/uploads/2023/07/PRESENTACION-MP-FECI-13-JUL-2023-final-3.pdf>

<sup>20</sup> Public Prosecutors' Office (2023). Available at:

<https://twitter.com/MPguatemala/status/1679275441499041793?s=20>



Registry of Citizens a period of 24 hours to proceed with the suspension. In view of this decision, Movimiento Semilla filed an injunction before the Constitutional Court, considering that there was a danger of violation of the electoral process.<sup>21</sup>

On the morning of July 13, 2023, the Public Prosecutors' Office raided the offices of the Political Organizations Department of the Citizen Registry of the TSE and confiscated the Movimiento Semilla file. Through its official accounts, the Public Prosecutors' Office informed that "within the investigation there are indications that (sic) possibly more than 5 thousand citizens have been illegally registered as members of Movimiento Semilla, by means of falsification of documents. Also, at least 12 deceased persons were reportedly registered in this political party."<sup>22</sup>

In the afternoon of the same day, July 13, the Director of the Citizen Registry announced that he was unable to comply with the order of the Seventh Criminal Judge,<sup>23</sup> given its timing and in view of the provisions of Article 92 of the LEPP.<sup>24</sup> In that decision, the Citizen Registry was endorsed by the TSE Plenary. Also in the afternoon of July 13, the CC announced that it had granted the provisional injunction filed by Movimiento Semilla.<sup>25</sup> In file No. 3985-2023, the CC resolved that the resolution of the Seventh Criminal Judge "DOES NOT AFFECT OR SUSPEND Agreement No. 1328-2023 of the Supreme Electoral Tribunal, so that the second round of elections is to take place on the indicated date and with the participation of the candidates officially named in the aforementioned Agreement." The CC added that it had reached the above resolution "without prejudice to the powers of criminal prosecution within the jurisdiction of the Public Prosecutors' Office and the provisions of Articles 251 of the Political Constitution of the Republic of Guatemala and 251 of the Electoral and Political Parties Law."

Multiple national and international actors condemned the actions of the Public Prosecutors' Office, particularly the July 13 raid on the TSE headquarters, which was carried out with an unnecessary display of force, with armed personnel wearing masks. In subsequent days, the actions continued, including pressure on the Citizen Registry to report on compliance with the judge's order, despite the CC's injunction; certifications against the Director of the Citizen Registry and an arrest warrant against the Deputy Director of the Citizen Registry. On July 20, the TSE again raided the TSE headquarters, this time

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<sup>21</sup> CC (2023). Available at: [https://twitter.com/CC\\_Guatemala/status/1679605391749939201?s=20](https://twitter.com/CC_Guatemala/status/1679605391749939201?s=20)

<sup>22</sup>Public Prosecutors' Office (2023). Available at:  
<https://twitter.com/MPguatemala/status/1679494393852579842?s=20>  
<https://twitter.com/MPguatemala/status/1679889430692212736?s=20>

<sup>23</sup> Citizen Registry, TSE (2023). Available at:  
[https://www.facebook.com/watch/live/?ref=watch\\_permalink&v=601070572110556](https://www.facebook.com/watch/live/?ref=watch_permalink&v=601070572110556)

<sup>24</sup>Article 92. Temporary suspension. The temporary suspension of a political party is permissible when: (...) A political party may not be suspended after an election has been called and until the election has been held.

<sup>25</sup>CC (2023). Available at: [https://twitter.com/CC\\_Guatemala/status/1679605391749939201?s=20](https://twitter.com/CC_Guatemala/status/1679605391749939201?s=20)





the Human Resources Department.<sup>26</sup> The TSE demanded respect for and guarantee of the fundamental principles of due process, the presumption of innocence, and the right to defense.<sup>27</sup>

The Public Prosecutors' Office insisted that it would respect the second round and would abide by the CC's injunction,<sup>28</sup> but did not desist from the actions against Movimiento Semilla and the electoral authority. On July 21, 2023, FECl officials raided the party's headquarters.<sup>29</sup> Subsequently, the Public Prosecutors' Office reported the opening of an investigation related to the Preliminary Electoral Results Transmission System (TREP) and asked the TSE for the names of the data entry clerks hired for the electoral process, by municipality and department.<sup>30</sup> Members of FECl also entered TSE facilities to obtain digital and physical copies of 2,023 of No. 4 Documents corresponding to the presidential election in the Central District, as well as a copy of the digital file of the tally of votes obtained by all political organizations in the five elections of June 25.<sup>31</sup> According to media reports, in early August the President of the TSE indicated that the Public Prosecutors' Office had at least 13 ongoing criminal cases related to the electoral process.<sup>32</sup>

The judicialization of the process continued almost up to the start of voting. Hours before Election Day, the FECl continued to send intimidating signals, declaring that it did not rule out the possibility of pre-trial proceedings after August 20<sup>33</sup> and summoning the TSE's Director of Information Technology to testify. Notification of that summons took place in the presence of observers from the Mission. The OAS/EOM reiterated its concern and insisted that "these actions interfere with the natural course of the electoral process, to the detriment of an entire nation that wants to express itself freely at the polls."<sup>34</sup> In his

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<sup>26</sup>Public Prosecutors' Office (2023). Available at:

<https://twitter.com/MPguatemala/status/1682144142833401861?s=20>

<sup>27</sup>TSE (2023). Available at: <https://twitter.com/TSEGuatemala/status/1682156933258592256?s=20>

<sup>28</sup>Public Prosecutors' Office (2023). Available at:

<https://twitter.com/MPguatemala/status/1683194860549951489?s=20>

<sup>29</sup>Public Prosecutors' Office (2023). Available at:

<https://twitter.com/MPguatemala/status/1682431850860490752?s=20>

<sup>30</sup>TSE (2023). Available at: <https://twitter.com/TSEGuatemala/status/1684965361957969926?s=20>

<sup>31</sup>TSE (2023). Available at:

<https://tse.org.gt/index.php/comunicacion/noticias/908-tse-entrega-2023-copias-certificadas-de-las-actas-numero-cuatro-en-diligencia-judicial>

<https://twitter.com/TSEGuatemala/status/1687325866693435392?s=20>

<sup>32</sup> Available at: <https://www.prensalibre.com/guatemala/politica/tse-es-investigado-por-el-ministerio-publico-en-al-menos-13-casos-diferentes/>

<sup>33</sup> Interview with the Special Prosecutor against Impunity, available at:

<https://www.youtube.com/watch?v=7vvQc72OVks>

<sup>34</sup> Press release of the OAS Electoral Observation Mission, August 18, 2023. Available at:

[https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-046/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-046/23)



message prior to the elections, the Chief of Mission stated: "It is crucial that the data entry clerks involved in this process have sufficient guarantees in order to carry out their work properly."<sup>35</sup>

On Friday, August 18, the CSJ granted an appeal for protection under the Constitution [*amparo*] requested by Movimiento Semilla to guarantee due compliance with the stages of the electoral process, including the awarding of positions.<sup>36</sup>

On the eve of the election, the UNE party filed an *amparo* against the TSE before the CSJ, requesting guarantees that the data entered in the TREP match the vote count data.<sup>37</sup> The CSJ granted the provisional *amparo* just hours before the start of the vote.<sup>38</sup> In response, the TSE reiterated that the TREP had functioned properly on June 25 with actions that were exclusively informative and non-binding. Likewise, it highlighted the oversight of political organizations as a guaranteed right in all instances, including the right to take a photograph of Document No. 4 (final closing and vote count tally sheets) and to receive a copy of Document No. 5 (certification of vote counts).<sup>39</sup>

All these judicial actions created an atmosphere of profound confusion and legal uncertainty, in addition to the risk of intimidating voters, electoral authorities, data entry clerks, and other persons involved in the process.

Finally, the night before the election, Magistrate Blanca Alfaro and Magistrate Gabriel Aguilera publicly denounced that they, and their families, had been the object of threats.<sup>40</sup> The Mission condemns any type of intimidation of electoral authorities and reaffirms the fundamental importance of guaranteeing the exercise of the electoral process in an environment free of pressure and fear.

### **III. Simulation tests and other preparatory events**

The Mission observed the preparatory simulation tests on August 16 and 17, followed by the official simulation test on August 18. On all three days, a testing plan was defined to scan and enter 100% of the

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<sup>35</sup> Message from the Chief of the Electoral Mission of the OAS, Eladio Loizaga, August 19, 2023. Available at: [https://twitter.com/OEA\\_oficial/status/1692959616647479435?s=20](https://twitter.com/OEA_oficial/status/1692959616647479435?s=20)

<sup>36</sup>The ruling is available at: <https://www.soy502.com/articulo/esto-dice-resolucion-csj-otorga-amparo-semilla-101476>

<sup>37</sup>UNE (2023). Available at: <https://twitter.com/PartidoUne/status/1692962051419783409?s=20>

<sup>38</sup>CSJ (2023). Available at: [https://twitter.com/OJGuatemala/status/1693145989022962081?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet](https://twitter.com/OJGuatemala/status/1693145989022962081?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet)  
[https://www.facebook.com/watch/live/?ref=watch\\_permalink&v=265607122920460](https://www.facebook.com/watch/live/?ref=watch_permalink&v=265607122920460)

<sup>39</sup>TSE (2023). Available at: <https://twitter.com/TSEGuatemala/status/1693290780821975412?s=20>

<sup>40</sup> Available at: <https://www.soy502.com/articulo/magistrados-tse-denuncian-amenazas-contra-100931>



24,749 No. 4 Documents from all the TREP stations for the election – located in the municipal capitals - and using all the data entry clerks, verifiers, and help desk operators located in the TSE's National Information Center (CNI). In the official test, the OAS/EOM observed the presence of computer data monitors from several political parties, not only from the two parties competing in the second round of elections.

