



PRELIMINARY STATEMENT

Well-administered elections by the Superior Tribunal of Electoral Justice in a country pending profound institutional reforms

Asunción, 24 April 2018

The preliminary statement of the EU Election Observation Mission (EU EOM) is delivered before the completion of the entire electoral process. Critical stages remain, including final results and the adjudication of petitions. The EU EOM is now only in a position to comment on observation undertaken to date, and will later publish a final report, including full analysis and recommendations for future improvement of the electoral processes.

Summary

- On 22 April, Paraguayans voted in six elections to elect the president and vice-president, the Congress (Senate and Chamber of Deputies), governors, members of departmental assemblies and Parlasur representatives. Voting took place in an organised and calm atmosphere with polling stations following procedures that ensured the integrity and transparency of the process. Representatives of political groups were provided with copies of the results forms. The overall assessment of the closing and counting process was good or very good in 88 per cent and the transparency of the process as good or very good in 89 per cent of the polling stations observed.
- There was confidence in the technical performance of the Superior Tribunal of Electoral Justice (TSJE) and its ability to administer elections, despite the fact that it is considered to be politicised. The TSJE showed a substantial level of preparedness for the administration of the electoral process and competence in conducting key operations.
- The TSJE faced several challenges in administering elections, including lack of an effective mechanism to ensure implementation of its decisions by the lower levels of the electoral administration and limited control over the last phases of the electoral process. The EU EOM considered that the TSJE was balanced on crucial decisions regarding different political groups. In contrast, decisions of some electoral tribunals and electoral courts were based on political preference and, at times, overstepped their mandate. For example, some electoral tribunals contravened the TSJE's instruction on the composition of the civic boards. The lack of control and confidence in the civic boards, seen as a battleground between political groupings and of dubious accountability, raises doubts about their positive contribution to the electoral process.
- Candidates were able to campaign without restrictions. The campaign was low-key compared to previous elections. Campaigning in social media replaced traditional methods of campaigning to a significant extent. The EU EOM observed instances of public resources being used for campaign purposes and undue influence on public servants to financially

contribute to and attend campaign events. Although the law 4743/12 and the TSJE regulation, both on campaign financing, are a welcome step towards transparency, they do not apply to the political parties' primary elections – a key stage of the electoral process. Furthermore, the law does not assign sufficient monitoring and sanctioning powers to the TSJE.

- Elections took place in a context of institutional weakness, distrust in political structures and judicial inertia. Distrust in the institutions was further deepened by the inclusion in party lists of candidates indicted for corruption and influence peddling, as well as the initiation by Congress of procedures to pass the draft law known as *autoblindaje*, perceived by the public as a shield to protect legislators from losing their seats.
- The electoral legal framework is in places ambiguous and contradictory, in many cases superseding constitutional provisions, and resulting in legal uncertainty. The root cause for this seems to be the dismissive attitude of political groups towards the law and the judiciary. The interpretation of legal provisions is dependent on the political forces with the highest representation in Congress and publicly acknowledged to serve personal and political interests. The judiciary is widely perceived as being politicised and subject to political pressure and control.
- The general lack of response by the Supreme Court to election appeals brought uncertainty regarding fundamental issues, such as eligibility of former presidents to stand as Senate candidates, and the composition of the civic boards (*juntas cívicas*). The Congress does not always follow decisions of the judiciary, which challenges the rule of law, adversely affecting the balance and the separation of powers.
- The EU EOM media monitoring revealed that the two main candidates monopolised the media coverage of the presidential campaign. The remaining eight presidential candidates had almost no coverage. While private media covered the campaign through interviews, talk shows and paid advertising, public media only offered free airtime as stipulated in the law. TV channels *SNT* and *RPC* and the newspaper *La Nación* were visibly critical of the opposition candidate, whereas the remaining media monitored showed a more balanced approach towards the main presidential contenders. Online media contributed to enable voters to make a more informed choice.
- There is inequality regarding women's participation and representation in the political sphere due to the scant public support for women's empowerment. No woman ran for president and only one ran for vice-president. Of the 15,597 candidates, 6,031 were women, an equivalent to 38.6 per cent. The low positions on candidates' lists that many women occupy means that their representation in the newly elected bodies will certainly be much lower.