The Mission received expressions of concern from some stakeholders about the possibility that the actions of the Public Prosecutors' Office could discourage the participation of TREP data entry clerks. The General Directorate of Information Technology of the TSE informed the OAS/EOM that, on the contrary, 95% of the data entry clerks who participated in the first round of elections were retained for the second round. This made it possible to take advantage of the experience accumulated on June 25.

In the afternoon of August 19, the Mission observed the software shutdown protocol and the zeroing (*puesta en ceros*) of the TREP database, which proceeded normally.

## ELECTION DAY

On election day, the OAS/EOM observed the elections from the opening to the closing and counting of votes in 1,345 polling stations located in 465 voting centers in the 22 departments of Guatemala and in the Capital City. In addition, the mission observed the vote in Washington D.C., USA.

The Mission observed that the polling stations opened, on average, at 7:01 a.m. and that 100% were operational at that time. It should be noted that the second round of the presidential election took place in a calm and normal atmosphere throughout the country. There were no significant incidents as there were in the first round of elections, which is due to the fact that the greatest risk of conflict is associated with local elections.

During its observation, the OAS/EOM observed few lines at the voting centers and a low number of voters throughout the day. The turnout rate in these runoff elections reached 45.1%,<sup>41</sup> 15.42 percentage points below the first round<sup>42</sup> but higher than that recorded in the 2019 ballot, when it was 42.7%.<sup>43</sup> The OAS/EOM urges electoral and governmental authorities, political parties and groups, civil society, and other relevant actors to develop plans and adopt measures that encourage electoral participation, as it is

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<sup>41</sup>TSE (2023). Preliminary Election Results 2023. Available at: <https://segundaeleccion.trep.gt#!/tc1/ENT>

<sup>42</sup> In the General and Central American Parliamentary Elections of June 25, 2023, a participation rate of 60.52% was recorded.

TSE (2023). Preliminary Election Results 2023. Available at: <https://primeraeleccion.trep.gt#!/tc1/ENT>

<sup>43</sup>TSE (2019). Preliminary Results Second Presidential Election 2019. Available at: <https://preliminares2019.tse.org.gt/201902/panel.html>



convinced that democracies are strengthened by the participation of and links with the greatest number of people.

On the other hand, only 1.56% of those registered abroad exercised their right to vote. The Mission considers that, although the implementation of voting abroad is a step forward for the exercise of the political rights of Guatemalan migrants, actions need to be taken to improve the procedures for future elections. Recommendations on this issue are below.

100% of the voting centers visited by the Mission had all the necessary materials to carry out the election. The OAS/EOM also found that 98% of the polling stations observed were operated by the incumbent members and that officials were aware of the procedures. In this second round, the vote-counting phase progressed much more quickly, not only because it was a single election with only two options, but also because of the training measures adopted. In addition, the OAS/EOM was able to verify that the JRV members received clearer instructions in the electoral material on the proper processing of the documents, along with training expressly focused on improving the filling out of the tally sheets. In this regard, the OAS observers noted an improvement with respect to the June 25 elections.

The Mission highlights and commends the civic spirit of those persons who were part of the polling stations (JRVs), the party agents, and all the officials of the departmental and national electoral authorities, security forces, and other State bodies whose work made this second round possible. The Mission once again highlights the fundamental role played by the party agents in ensuring the transparency of the process and mutual oversight of the competing parties.

In the polling stations observed, the OAS/EOM witnessed a majority of women (52%) serving as presidents of the JRV. As on previous occasions, the Mission highlights and welcomes their participation and appreciates their commitment to strengthening Guatemalan democracy. Likewise, OAS observers noted the presence of agents from the UNE Party and Movimiento Semilla party in 95% and 88% of the electoral precincts observed, respectively. . At the close of the day, the TSE reported that the political parties' agents were present in 98.7% of the polling stations.<sup>44</sup>

Although the elections were peaceful throughout the day, at the close of voting, the media reported acts of intimidation in Zone 4 of Mixco and Zone 18 of Guatemala City, where minor explosives were tossed inside two voting centers. According to official information, the Public Prosecutors' Office received 19 reports of conflicts related to the transfer of people, vote buying, and political propaganda at the national

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<sup>44</sup>TSE (2023). Available at: <https://fb.watch/mzsL2OXMgv/?mibextid=2JQ9oc>



level.<sup>45</sup> The Mission observed the delivery of food to voters in the municipality of San Diego, Zacapa and also received two complaints of vote buying. Overall, the Mission received six complaints in connection with the second round of presidential elections, plus the aforementioned complaint from the presidential candidate of Movimiento Semilla, in the period between the first and the second round.

At 5:30 p.m., the TSE began the official system reset (*puesta en cero*) of the TREP, which was ready to begin receiving tally sheets as soon as voting ended. According to the OAS observers, on average, the polling stations closed at 6:00 p.m. At the end of voting hours, the Mission observed that no voter remained in line to exercise his or her right to vote.

The data flow in the TREP was extremely expeditious. At 7:00 p.m., one hour after the close of voting, the OAS/EOM observed that 53.9% of the tally sheets had already been processed. At 9:00 p.m., 98.95% of the votes had been processed and shortly after 11:00 p.m., 100% of the tally sheets at the national level had been processed, showing a preliminary 58.01% of valid votes for the Movimiento Semilla party and 37.24% for the UNE party. The preliminary results of the presidential election released by the TREP leave no doubt as to the will expressed by the citizenry. The Mission also adds that the preliminary data coincide with the information gathered by the OAS observers. The Mission highlights the speed with which the TREP worked, and the impressive performance of the data entry clerks hired for the transmission of results, which gave certainty to the population on election night. Also worth noting is the low rate of contested votes, with only 828 contested votes in the presidential election.

Regarding the five municipalities that repeated elections on August 20<sup>46</sup> for reasons of conflict or annulment, the Mission observed that they also went smoothly, although there were some logistical problems in the election of San José del Golfo, where there was a lack of electoral material. It was preliminarily reported that the VAMOS party and the UNE party won four and one mayoralties, respectively.<sup>47</sup>

## FINDINGS AND RECOMMENDATIONS

This was the twenty-second Electoral Observation Mission that the Organization of American States has deployed in Guatemala. Over the years, the OAS has maintained its commitment to the continuous improvement of the Guatemalan political-electoral system through the findings and recommendations that emanate from its reports. The Preliminary Report published by the Mission after the June 25 elections

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<sup>45</sup>Public Prosecutors' Office (2023). Available at:

<https://www.facebook.com/mpguatemala/videos/1025524465469650/>

<sup>46</sup> San José del Golfo, Guatemala; San Martín Zapotitlán, Retalhuleu; San Pedro Yepocapa, Chimaltenango; San Pablo Jacopilas, Suchitepéquez; San Bartolomé Jocotenango, Quiché.

<sup>47</sup> TSE (2023). Preliminary Election Results 2023. Available at: <https://segundaeleccion.trep.gt/#!/tc1/DIV/e25>

focused on providing suggestions that could be implemented for the second round of the presidential election. For this reason, the OAS/EOM presents below its findings and substantive recommendations in all the specialties observed in both rounds, namely: electoral organization, electoral technology, electoral justice, electoral violence, political financing, political participation of women, and political participation of indigenous peoples. These findings and recommendations are presented in preliminary form and will be supplemented in the Final Report to the OAS Permanent Council.

## I. Organizational aspects

### *TSE and temporary electoral bodies*

The Supreme Electoral Tribunal (TSE) swore in the Departmental Electoral Boards (JED) as soon as the convocation decree was issued. From that moment on, the boards operated autonomously. However, this resulted in a lack of coordination and standardization of processes between the different JEDs and the highest electoral authority. As indicated in the Preliminary Report of June 27, these General Elections were accompanied by widespread renewal in the temporary electoral bodies. This was replicated at the municipal level, where only 20% of the members of the Municipal Electoral Boards (JEM) had previous experience in the position. As documented by the EOM-Gt, between the first and second round of elections, 31 changes were registered in 14 Municipal Electoral Boards and one change in a Departmental Electoral Board.<sup>48</sup>

The OAS/EOM learned that there was a heavy administrative burden for the members of the Departmental and Municipal Electoral Boards, especially for those who had no experience in public service. It should also be taken into account that the position is ad honorem and open to any citizen (*de perfil ciudadano*). According to information provided to the Mission by the TSE and several JEDs, the Tribunal appointed an accountant to support the boards, which still had difficulty in preparing the Electoral Operating Plan (POE), which required the presentation of at least seven forms with budget estimates with which they were not familiar. This led to delays in the allocation of the budget and the resignation of several members. In fact, resignations were a leading cause of changes in the JEDs, according to national observers.<sup>49</sup> Among the reasons given were the heavy administrative burden, the legal responsibilities of the position, and lack of time.

The OAS/EOM offers the following recommendations:

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<sup>48</sup> EOM-Gt (2023). Seventh Report. Available at: <https://moe.gt/septimo-informe-mision-de-observacion-electoral-de-guatemala/>

<sup>49</sup> EOM-Gt (2023). Report No. 2 Available at: <https://moe.gt/segundo-informe-mision-de-observacion-electoral-de-guatemala/>



- Strengthen upward and downward coordination and communication channels between the TSE and the temporary boards.
- Provide for TSE technical administrative and legal advisory staff to work jointly with the boards in planning, contracting, and accountability tasks.
- Review the criteria and mechanisms for the designation of temporary electoral bodies.
- Standardize and simplify the administrative processes to be carried out by the temporary boards in the exercise of their functions.
- Maintain a database of citizens interested in collaborating with future electoral processes and train them in advance.