The European Union Election Observation Mission (EU EOM) has been present in Paraguay since 13 March following an invitation from the Government and the Superior Tribunal of Electoral Justice (TSJE). The Mission is led by Chief Observer, Renate Weber, Member of the European Parliament. In total, the EU EOM deployed 96 observers from the 28 EU Member States, Canada and Norway across the country to assess the whole electoral process against international obligations and commitments for democratic elections as well as the laws of Paraguay. A delegation of the European Parliament, headed by José Ignacio Salafranca member of the European Parliament, also joined the mission and fully endorses this Statement. On election day, observers visited over 440 polling stations to observe voting and counting. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005.

Preliminary Findings

Background

On 22 April Paraguayans voted in six elections to elect the president and vice-president, the Congress (Senate and Chamber of Deputies), governors, members of departmental assemblies and their representatives to Parlasur. A total of 61 political groupings contested the general elections. Despite the considerable number of participants, the electoral process was dominated by *Partido Colorado - Asociación Nacional Republicana* (ANR), *Partido Liberal Radical Auténtico* - (PLRA) and *Frente Guasú*. After highly contested primary elections in December 2017, the *Partido Colorado* put forward the presidential candidacy of Mario Abdo Benítez and Hugo Velazquez for vice-president. PLRA, *Frente Guasú* and other political groupings submitted a joint presidential bid, on behalf of *Alianza Ganar*, with Efraín Alegre and Leo Rubin as candidates.

The 2018 elections took place in a political environment characterised by institutional weakness, distrust in political structures and judicial inertia. The judicial system was acknowledged, including by the two main presidential candidates, to be malleable to pacts brokered between political parties and the judiciary and subject to political pressure. Distrust in political party structures and institutions was further deepened by the fact that candidates indicted for corruption and influence peddling remained in the party lists, and that Congress attempted to pass the draft law 6039/18, commonly known as *autoblindaje*,¹ significantly increasing the requirements for members of Congress to lose their seats. The inertia of the judiciary in dealing with election challenges resulted in legal uncertainty regarding fundamental issues, such as the eligibility of former presidents to stand for the Senate, and the composition of the civic boards.

Legal Framework

Dismissive attitude of political groups towards the law and the judiciary hindered the balance and separation of powers

The electoral legal framework is in places ambiguous and contradictory, in many cases superseding constitutional provisions resulting in legal uncertainty. The root cause for this seems to be the dismissive attitude of political groups towards the law and the judiciary. The interpretation and application of legal provisions is dependent on the political forces with the highest representation in Congress and is publicly acknowledged to serve personal and political interests. Supreme Court decisions, the only body responsible for interpreting constitutional provisions, are not always implemented by Congress, which upsets the balance and the separation of the three powers of a state. The judiciary is widely perceived as politicised and subject to political pressure and control.

The absence of an effective sanctioning mechanism renders the existence of some legal provisions irrelevant, as is the case with electoral offences. Furthermore, the Supreme Court failed to address in a timely manner the challenges posed to the electoral process within the 15-day legal deadline. The cases challenging candidacies of former presidents were resolved late in the process, whereas the case related to the composition of civic boards was not addressed at all.

¹ *Autoblindaje* is the term used to express self-protection.

In 2014, the TSJE submitted a draft law amending the electoral laws with a number of proposals that would have benefitted the electoral process. However, the draft law received no attention from Congress.

Election Administration

Well administered elections despite the absence of an effective mechanism to ensure the implementation of TSJE's decisions and limited control over the last phases of the process

There was confidence in the technical performance of the Superior Tribunal of Electoral Justice (TSJE) and its ability to administer elections despite the fact that it is seen as politicised. The TSJE showed substantial level of preparedness for the administration of the electoral process and competence in conducting key electoral operations such as the planning for the transmission of results, printing of ballot papers and the distribution of electoral material.

The TSJE made efforts to administer an inclusive and transparent process. Political party representatives were able to follow up and be informed about electoral operations. The EU EOM had permanent access to information requested and to TSJE facilities and departments. At lower levels, EU observers experienced the same level of cooperation with the electoral tribunals and electoral courts.

The TSJE faced several challenges in administering elections, including the lack of an effective mechanism to ensure that its decisions were implemented by the lower levels of the electoral administration and limited control over the last phases of the electoral process, namely during election day.