### *Logistics derived from the candidacy registration process*

The first electoral stage was marked by the uncertainty caused by the repeated disqualification of candidates. Of 47,448 candidates registered in the Citizen Registry as of March 29, only 41,430 were able to participate in the elections.<sup>50</sup> In other words, 12.68% were excluded, both by resolutions of the Supreme Electoral Tribunal and the judicial system. Four presidential tickets who sought registration were finally unable to participate, one of them leading in the polls and with just over a month to go before the elections.

The repeated changes in the candidacies in the run-up to June 25 delayed the printing of ballots and made the logistical processes for the assembly of boxes and distribution of material more complex. These processes were completed on time, despite changes and the need to reprint ballots, which in two municipalities occurred up to the eve of the election.<sup>51</sup> Nevertheless, the OAS/EOM warns that instability in the candidacies not only introduces uncertainty for the citizenry, but also puts pressure on the logistics of the elections. Legal analysis of the candidate registration process and recommendations on the matter can be found in the section on electoral justice.

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<sup>50</sup> Information obtained by the OAS/EOM directly from the Citizen Registry: on May 8, it reported 47,448 registered candidacies and on June 23, 41,430.

<sup>51</sup> The Electoral Directorate reported, on June 24 in the early morning, the printing of the municipal ballots of: Pajapita- San Marcos and Pastores- Sacatepéquez.



## *Training*

For the presidential runoff, the Institute for Civic-Political and Electoral Education and Training informed the Mission that it was able to train approximately 70% of the JRV members. In the hiring plan, the Institute requested the hiring of 164 temporary trainers, but in the end only had 114. The percentage of training fluctuated between 50% and 100% in the different departments, in direct proportion to the number of trainers hired. For the second presidential election, training focused on the filling out of tally sheets, in accordance with one of the recommendations of the OAS in its Preliminary Report of June 27. Additional electoral material was also produced for this purpose, as detailed below. The Mission learned that the training sessions continued until the day before the election, but that the statistics were updated at the end of Election Day. In this regard, the Mission reiterates<sup>52</sup> its recommendation to:

- Keep an updated record of the progress of training in each JRV and have available municipal, departmental, and national statistics, in order to identify in advance the municipalities and polling stations that may require additional support during Election Day.

In order to make further progress in the use of training materials, the Mission also recommends:

- Developing training materials earlier and generating a dissemination strategy to ensure that they reach a wider audience and are more useful.

After the first round, some controversy was generated by the fact that some JRVs did not allow party agents to take photographs of Document No. 4. In other cases, arithmetic errors were detected and the tally sheets were tested when those acting as agents had already withdrawn, due to the duration of the vote count of the five concurrent elections. Therefore, and following the recommendation of Secretary General Almagro, the Tribunal issued Circular No. 16-2023, giving guidelines to the JRVs to allow agents to take a photograph of Document No. 4, and establishing the obligation to provide them with a copy of Document No. 5. The Mission found that the TSE adopted measures to train agents in the exercise of these functions. The OAS/EOM offers the following recommendations:

- Incorporate guidelines on the rights and prohibitions of political party agents into the training workshops for the JRVs on a permanent basis.

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<sup>52</sup>Preliminary Report of the Electoral Observation Mission for the General Elections and Elections of Deputies to the Central American Parliament, June 27, 2023. Available at: <https://www.oas.org/fpdb/press/PRELIMINARY-REPORT---OAS-Electoral-Observation-MISSION-in-Guatemala-1st-Round.pdf>





- Include training for political parties and delivery of material for agents in the training plan of the Institute for Civic-Political and Electoral Education and Training.

## *Electoral material*

### Design of the documents

In the June 25 General Elections, the OAS/EOM observed that many No. 4 Documents were tested due to errors in adding up and filling out the tally sheets. The Mission found that the electoral material did not include formats for keeping the tally (spreadsheets and/or draft tally sheets), so each JRV did it in its own way.

For this second round of voting, the TSE prepared new instructions for the JRVs, which more clearly specified the activities of the counting phase, particularly those related to the filling out of the tally sheets. In addition, some JEDs incorporated in the electoral material a draft for the polling station count, a practice that may help reduce errors and review of the tally sheets.

The OAS/EOM offers the following recommendations:

- Include in the electoral material, in all elections and nationwide, a vote counting format that makes it easier for the members of the JRV to assign the votes to each candidacy or political organization as the ballots are drawn in order to avoid errors and review of official tally sheets.

Within the framework of the second round of the presidential election, the Mission wishes to highlight the inclusion, in the electoral box, of an informative document and a poster with information regarding the right of the political party agents to take a photograph of Document No. 4 and the obligation of the polling stations to provide them with a copy of Document No. 5 (see section on electoral material). In addition, an information booklet was printed for party monitors with information in this regard. The OAS/EOM congratulates the TSE for swiftly responding to the need to give maximum publicity to this measure, which contributed to the transparency of the process.

### Traceability

In the two rounds of elections, the OAS/EOM observed the assembly line of ballot boxes and noted that there were five TSE auditing points, as well as quality controls for the tally sheets, ballots, and voter lists. The Mission observed that the boxes were sealed with adhesives and plastic padlocks. Although they were barcoded by JRV, no reading of the code was performed. There was control of the geolocation of the



trucks of the company hired for the transportation, but there was no specific traceability by ballot box. The OAS/EOM offers the following recommendations:

- Continue with efforts to add security and traceability mechanisms for electoral materials at all stages of the electoral process.

## *Party agents*

### Agents at the Polling Stations (JRV)

In addition to the large presence of political party agents in the JRVs visited on both Election Days, the OAS/EOM was also able to observe a lack of homogeneity in the accreditation procedures. The Mission reiterates the recommendation it made after the first round:<sup>53</sup>

- Optimize and standardize the process of accrediting agents, preferably developing a single form or registration tool.

## IT Monitors

By means of Agreement No. 292-2023,<sup>54</sup> the Supreme Electoral Tribunal summoned political parties to present information technology monitors at the national level and for each voting center. According to data collected by the Mission, there were more information technology monitors in the second round than in the first. However, the OAS/EOM also received information that, in general, few information technology monitors had a clear idea regarding the digitalization and verification procedures used at their stations. The OAS/EOM offers the following recommendations:

- Regulate and develop guidelines on the functions of the information technology monitors in the voting centers.
- Continue to raise awareness of the process of transmitting preliminary results, in order to inform and clarify doubts regarding data entry, verification, and validation.

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<sup>53</sup>Preliminary Report of the Electoral Observation Mission for the General Elections and Elections of Deputies to the Central American Parliament, June 27, 2023. Available at: <https://www.oas.org/fpdb/press/PRELIMINARY-REPORT---OAS-Electoral-Observation-MISSION-in-Guatemala-1st-Round.pdf>

<sup>54</sup>TSE (2023). Available at: <https://www.tse.org.gt/images/Acuerdos2023/292-2023>



## *Polling station coordinators*

The OAS/EOM found that polling station coordinators played a key role on election day, both logistically and in support of JRV members. It recommends:

- Approving and standardizing the functions of polling station coordinators and continuing to strengthen their training.

## *Incident tracking and reporting*

The Mission observed that the Departmental Electoral Boards of the Central District and Guatemala implemented a technological application to monitor their polling station, which included, inter alia, reporting the opening of the station, voter turnout, and possible incidents at various cut-off points throughout the day. The OAS/EOM considers that this is a tool that could provide very useful information for real-time monitoring of the electoral process at the national level. The Mission recommends to the TSE that it:

- Adopt, in coordination and with the participation of the JEDs, a technological tool for monitoring polling stations and reporting incidents, nationwide.

## *Vote count and transmission*

The process and time taken to count the votes naturally depended on the number and complexity of the elections. In the general elections, the Mission observed discrepancies among the JRVs in the order in which votes were counted and transmitted in the five elections. For the second presidential election, there was no confusion, as there was only one election and only one No. 4 Document to fill out and transmit. In order to standardize counting and transmission processes, the OAS/EOM recommends:

- Standardizing the instructions provided to JRV members with the electoral material, both in the virtual courses and in face-to-face trainings and information booklets.
- Incorporating practical exercises and simulations for filling out and transmitting tally sheets in the training sessions, so that the information reaches the regions in a uniform manner.

## *Overseas voting*

The OAS/EOM noted the institutional effort involved in the identification and registration of 90,846 voters in the U.S.A., 43.59% more than in 2019. However, turnout barely reached 1.6% of registered voters in



the first round of elections and 1.56% in the second round. The Mission was informed of many voters who had expressed their desire to vote but did not have a Personal Identification Document (DPI). In fact, several of the members of the JRVs observed abroad participated as volunteers but were not eligible to vote. The OAS/EOM also learned of Guatemalan migrants interested in the electoral process who were unable to vote because their place of residence did not correspond to their registered address. The OAS/EOM offers the following recommendations:

- Strengthen the Specialized Unit on Overseas Voting (UEVE) and coordinate with the Ministry of Foreign Affairs to elicit the support of Guatemalan consulates around the world in the design and implementation of overseas voting in more countries with a Guatemalan population.
- Establish a special protocol for the Overseas Electoral Board (JEVEX), so that it enjoys the constant support of the UEVE.
- Evaluate the possibility of a legal amendment that allows Guatemalans abroad to vote with their valid passport, in order to allow them to register and participate even when it is difficult for them to obtain an ID card.
- Strengthen coordination between UEVE, JEVEX, and the Ministry of Foreign Affairs, both in the approach to migrants and in the selection of polling stations and planning the deployment of electoral material.
- Strengthen communication campaigns for voter registration and voting and have them focus on reaching the community of Guatemalans living abroad.
- Establish opportunities for cooperation between the TSE, the Ministry of Foreign Affairs, and organizations of Guatemalans living abroad, with a view to generating synergies that allow an increase in electoral participation.