The EU EOM considered that the TSJE made balanced decisions on crucial issues involving different political groups. While it accepted the candidacies for Senate of former presidents mainly from the Colorado Party, the TSJE also included *Frente Guasú* in the civic boards, taking one of the seats of the Colorado Party. In contrast, some electoral tribunals and electoral courts took decisions based on their political preference and at times overstepped their mandate. After a complaint submitted by *Frente Guasú* arguing for its right to be represented on civic boards, which are appointed according to the representation of political groups in Congress, the TSJE instructed civic boards to include a member of *Frente Guasú*. Although most civic boards were established following the TSJE's instruction, some electoral tribunals and civic boards were constantly reluctant to comply with it.

The TSJE has limited control over the capacity of polling station members and the understanding and consistent application of election procedures. There is no obligation on the TSJE to train polling station members. In practice, their respective political group provide the training. Polling stations are the only instance dealing with complaints on election day.

Lack of confidence in the civic boards, responsible for the retrieval of election results forms, increased the importance of the Transmission of Preliminary Election Results (TREP) system. The results for presidential and governors' elections were transmitted and aggregated using TREP. Election results for Congress were introduced and registered in the TREP system by scanning the elections results forms. These result forms are to be made publicly available. This has provided more safeguards to the TSJE in order to obtain the results sent originally from polling stations. The lack of control and confidence in the civic boards, seen as a battleground for

political groups and of dubious accountability, raises doubts regarding their positive contribution to the electoral process.

The last update to the voter register concluded in June 2017. A total of 4,241,507 voters registered, an increase of 725,234 new voters since last elections. Paraguayans residing in Argentina, Brazil, USA and Spain could register online, reaching 38,170 voters. There were no official complaints regarding the voter register. A number of restrictions imposed on the right to vote are not in line with international principles on the right to political participation. These include the disqualification of deaf-mutes who cannot make themselves understood, persons in custody, and lastly students at the military and police academy.²

Registration of Candidates

Legal uncertainty on eligibility of current and former presidents to stand as candidates prevailed throughout the electoral process

Ten political organisations contested presidential elections. For the Senate, a total of 29 political groups submitted lists of candidates, whereas 50 lists were presented for the Chamber of Deputies. A total of 29 political organisations competed for Parlasur.

The electoral process developed in an environment of legal uncertainty regarding the eligibility of former presidents to stand as candidates for Senate, given the late response of the Supreme Court. Appeals from different parties were submitted to the Supreme Court against the decision of the TSJE to accept these candidacies. As late as 11 April, the Supreme Court upheld the TSJE's decision to accept their candidacies. Uncertainty remains as to whether the newly elected Congress will respect the Supreme Court's decision or refuse to swear-in former presidents, thus ignoring a Supreme Court decision. Independently of the subject matter, the fact that the Congress does not always follow decisions of the judiciary results in institutional weakness whereby the rule of law and the balance of powers between the three branches of government are jeopardised.

Divergences within political parties were noted regarding the presence of candidates indicted for corruption in their lists for Congress. Political parties expected these candidates would, on their own will, agree to renounce to be on the lists and did not make use of the available internal mechanisms to remove them. The EU EOM believes that there was insufficient political will to remove these candidates and difficulties in implementing internal mechanisms provided for in the party statutes were used as an excuse. This revealed weaknesses in the political structures of the parties.

² Article 25 ICCPR, United Nations Human Rights Commission, General Comment No. 25, paragraph 10: "The right to vote at elections and referendums must be established by law and may be subject only to reasonable restrictions (...). It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements."

Campaign Environment

Low-key electoral campaign in a more transparent financing setting although without effective monitoring and sanctioning mechanisms

The political campaign was historically low-key compared to previous elections, including the primaries of last December. Apart from ANR, PLRA and *Frente Guasú*, smaller political groups had little to no presence. A few large rallies were observed but campaign events were mainly conducted through door-to-door canvassing and small meetings at local level. This was unlike the December primaries which were highly contested and involved a massive mobilisation and participation of voters in highly costly campaigns. Contestants were reluctant to spend all their financial resources on campaigning, but rather focused on saving sufficient funds for election day, including for the payment of polling station staff and party representatives. Also, it is common practice that political parties facilitate the transportation of voters to polling stations and provide them with “financial incentives” before voting. Campaigning in social media replaced, to a significant extent, traditional methods of campaigning.