## II. Electoral technology

In the days prior to the second round of elections, the Mission had the opportunity to attend several training sessions for data entry clerks in the 16 municipalities of the Department of Guatemala, as well as in the Central District, and noted that the data entry clerks took full advantage of the training. Likewise, the OAS/EOM observed several of the training courses provided by the TSE to the political parties' information technology monitors, focusing on the presentation and operation of the TREP results dissemination portal. The training included aspects such as the consultation of individual and mass images of the tally sheets, the downloading of the results databases, as well as the procedure for the verification



of the hash codes<sup>55</sup> of the published tally sheets. It is important to reiterate that in the days prior to the second round of elections, the OAS/EOM was present in the preliminary simulation tests and in the official simulation test of August 18, as well as at the time of the closing of the software and the reset (*puesta en cero*) of the TREP database, on January 19.

As indicated, on election day the TREP worked in an expeditious and stable manner, transmitting results continuously and without interruption from 6:00 p.m. until 100% of the tally sheets were completed, shortly after 11:00 p.m. As in the first round, the results disclosure site (<https://segundaeleccion.trep.gt>) proved to be adequate and presented the progress of the processing of the tally sheets as a whole and for each election (presidential and municipal, for the five municipalities that repeated elections). Again, data could be obtained by desired level and the option of downloading results and visualization of tally sheets at the JRV level was provided.

Also as in the first round, the TSE made the web portal available to citizens (<https://dondevotas2023.tse.org.gt>) along with the "Where to vote" ("Donde votas") mobile application, and other channels to inform citizens about their polling station, including text messages and a call center, as well as physically at the departmental delegations and municipal subdelegations of the TSE. The OAS/EOM was able to observe that both the polling station consultation website and the mobile app performed properly.

As mentioned above, for the 2023 electoral process, the TSE opted to contract the Transmission of Preliminary Electoral Results (TREP) system as a technological tool to process the results on election night, in a preliminary manner. Pursuant to Article 245 of the Electoral and Political Parties Law, the official dissemination of results is made by the Supreme Electoral Tribunal, within eight days of the end of the electoral process, once the hearings for the review of vote counts and the pending contestation processes have been completed.

After the first round of elections, the Mission highlighted the use of *blockchain* technology to preserve the inalterability of the tally sheets, which could be downloaded directly by the population, and that this was indeed what happened in the post-electoral period, which helped refute queries raised by certain actors. The same option was available in the second round.

As in the first round, the Mission was unable to ascertain the TSE's formal protocols for the completion of the software, including the sealing and encryption of the latest version, its verification, and the protocol

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<sup>55</sup> The so-called "hash" code is a mathematical algorithm that makes it possible to uniquely identify a file. Within the framework of the electoral process, it served as a validation and verification mechanism that made it possible to know whether a file had remained intact or had been modified.



for the reset (*puesta con cero*) and sealing of databases. The OAS/EOM offers the following recommendations:

- Define, schedule, and execute software sealing, verification, and database reset protocols in a timely manner.

The purpose of the TREP is to process *preliminary* results. However, the processing of *official* results, which is done at the level of the Departmental Electoral Boards, would also benefit from an equally sophisticated and standardized system. The OAS/EOM verified that there is no software available to all the JEDs to carry out this count, which represents an institutional weakness in terms of electoral technology development. The Mission recommends to the TSE that it:

- Promote, in consultation and coordination with the JEDs, the development of an IT tool for the computation of official results to be adopted by the JEDs.

The Mission obtained much useful information on the technological response to the election through its interviews and from direct observation. The OAS/EOM thanks the technical staff of the TSE for their willingness to share this information. Notwithstanding the above, despite multiple requests for information from the stage prior to the first round and up to the second presidential election, the Mission did not receive official documentation formally describing the technological infrastructure scheme, systems architecture, reports on the results of the pre-drills and drills, audit reports and other documents needed for technical observation of the electoral technology component. This prevents it from acquiring detailed knowledge of relevant aspects of the process.

### *Technological security*

While TREP's technology implementation is primarily in the cloud, no inventory of physical equipment was provided. Virtual implementations of this type interact, in certain segments, with physical connectivity equipment, which use *firmware* versions, security schemes, and *logs*, which must be monitored to make sure that they correspond to the latest version. The OAS/EOM offers the following recommendations:

- Implement a technological inventory mechanism, both physical and virtual.

The OAS/EOM learned that stress tests were conducted in the laboratory<sup>56</sup> of the platform provided for the dissemination of TREP results, although it was not included in the simulation, in such a way as to evaluate its performance under conditions similar to those of election day. It recommends:

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<sup>56</sup> That is, the platform has been subjected to pressures that emulate a stress test.

- Including the exposure of the results display module in the simulations, so that it is subjected to the real working environment that will be used for the elections. In this way, it is possible to evaluate new modalities that could be used that are not contemplated in the stress tests. To this end, drills must be planned well in advance.

### III. Electoral justice

#### *Political party registration and suspension*

According to Guatemalan regulations,<sup>57</sup> in order to register a political party it is necessary to comply with several requirements, including the presentation of signatures of citizens as members of the party. Various stakeholders expressed their concern to the Mission because in political organization registration processes there are often claims of falsification of signatures or even the inclusion of deceased persons. They pointed out that, on previous occasions, the verification of this type of incident resulted in the signatures not being counted. In other words, the way Movimiento Semilla was treated would deviate from precedent, since it not only resulted in a criminal investigation, but even in a criminal court order that ordered the suspension of the registration of a political organization.

By way of background, the OAS/EOM learned of a case that occurred in 2015,<sup>58</sup> in which the Supreme Electoral Tribunal considered that the cancellation of a political party was not permissible, because suspension had to come first. Suspension is now prohibited after the electoral process has been convened, pursuant to the aforementioned Article 92 of the Electoral and Political Parties Law.

In the current election process, the decision of the Seventh Criminal Judge that ordered the suspension of the legal status of Movimiento Semilla took place after the voting and when the TSE was about to officially certify the results of the first presidential round; that is, even after the new review of vote counts and cross-checking of tally sheets ordered by the Constitutional Court. The OAS/EOM offers the following recommendations:

- Evaluate the implementation of technological mechanisms that allow for greater certainty with respect to citizen accession to political party registration. It also recommends that any findings of flaws in the collection of signatures be treated in the same way in the different political party registration processes.

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<sup>57</sup> Electoral and Political Parties Law (LEPP), Article 63ff. Regulation of the Electoral and Political Parties Law, Article 21ff.

<sup>58</sup>TSE (2015). Agreement No. 346 -2015. Available at: <https://www.tse.org.gt/images/Acuerdos2015/346-2015.pdf>



In order to ensure respect for the will of the people, in cases where the verification of signatures accompanying membership leads to criminal investigations, the OAS/EOM recommends:

- To guarantee that the progress of criminal investigations does not affect the electoral process and/or its results, abides by the legal prohibition to suspend political parties during the electoral process, respects the competencies of the TSE as the highest electoral authority, and avoids any possible impairment of its independence and autonomy.

### *Registration of candidacies*

As previously mentioned, the initial stage of the process was marked by the uncertainty regarding the disqualification of thousands of candidates, which even extended to four presidential tickets, with the consequent creation of uncertainty for citizens, as well as logistical pressure on the authorities in charge of the organization of the election.

The Mission is aware that the Guatemalan legislation envisages various circumstances that may lead to the non-registration or revocation of the registration of candidacies. Nevertheless, and as the OAS/EOM has cautioned in its electoral observation reports in different countries, the OAS/EOM urges Guatemala to take into consideration the jurisprudence of the Inter-American Court of Human Rights, according to which the provision and application of requirements for exercising political rights do not constitute, per se, an undue restriction on those rights, as long as the interference is not abusive or arbitrary. Such interference must therefore be provided for in the law in a formal and material sense; pursue a legitimate purpose; and comply with the requirements of suitability, necessity, and proportionality, in accordance with the sequence of criteria and parameters established in inter-American jurisprudence.<sup>59</sup>

In recent years, the OAS has observed<sup>60</sup> the growing importance of the principle of definitiveness as an indispensable condition for providing legal certainty to electoral processes, especially with regard to the competing candidates. In this area, the preclusion of electoral stages is more than a formality: it is a guarantee for the full exercise of the right to elect and be elected. Political actors and citizens alike benefit

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<sup>59</sup> Inter-American Court of Human Rights, Advisory Opinion OC-28/21 of June 7, 2021. Available at: [https://www.corteidh.or.cr/docs/opiniones/seriea\\_28\\_eng.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_28_eng.pdf)

<sup>60</sup> Preliminary Report of the OAS Electoral Observation Mission in Ecuador for the Sectional Elections, to the Council of Citizen Participation and Social Control (CPCCS), Referendum and Local Popular Consultation of February 5, 2023, available at:

<https://www.oas.org/eomdatabase/moereport.aspx?lang=en&id=452&missionid=539>

Preliminary Report of the OAS Electoral Observation Mission for the Regional and Municipal Elections in Peru on October 2, 2022, available at: <https://www.oas.org/eomdatabase/moeinfo.aspx?lang=en&id=449>





from knowing that a registered candidacy will not always be subject to review. The OAS/EOM offers the following recommendations:

- Design and implement proceedings that ensure the political rights of candidates are expeditious, guarantee timely responses and attempt to abide by the principal of finality (*definitividad*), in order to avoid any possible uncertainty among citizens and generate the conditions for exercising a fully informed vote.

Without prejudice to the powers exercised autonomously by the judicial, prosecutorial, and constitutional authorities, the Mission recommends:

- Carefully establishing in the regulations the specific powers and competencies of each of the bodies that may issue --prior to the election, and no later than that-- pronouncements with electoral justice implications, as well as the procedures, deadlines, and instruments contemplated.
- Considering introducing in the regulations the principle of preclusion of petitions and appeals with potential impact on the electoral process, in order to guarantee that no decisions are issued that may alter the development of the elections close to voting day.

### *Legal actions in connection with the electoral process*

As mentioned above, the Mission observed the intense and continuous judicialization of the electoral process, manifested in various petitions, appeals, and fiscal and judicial actions outside the electoral contests, in both constitutional and criminal matters, through the Public Prosecutors' Office, criminal judges of the Judicial Branch, the Constitutional Court, the Supreme Court of Justice, and appellate courts, among others. Several of these actions sought to question the results of the first round of elections, despite the fact that there was no conclusive evidence or indication that the results presented did not correspond to the vote counts at the polling station.

As indicated above, the abuse of instruments for posing legal and other challenges generated uncertainty and confusion for the citizenry and even cast doubt on the holding of the second round of elections and the participation in it of the two tickets resulting from the vote on June 25. On August 18 and 19, hours before the election, appeals were still being filed and resolutions on the electoral process were issued, which did not help guarantee the conditions of stability, definitiveness, predictability, and reliability that must accompany an electoral process. The OAS/EOM also considers that the judicialization of the process undermined the highest electoral authority granted by the Constitution to the Supreme Electoral Tribunal, whose specific legislation also has the rank of constitutional law.



The Mission has observed that political actors filed petitions and lawsuits to challenge, in various bodies and on multiple occasions, the participating candidates and the results of the election, both in electoral and constitutional proceedings, even when there is no clear and evident basis in Guatemalan law to support their petitions and methods used to challenge outcomes. This action may trigger a delay in the definition of the candidacies and the proclamation of results, as occurred in the present electoral process. In this regard, and in line with the recommendations of OAS missions in other countries,<sup>61</sup> the OAS recommends:

- Evaluating regulatory reforms that discourage excessive litigation, as well as applications exclusively designed to cause delay or that are contrary to law. These may include, but are not limited to, the imposition of fines in the case of clear abusive use of electoral and constitutional actions.

The OAS/EOM also observed that the official communication by the judicial bodies regarding the resolutions, and the text of the rulings themselves, used unnecessarily dense and confusing language, so that it was not always clear what the judicial decision was and what implications it had for the electoral process, giving rise to multiple interpretations by political actors and jurists. There were even cases in which the institutions had to issue communiqués clarifying their decisions.<sup>62</sup> The OAS/EOM offers the following recommendation:

Take steps to adopt clearly formulated principles and standards of justice, so that citizens may fully exercise their right to information regarding the electoral process.

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<sup>61</sup> Final Report to the Permanent Council of the OAS, Foreign Visitors Mission for the Federal and Local Elections of the United Mexican States on June 6, 2023. Available at:

<https://www.oas.org/eomdatabase/moereport.aspx?lang=en&id=434&missionid=516>

Final Report to the Permanent Council of the OAS, Foreign Visitors Mission for the Federal and Local Elections of the United Mexican States on July 1, 2023. Available at:

<https://www.oas.org/eomdatabase/moereport.aspx?lang=en&id=409&missionid=488>

<sup>62</sup>CSJ (2023). Available at: <https://twitter.com/OJGuatemala/status/1693055922401104294?s=20>

## IV. Electoral violence<sup>63</sup>

The Mission observed a tense atmosphere in the pre-electoral, electoral, and post-electoral stages of the 2023 General Elections, and received messages of consternation from various interlocutors regarding the risk of electoral conflict, particularly in the context of the municipal elections. As indicated in its Preliminary Report in June, the OAS/EOM warned that no single definition of the concept of "electoral conflict" was used, although in general it referred to the occurrence of disturbances by groups of people harboring some type of disagreement related to the election, whose actions could affect the normality of the voting or the processing of the results.

The Mission positively assessed the response of the authorities to the risk of violence and especially to the risk of electoral conflict. This response incorporated several recommendations raised by the OAS following the 2019 elections. The Mission highlights in particular the effort to strengthen the channels of coordination and communication between the different authorities in charge of guaranteeing security in connection with the electoral process. This included the presentation to the TSE of the Integrated Strategic Action Plan<sup>64</sup> between the Ministry of the Interior, the Ministry of Defense, and the Public Prosecutors' Office, as well as the installation of the Interagency Electoral Security Roundtable.<sup>65</sup> Also notable was the work of the Electoral Conflict Prevention Roundtable,<sup>66</sup> under the Technical Secretariat of the United Nations Development Program (UNDP), and the establishment of the Security and Social Conflict Reduction Roundtables<sup>67</sup> in territories where the risk of disturbances related to the electoral process had been identified.

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<sup>63</sup> For the purposes of this Mission, electoral violence is to be understood as any form of intimidation or physical violence targeting stakeholders in the electoral process or aiming to interrupt the electoral process or cause material harm, with a view to impairing the free and transparent conduct of the electoral process or influencing the result. Electoral violence, which may occur before, during, or after election day, forms part of a broader context of political violence corresponding to various forms of aggression aimed at limiting the fundamental right to political participation.

Electoral Observation Missions - EOM. (2018). *Electoral risk maps and factors. National elections Colombia 2018*. P. 187. Available at: <https://goo.gl/X6fdXb> electoral Research Group - GIEL. (undated). Methodology Available at: <http://giel.uniriotec.br/?file=metodologia>;

<sup>64</sup> Public Prosecutors' Office (2023). Available at: <https://www.mp.gob.gt/noticia/ministerio-publico-ministerio-de-gobernacion-y-ministerio-de-defensa-nacional-presentaron-al-tse-plan-de-accion-estrategico-integrado-en-el-marco-de-las-elecciones-generales-2023/>

<sup>65</sup> TSE (2023). Available at: <https://www.tse.org.gt/index.php/comunicacion/noticias/757-establecen-mesa-interinstitucional-de-seguridad-electoral>

<sup>66</sup> TSE (2023). Available at: <https://www.tse.org.gt/index.php/comunicacion/noticias/739-petit-comite-de-la-mesa-de-prevencion-de-la-conflictividad-electoral>

<sup>67</sup> Ministry of the Interior (2023). Available at: <https://mingob.gob.gt/autoridades-refuerzan-medidas-de-seguridad-y-la-transparencia-para-elecciones-generales-2023/>



The Mission observed the participation of the different authorities in the aforementioned interagency roundtables. Their diligence allowed them to detect electoral conflicts in a timely manner and to mount an institutional response to them, especially during the June 25 election day. The Mission also observed good coordination with the equivalent bodies at the departmental level. Accordingly, the OAS/EOM recognizes the work of the TSE's General Inspectorate in the execution of actions related to the prevention of, and attention to, electoral conflicts.

The Preliminary Report of June 27 details several incidents that occurred during the first round of elections. According to the initial assessments of the Roundtable for the Prevention of Electoral Conflict, the cases of electoral conflict in the June 25 General Elections were fewer than those recorded in the 2019 and 2015 elections.<sup>68</sup> As indicated, the election day of August 20 was much calmer and there were no outstanding violent incidents.

The Mission also learned about the deployment of more than 42,000 members of the National Civil Police (PNC) on June 25<sup>69</sup> and 43,000 on August 20.<sup>70</sup> Likewise, the OAS/EOM commended the participation of the Human Rights Ombudsman's Electoral Observatory and Volunteers, made up of more than 650 officials of the institution and around 3,000 university student volunteers, trained to monitor and accompany the electoral process.<sup>71</sup> In addition, more than 12,000 young people joined the TSE's Civic Electoral Volunteers.<sup>72</sup> The Mission stresses the importance of the presence of, and part played by, the various institutions involved in the electoral process, in order to give confidence to the citizens and help reduce tensions that may lead to electoral conflicts.

Various stakeholders told the Mission that every four years there are recurrent acts of protest that can quickly escalate into riots or vandalism in the context of municipal elections. However, although there are municipalities with recurrent tensions, many other cases depend on particular circumstances, which makes it difficult to foresee exactly where the conflict will occur. The Mission encountered at least three factors cited by citizens and authorities to explain these conflictive phenomena: dissatisfaction with real or apparent cases of pressurizing voters (*trashumancia o "acarreo" electoral*); dissatisfaction with real or apparent vote buying; and very close results in municipal elections.

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<sup>68</sup> TSE (2023). Available at: <https://twitter.com/TSEGuatemala/status/1681074467311611905?s=20>

<sup>69</sup> Ministry of the Interior (2023). Available at: <https://mingob.gob.gt/mas-de-42-mil-agentes-velando-por-la-seguridad-ciudadana-durante-las-elecciones/>

<sup>70</sup> Ministry of the Interior (2023). Available at: <https://mingob.gob.gt/despliegue-policial-permite-proceso-electoral-ordenado-y-en-paz/>

<sup>71</sup> PDH (2023). Available at: <https://www.pdh.org.gt/comunicacion/noticias/18-23-el-procurador-de-los-derechos-humanos-dr-alejandro-cordova-a-la-opinion-publica-informa.html>

<sup>72</sup> TSE (2023). Available at: <https://www.tse.org.gt/index.php/comunicacion/noticias/866-destacada-participacion-del-voluntariado-civico-electoral-en-apoyo-a-votantes>



In contrast to the inter-agency coordination to deal with electoral conflicts, the Mission did not observe a similar approach to the risk of direct violence against candidates, their campaign collaborators, or electoral authorities during the period prior to the elections, when multiple acts of violence against these types of actors occurred. The OAS/EOM is concerned about the threats publicly denounced by both a female Magistrate and a male Magistrate of the TSE plenary, as detailed in the section on the period between the first and the second round. The Mission learned from the Division of Protection of Persons and Security (DPPS) of the National Civil Police about the risk analysis and the granting of personal protection measures (PNC escorts) and perimeter protection to candidates of different political parties. However, taking into account the registered cases of armed attacks against candidates, which are reported in the Preliminary Report of June 27, as well as the cases of threats against TSE magistrates, the OAS/EOM recommends:

- Developing inter-agency opportunities for the analysis of the risk of violence against candidates, members of political parties, and members of the electoral organization in the electoral context, the prevention of attacks, protection, and in consummated cases, investigation, to avoid impunity.

In 2019, the Mission recommended designing a homogeneous methodology and a single registry for the proper classification, identification, and accounting of electoral conflict episodes, creating an official registry of electoral violence events to which all government agencies could have access. In this regard, the Mission recognizes the effort to achieve a joint methodology reflected in the Integrated Strategic Action Plan between the Ministry of the Interior, the Ministry of Defense, and the Public Prosecutors' Office, which was delivered to the TSE. However, there is still no single definition of "electoral conflict", nor is there a registry shared by the authorities. In addition, the final numbers drawn up by the authorities differ in terms of the number of cases and the type of events that occurred and that are considered "electoral conflict". The OAS/EOM offers the following recommendation:

- Clarify the definition of "electoral conflict/unrest," taking care not to classify peaceful and legitimate demonstrations and protests within a category of "electoral conflict/unrest" that could be related to (electoral and non-electoral) crimes, in order to reduce the risk of stigmatization or criminalization of legitimate forms of action within the framework of the right to political participation and freedom of expression.<sup>73</sup>

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<sup>73</sup>The Inter-American Commission on Human Rights (IACHR) (2019). Available at: <http://portal.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf>



In 2019, the Mission had also recommended considering in security plans protection of the physical integrity of electoral officials working in the field. The Mission acknowledges progress made in 2023 and stresses in particular the importance of disseminating the "Directories of Electoral Security Links", which facilitate security coordination among authorities involved in the organization of elections. To continue moving in this direction, the OAS/EOM recommends:

- Drafting a security protocol for polling stations (JRVs), to be delivered together with the station instructions, so that persons know how to react in case of eventual electoral conflicts at the polling station, in the polling center or in a municipality.

## V. Campaign finance

### *Equity in the financing system*

Pursuant to Articles 21ff of the LEPP and their corresponding regulations, the Guatemalan State contributes to the ordinary activities for the operation of political parties through four annual quotas, which are calculated on the basis of a fixed amount for each vote obtained in the elections, provided that the party surpasses a minimum threshold of 5% of the total valid votes in the General Elections or has obtained the election of at least one deputy to the Congress of the Republic. In an election year, parties may use all of their public financing for campaign expenses. Thus, Guatemala has opted for a mixed political-electoral financing model for political parties, and a strictly private model for territorial candidacies of civic citizen committees. In this electoral year, according to figures sent to the Mission by the TSE and in accordance with the 2019 electoral results, the party with the highest allocation of public financing was the UNE party, followed by the VAMOS party. All in all, 19 parties made up the list of organizations eligible for state political financing.

From the analysis of the regulations and the information gathered, the OAS/EOM considers that the electoral financing model established in Guatemala is not predominantly public, since the resources delivered by the TSE in four installments (ordinarily in the month of July) are transferred for the operation of the political parties and are based on the votes obtained in the last elections. In the year coinciding with the election, these sums are paid out in the month of January, and the organizations may use them for electoral campaign activities. That is, rather than a public financing of electoral campaigns, there is an authorization in the legislation to use the fourth quota of the regular public financing for electoral purposes. Among other implications, this means that new political organizations lack state funding during election periods.

For this and other reasons, private contributions turn out to be the most relevant for the elections, as recognized by the TSE's Specialized Unit for Control and Oversight of the Finances of Political



Organizations. According to this Unit, from the periodic reports submitted by the organizations at the close of the voting last June 25, it can be concluded that the expenses with resources from public financing amount to Q9,166,985, while the expenses covered by private contributions total Q35,331,732, which is equivalent to almost four times the money allocated by the State for political organizations and the electoral campaign.

The 2015 OAS/EOM recommended that "campaign finance reforms be aimed at strengthening public financing of campaigns and parties, and restricting private financing." This Mission reiterates this recommendation, as follows:

- Design and implement, through amendments to the LEPP, a political-electoral financing system with greater participation of public financing, which restricts the use of private resources and the risk of irregular sources of financing, and differentiates between:
  - Permanent resources for the strengthening of political organizations, which should be allocated for their operation, consolidation of decentralized structures, and promotion and training of new leadership, with emphasis on historically underrepresented groups (women and indigenous people, among others); and
  - resources specifically earmarked for the electoral campaign, including all organizations with nomination capacity (political parties and civic citizen committees), through a model that allows the delivery of partial resources prior to the electoral contest and the remainder after the declaration of results, once respect and compliance have been verified with respect to the financing rules regarding, inter alia, limits, origin of private resources, and transparency in accountability.

For the year 2023, the Mission was able to verify that, days before the first round of elections, the last installment had not been disbursed to five political parties,<sup>74</sup> which therefore constituted failure to comply with the mandate of the LEPP, which establishes the delivery of these funds in the month of January of the year of the election. The TSE informed the OAS/EOM that, in some cases, this was due to the fact that the Ministry of Finance did not deliver to the TSE the amount needed to cover 100% of the parties' quotas. In the case of the Prosperidad Ciudadana party, it was due to the impossibility of the party to access the quotas because it did not comply with the requirements established in the legislation for such purpose. Consequently, the campaigns of these five political parties were conducted with purely private funds, with

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<sup>74</sup> The quota was not delivered to the parties VAMOS, PODEMOS, VIVA, URNG and Prosperidad Ciudadana. The total outstanding amount amounted to almost five million Quetzales, with the largest amount owed to the VAMOS party (Q 2,386,549).



the exception of media advertising, which is assumed in its entirety by the TSE in accordance with the media plans designed by the political parties. The OAS/EOM offers the following recommendations:

- Guarantee the delivery of public financing resources, in a timely manner and under the terms established in the LEPP, through inter-agency coordination and based on the competencies assigned by the Political Constitution and legislation.
- Establish a process of permanent monitoring of political organizations to ensure that they comply with the requirements that allow them access to public financing.

The public financing model in Guatemala does not include in the regulations the direct requirement for political parties to allocate a percentage of resources for the promotion of political inclusion of historically underrepresented groups, especially as regards women and indigenous populations. Likewise, it transpired that most political organizations do not contemplate affirmative actions in this regard in their bylaws. The OAS/EOM offers the following recommendation:

- Evaluate a legal or other modification that requires statutory adjustments in political parties, so that affirmative actions are implemented in favor of new leadership by historically underrepresented groups, such as young people, women, and indigenous populations, for example by granting additional financing for the effective participation of these groups in decision-making bodies or in popularly elected positions and municipalities (*corporaciones*).

### *Accountability and punishments*

The Mission observed that the process of auditing and controlling political-electoral financing lacks procedures that would allow for thorough and detailed cross-checking of information. The TSE's Auditing Unit informed the Mission that it established seven commissions at the beginning of June, with the purpose of auditing the 79 civic electoral committees that were participating in the 2023 elections, which culminated in a review of compliance with formal, financial, and accountability aspects and the presentation of 79 individual final audit reports to the TSE plenary.

Regarding political parties recognized by the TSE, the Unit informed that with respect to the 358 financial reports on expenditure in the months of March (beginning of the campaign period), April, May, and June 2023, 115 requests for information were issued, through which the political organizations were made aware of certain errors, omissions, and/or inconsistencies, in both their public and private financing reports. As a result of this work, it was possible to establish that political organizations make adjustments to campaign expenses, as required by the TSE and according to the evidence gathered by the Auditing Unit. The OAS/EOM offers the following recommendation:





- Implement processes and mechanisms for overseeing and auditing income and expenses of all political actors in the contest. Those processes and mechanisms should be homogeneous and standardized according to international standards (implementation of procedures in accordance with the International Accounting Standards, IAS,<sup>75</sup> and the International Financial Reporting Standards, IFRS,<sup>76</sup>) and be accompanied by permanent support and training for both TSE officials and political organizations.

The Mission observed a possible non-compliance with the constitutional mandate of Article 223, which prohibits the carrying out of propaganda by executive authorities at all levels, regarding the works and activities carried out during their term of office. Likewise, the OAS/EOM received information from a variety of actors, media, civil society, and others, of possible transgressions of the ban on using State resources and goods for electoral propaganda, and on granting or offering perks, gifts, or any other retribution that implies political patronage (*clientelismo*) for electoral purposes, contained in Article 223 of the LEPP. The OAS/EOM offers the following recommendation:

- Strengthen the General Inspectorate and the Specialized Unit for Control and Auditing of the Finances of Political Organizations of the TSE by endowing it with greater technical, technological, and logistical tools; interoperability, with databases from different public entities, and suitable and sufficient personnel, avoiding staff rotation, so as to enable investigation or verification of, inter alia, contributors, origin of resources, actual campaign expenses, omission of information, individual and campaign limits, electoral propaganda, and use of social networks.

Finally, the Mission highlights and acknowledges the reform on access to social media, as well as the implementation of that reform by the Specialized Unit on Media and Opinion Polls of the TSE. Various interlocutors, including political parties and civil society actors, stated that the reform has guaranteed equal and equitable access to political propaganda on national and regional television channels, as well as on radio stations.

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<sup>75</sup> The IAS (International Accounting Standards), created from 1973 to 2001 by the International Accounting Standards Committee (IASC), predecessor of the current International Accounting Standards Board (IASB), are a set of technical guidelines that regulate the economic information to be presented in the financial statements through the standardization of formats, which facilitates the comparison of information.

<sup>76</sup> The International Financial Reporting Standards (IFRS) are technical accounting standards adopted by the International Accounting Standards Board (IASB). They constitute international standards or norms for accounting and establish the requirements for recognition, measurement, presentation, and disclosure of transactions and economic events.

## VI. Women's political participation

### *Promotion of Women's political participation*

Since 2015, the OAS has insisted that Guatemala develop institutional elements to strengthen women's political participation, going so far as to send its observation reports<sup>77</sup> to the Inter-American Commission of Women (CIM). For its part, the CIM has stated that important challenges persist in indicators such as the percentage of women elected and has pointed out the absence of affirmative measures in the Guatemalan system. To date, these reiterated recommendations have not been addressed by the State of Guatemala.

Guatemala does not have affirmative actions or a parity law that promotes women's access to public executive and representative elected positions. TSE data show the high participation of women in the electoral roll (54% of women compared to 46% of men<sup>78</sup>) and in party affiliations. However, when it comes to analyzing the occupation of women in party and/or representative decision-making positions, this participation drops abruptly.

From the analysis of the legislative review and observation on the ground, it can be concluded that, despite the fact that Guatemala exhibits a regulatory framework that is not very advanced in the adoption of mechanisms to promote women's political participation, their presence as voters, party members, and even candidates is comparable to that of other countries in the region that have not yet adopted parity but do have a quota system. In this sense, the Mission was able to discern among various persons and organizations interviewed the conviction that Guatemala can advance towards the promotion of parity in the election of public officials, since the adoption of more modest quotas could even represent a regression with respect to the current state of affairs.

In this electoral process, the percentages of women elected to public office remained similar to those recorded in the previous electoral process, in 2019. Additionally, it is observed that Guatemala generally

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<sup>77</sup> Final Report to the Permanent Council of the OAS, Electoral Observation Mission for the General Elections and the Second Round of the Presidential Elections in the Republic of Guatemala, 2019. Available at:

<https://www.oas.org/eomdatabase/moereport.aspx?lang=en&id=415&missionid=495>

Final Report to the OAS Permanent Council, Electoral Observation Mission for the Presidential, Legislative, Municipal, and Central American Parliamentary Elections in Guatemala, September 6 and October 25, 2015. Available at:

<https://www.oas.org/eomdatabase/moereport.aspx?lang=en&id=379&missionid=452>

<sup>78</sup> TSE (2023). Registration statistics. Available at: <https://www.tse.org.gt/index.php/sistema-de-estadisticas/estadisticas-de-empadronados>



maintains the obstacles to election pointed out by the OAS Electoral Observation Mission of 2019,<sup>79</sup> and has failed to make progress in the adoption of suggestions and recommendations made on that occasion. However, the adoption of an administrative protocol on gender-based political violence is certainly worth noting.

In 2023, 22 presidential tickets were presented, including two female presidential candidates: Sandra Torres, for Unidad Nacional de la Esperanza (UNE), and Zury Ríos, for VALOR-Partido Unionista. Two female vice-presidential candidates were also nominated: Karin Larissa Herrera Aguilar, for Movimiento Semilla, and Mónica Enríquez, for URNG-MAIZ WINAQ. In this electoral process, the participation of women decreased in terms of both presidential and vice-presidential candidacies.

At the congressional level, the OAS/EOM observed, based on official information, that the percentages of inclusion of women in the lists for national deputies ranged from 0 (PIN party) to 50% (CREO party), with 12 political organizations below 30%.<sup>80</sup> Women topped the list in six of the 27 political organizations in the parliamentary race. It should be noted that the lists were not required to present candidacies for all seats. In terms of candidates for district deputies, women represented between 17% (Zacapa) and 36% (Alta Verapaz) of the registered lists.

In the election for municipalities, there was a very low participation of women candidates in all districts. Only three departments registered more than 10% of women in the municipal races, Guatemala (12% of women candidates), Escuintla (10%), and Izabal (10%). In general terms, the percentage of women candidates for mayor remained at 7% of the total, with no progress in this category compared to the findings of the 2019 OAS/EOM. Women accounted for an average of 16% of the candidacies for incumbent trustee (*síndica titular*) and 22% for alternate trustee, as well as 25% of candidacies for incumbent councilwoman and 31% for alternate councilwoman. Broadly speaking, it can be observed that, although the overall average participation of women in multi-person races at the municipal level continues to be very low, their participation has been increasing in recent years. From 11.2% (2015) to 16% (2023) as incumbent trustees and from 19.4% (2011) to 25% (2023) as incumbent councilwomen.

According to official party membership statistics, women represented more than half of the members of most registered political parties in the 2023 race. Of the 30 political organizations eligible to compete, 21 had a majority of female members. In total percentages, women outnumber men by 16 points (58% to

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<sup>79</sup> Final Report to the Permanent Council of the OAS, Electoral Observation Mission for the General Elections and the Second Round of the Presidential Elections in the Republic of Guatemala, 2019. Available at: <https://www.oas.org/eomdatabase/moereport.aspx?lang=en&id=415&missionid=495>

<sup>80</sup> The 30% is taken as a measurement parameter, as it is the minimum percentage floor now most used in the various countries of Latin America in electoral legislation with gender quotas.



42%). As for the Executive Secretaries of the political organizations, five are headed by women and 25 by men.

In terms of elected authorities, the Mission highlights the election of Karin Herrera as Vice President of the Republic, the second in the country's history. In the Congress of the Republic 2024-2028, women will hold 20% of the total number of seats. This figure maintains previous levels. The OAS/EOM conducted an analysis by district and noted that no women were elected in 11 districts, 10 of which are considered small, i.e., electing persons to fill between two and five seats. When these small districts are combined with a high fragmentation of the party system and electoral dispersion, it is mainly women at the top of the lists who have a real chance of reaching Congress. The most illustrative case is Chimaltenango, a district that renewed five seats and in which no woman was able to enter parliament, as the five seats corresponded to five different political organizations, none of which had a woman at the top of the list.

As indicated, Guatemala continues to fail to address the reiterated recommendations of the OAS and the Inter-American Commission of Women (CIM) regarding women's political participation. The OAS/EOM offers the following recommendation:

- Coordinate an urgent visit, once the new authorities have been sworn in, by the OAS High Level Group for the Strengthening of Women's Political Participation, in order to establish a work plan for the implementation of the recommendations on women's political participation.

Guatemala maintains its electoral legislation without affirmative measures or any other type of regulation that seeks to equalize opportunities for women as candidates. The individuals and organizations interviewed by the Mission agreed on the need to incorporate gender parity as a mechanism to increase women's political participation and their real and effective access to power. In this sense, they expressed concern about an eventual application of a progressive 30% gender quota (as some proposals contemplate), since it could mean a setback for women over the current levels of representation in the Congress of the Republic and it could happen that progressiveness would not be achieved in a reasonable period of time. They also supported and sustained the position of including a greater participation of indigenous women candidates. The OAS/EOM offers the following recommendation:

- Promote parity as a tool to strengthen women's participation on an equal footing, including indigenous women.

The Mission held meetings with women's organizations from different parts of the country and the trans women's collective. They expressed concern about being discriminated against at the time of casting their vote, with impediments from the polling station authorities. The OAS/EOM recommends to the Supreme Electoral Tribunal that it:



- Carry out information and awareness campaigns on the rights already recognized in the Political Constitution and their implications for all the inhabitants of the Republic.

### *Gender-based political violence*

In 2023, the Supreme Electoral Tribunal approved a Protocol to address violence against women in the political-electoral sphere. The need to approve a protocol had been a recommendation made by the 2019 EOM. This protocol is aimed at political organizations for the prevention of violence against women in the political and electoral sphere and establishes that complaints of gender-based political violence must be filed with the: 1) National Civil Police; 2) Human Rights Ombudsman; 3) Public Prosecutors' Office or Justice of the Peace, or 4) other agencies for cases of gender violence and human rights violations. In terms of scope and application the instrument applies for: 1) candidates for elective representative office; 2) women elected by popular vote or nominated for public office; 3) women in public or political office; 4) political organizations; 5) voters.

The institutional competencies of the Supreme Electoral Tribunal are deployed with the participation of the Department for the Political Promotion of Women of the Electoral Institute, the General Directorate of Information Technology, the Directorate of Planning, the General Inspectorate, the Directorate of Social Communication, and the General Directorate of the Citizen Registry, in: systematizing information on reported cases of political violence in the competent institutions, developing awareness-raising tasks aimed at drawing attention to political violence against women and exposing it for what it is, and training actors in electoral (permanent and non-permanent) bodies, political organizations, justice operators, and the media, among others, on political violence against women.

In the context of the first round of elections, the OAS/EOM learned that the Supreme Electoral Tribunal issued a public reprimand of a political party and ordered it to remove posters for conducting an electoral campaign with content that denigrated the dignity of women.<sup>81</sup>

While welcoming the adoption of the protocol, the Mission warns women leaders and others interviewed that discrimination and violence continue to be a cause for concern, as they imply the hindrance of their political rights. The OAS/EOM offers the following recommendation:

- Strengthen the institutional capacities of the Supreme Electoral Tribunal to highlight prevention actions and action strategies to address cases of gender-based political violence. It is important

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<sup>81</sup> TSE (2023). Agreement No. 378-2023. Available at: <https://www.tse.org.gt/images/Acuerdos2023/378-2023>



to identify a direct "access route" (fast track procedure) for cases of complaints that are initiated during the electoral process and require immediate evaluation.

Also, given that it implies advancing women's rights to equality and freedom to participate in an electoral process free of gender violence, it is recommended that the Supreme Electoral Tribunal:

- Elaborate a Strategic Plan for the Dissemination of the Protocol to address violence against women in the political and electoral sphere and any other measure aimed at combating political violence against women.
- Include in the Training Manuals the definition and scope of the concept of gender-based political violence together with the electoral materials used to instruct authorities and voters, in order to disseminate the recently approved protocol.
- Promote campaigns, workshops, and/or awareness-raising and dissemination courses for women candidates to facilitate access to filing of, and following up on, complaints.
- Train and highlight actions/omissions that incur in political violence against women, with actions aimed at political parties, the media, and personnel involved in the organization of the electoral process.
- Systematize information on complaints received, in order to follow up on each case.

### *Institutionality and official statistics*

The Mission has taken note of the work carried out by the Department for the Political Promotion of Women of the TSE and recognizes the efforts to train women regarding their political rights. The OAS/EOM offers the following recommendation:

- Provide greater resources to the Department for the Political Promotion of Women of the TSE, so that it can continue with the tasks of promoting a Network of Women Multipliers and extend it to women politicians, both candidates and those who hold a representative position.
- Promote coordinated training initiatives with political organizations on equal political rights and gender-based political violence.

During fieldwork, the Mission found that sex-disaggregated information on political participation is not made publicly available for registered and unregistered candidates, for all categories at stake. Likewise,



no information is published on the gender composition of the temporary electoral bodies. The OAS/EOM offers the following recommendations:

- Organize and publicly disseminate, through the TSE website, all information regarding the electoral process, broken down by gender: registered candidates, candidates not registered, rejected candidates, reasons for rejected candidates, and electoral results.
- Include the gender composition of the Departmental, Municipal, and Voting Boards.

## VII. Political participation of indigenous peoples

Guatemala is a multicultural and multilingual country. The percentage of the population that self-identifies as indigenous is 43.6% (a total of 6,518,846 people), including the Mayan, Xinca, and Garifuna peoples.<sup>82</sup> Their linguistic diversity includes Spanish and 24 indigenous languages.<sup>83</sup> Despite the fact that the Political Constitution establishes the recognition and protection of ethnic groups, and that the country is a signatory to international legal instruments for the protection of indigenous rights, there are still obstacles that hinder the effective fulfillment of their rights to political participation.

In terms of candidacies, out of 30 political parties that participated in the 2023 General Elections, only the Winaq Movement self-identified as indigenous. This was the only group that presented an indigenous candidacy for the Presidency of the Republic, and it did not obtain the number of votes needed to compete in the second round. It should be noted that the presidential ticket of the Movement for the Liberation of the Peoples (MLP) party, led by Mayan activist Mam Thelma Cabrera, failed to register in the electoral process. In light of the good electoral result that Mrs. Cabrera achieved in the 2019 elections, in which she obtained fourth place in the presidential race, several people and organizations interviewed expressed dissatisfaction with this fact.

According to official data, out of a total of 160 seats in the National Congress, at least 12 seats would be held by persons pertaining to indigenous peoples (10%).<sup>84</sup> However, indigenous organizations told the Mission that the figure could be higher, although still well below the population percentages. Only one of the elected deputies is an indigenous woman, a member of the Mayan people. The OAS/EOM estimated

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<sup>82</sup> INE (2018). XII National Population Census and VII Housing Census of 2018. Available at:

<https://www.censopoblacion.gt/explorador>

<sup>83</sup>Ministry of Education (undated) Available at: [https://digebi.mineduc.gob.gt/digebi/?page\\_id=2103](https://digebi.mineduc.gob.gt/digebi/?page_id=2103)

<sup>84</sup>Congress of the Republic (2023). Available at:

[https://www.congreso.gob.gt/noticias\\_congreso/10182/2023/1#:~:text=Los%20diputados%20Sonia%20Guti%C3%A9rrez%2C%20Osmundo,X%20Legislatura%202024%2D2028%22](https://www.congreso.gob.gt/noticias_congreso/10182/2023/1#:~:text=Los%20diputados%20Sonia%20Guti%C3%A9rrez%2C%20Osmundo,X%20Legislatura%202024%2D2028%22)

that, of the 20 deputy seats for PARLACEN, two were obtained by a woman and a man who self-identified as indigenous (10%).

### *Affirmative action*

Notable among the Mission's main findings is the persistent absence of affirmative action mechanisms that promote and favor electoral participation and the effective representation of indigenous peoples in elective office. The OAS/EOM recommends giving priority in the legislative agenda to:

- Implementing affirmative action measures to increase the representation of the indigenous population in political participation and representation bodies, with a view to moving towards parity that reflects the ethnic makeup of Guatemalan society.

### *Institutionality and official statistics*

The OAS/EOM again found that there are no data disaggregated by ethnicity in the electoral registry, in the registration of candidacies at all levels, or in the composition of permanent and temporary electoral bodies. This omission hinders the establishment of public policies aimed at the full participation of indigenous peoples in the electoral process, and politics in general. As in previous OAS Electoral Observation Missions, this Mission reiterates its recommendation to:

- Develop mechanisms to provide disaggregated data in the electoral roll, so as to have information on the electoral behavior of indigenous peoples. This will make it possible to design and implement public policies to promote the full political participation of indigenous peoples in electoral processes, thereby strengthening democracy.
- Collect and publish information on candidacies at all levels broken down by ethnicity. This will draw attention to the representation of indigenous peoples in elected office and their inclusion in the political system.
- Collect information broken down by ethnicity on the composition of permanent and temporary electoral bodies, as well as promote the participation of the indigenous population as permanent or temporary electoral authorities and/or electoral personnel.

In addition, the Mission found that the organizational structure of the TSE does not yet include a department or unit specifically aimed at promoting the political participation of indigenous peoples, establishing links with their communities and developing national policies oriented to this large segment of the population. The OAS/EOM reiterates the recommendation to:



- Create a specific unit within the TSE to work on the promotion and encouragement of the electoral and political participation of the indigenous population, with a linguistic and intercultural approach.

### *Inclusion and accessibility*

The OAS/EOM observed that most of the information campaigns on polling stations and voting that the TSE undertook were only in Spanish, with the exception of information spots in four of the 24 indigenous languages. All ballots for elective offices contained information only in Spanish, which is an obstacle for the monolingual indigenous population, which represents 24% of the total population according to official statistics. In the case of the Mayan people, the percentage is estimated to be around 30%; for the Xinca people, 21%; and for the Garifuna people, 16%.<sup>85</sup> The Mission reiterates its recommendation:

- To include native languages in the dissemination of electoral information, the drafting of technical material, and the printing of electoral stationery, especially in those departments where the indigenous population exceeds 50% of the total, within the framework of compliance with the National Languages Law.

The indispensable requirement to vote is possession of a Personal Identification Document (DPI), which costs 100 Quetzales (approximately US\$ 12). This cost could pose an obstacle for the electoral participation of indigenous people, due to the poverty mainly afflicting this population. The Mission again suggests:

- Reducing the cost of the procedure for obtaining a DPI, or establishing special subsidies for indigenous people who cannot afford this expense.

The Mission was informed about difficulty in accessing polling stations, due to lack of transportation and the long distances from indigenous communities. The OAS/EOM offers the following recommendation:

- Continue efforts to bring polling stations closer to remote populations and analyze the possibility of providing a free transportation service on Election Day for transportation from the communities to the polling stations, especially in rural areas.

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<sup>85</sup> INE (2021). Statistical Compendium of Villages 2018. P. 21. Available at: <https://www.ine.gob.gt/sistema/uploads/2021/12/30/20211230192119ITIf0Taxw7mbshQNenoLw9A9K5cR4pMt.pdf>



The OAS/EOM received information regarding the need to coordinate training and organizational activities between the TSE and the indigenous ancestral authorities, especially strategies for the prevention of electoral conflict and training on the electoral process. The OAS/EOM offers the following recommendation:

- Establish mechanisms for coordinated and participatory work with ancestral authorities of indigenous peoples, especially for strategies to prevent electoral conflicts in the municipalities, as well as training on the electoral process.

Finally, the Mission welcomes the work of various electoral observation missions promoted by indigenous organizations, whose observers have been helping to promote the political participation of indigenous peoples and the deepening and strengthening of Guatemalan democracy.

## **ACKNOWLEDGEMENTS**

The Mission is grateful for the help it received from the Supreme Electoral Tribunal (TSE), the temporary electoral bodies, and the various agencies of the Guatemalan State that allowed it to carry out its functions. The OAS/EOM acknowledges the work of the government of the Republic of Guatemala and the security forces, who guaranteed a largely smooth and uneventful election day and cooperated fully with the Mission. The Mission is expressly grateful for the support of the Ministry of Foreign Affairs in all the deployments carried out in connection with this electoral process. The OAS/EOM also commends the national and international observation teams, particularly the Gt EOM and the EU EOM, whose work contributed to the transparency and reliability of the process.

The OAS Electoral Observation Mission for the presidential runoff was made possible thanks to financial contributions from Brazil, Canada, France, Italy, the Netherlands, Peru, Spain, Switzerland, and the United States.