President Cartes campaigned as candidate for the Senate while in office. The EU EOM observed instances of public resources being used for campaign purposes. These include the use of state social programmes, the distribution of medicines and undue influence on public employees to financially contribute to and attend campaign events of the ruling party during working hours.

The law 4743/12 regulating political financing was applicable for the first time to general elections. Aiming at a more effective implementation of the law, the TSJE issued a regulation whereby political groups were required to open a bank account, appoint a financial administrator and declare their expenditures to the TSJE. Political parties are entitled to a public subsidy for campaigning, which is paid only after the elections, based on the number of votes obtained. This results in parties with limited economic power needing to seek bank loans to finance their campaign activities.

Although the law on campaign financing is a welcome step towards transparency, it is not applicable to the political parties’ primary elections and the absence of an effective monitoring and sanctioning mechanism remain unaddressed. Although the TSJE is responsible to verify the compliance of the campaign finance rules by political groups, the law does not provide sufficient monitoring and investigative powers to fulfil this mandate.

Media

Diverse media landscape with limited editorial independence

There are a high number of media outlets operating in Paraguay. However, ownership is concentrated in the hands of a few individuals, thus undermining pluralism and possibly limiting journalists’ editorial independence. Despite the existence of a constitutional prohibition on candidates being media owners, numerous candidates exercise influence on media owned by close relatives.

The EU EOM media monitoring revealed that the two main candidates monopolised the media coverage of the presidential campaign. Print media devoted 57 per cent of coverage to Mario Abdo Benitez and 43 per cent to Efrain Alegre. Broadcast media also allotted 57 per cent to the Colorado candidate and 43 per cent to the candidate of *Alianza Ganar*. Private media covered the political campaign in several types of programmes - interviews, talk shows and paid

advertising - whereas public media only offered free airtime campaign content according to the law. Public media also increased the dissemination of institutional content focusing on the government's achievements as elections approached. While TV channels *SNT* and *RPC* and the newspaper *La Nación* were visibly critical of the opposition candidate, the remaining media monitored showed a more balanced approach towards the two main contenders. Online media provided an important source of political and election information, including through social networks, contributing to enable voters to make a more informed choice.

A presidential debate between the two main candidates took place one week before elections and was widely broadcast by TV and radio channels and online media. A few candidates took advantage of the free airtime granted by law but most preferred to convey their campaign messages on social media. The EU EOM noted a blurred distinction between free and paid political advertising on the broadcast media monitored. Some media did not comply with the obligation to charge equal fees for political advertising to all political contenders. The EU EOM is unaware of official complaints regarding media. However, there is no sanctioning mechanism to address media-related offences.

Participation of Women

Scant support for women's empowerment hindered gender equality in the political sphere

No woman ran for presidency and only one did for the vice-presidency. Of the 15,597 candidacies, 6,031 were women, an equivalent to 38.6 per cent. The low positions on candidates' lists that many of women occupy means that their representation in the newly elected bodies will certainly be much lower. For the Senate only five of the 29 lists were headed by women and for the Chamber of Deputies only 46 out of the 760 lists. Further, out of the 133 candidates for governor seats, only 11 were women.

Declarations made by candidates, in particular of the President, discouraging demands for equality do not contribute to the promotion of equal opportunities in the right to stand for elections. Furthermore, movements and groups of women advocating for equality are frequently stigmatised and often subject to insults and degrading comments. Equality of political rights and participation in public life between men and women is one of the principles for credible elections to which Paraguay has committed by ratifying the International Convention on Civil and Political Rights in 1992 and the Convention on the Elimination of All Forms of Discrimination Against Women in 1987.

Participation of Indigenous People

Prevailing low representation of indigenous people in the electoral process

There is no official number of the registered population of indigenous peoples, which hampers the ability to conduct an analysis on their inclusion in public life. Nevertheless, as a consequence of civil registration campaigns, the number of indigenous voters has increased. There has never been an elected political representative who identifies as indigenous. For the 2018 elections, the Indigenous Plurinational Political Movement of Paraguay (MPIP) submitted lists of candidates.

Persons with Special Needs

Efforts towards inclusion of voters with special needs

In line with a recommendation of the EU EOM 2013, the TSJE made efforts towards the inclusion of persons with special needs. For the 2018 general elections, there are a few candidates belonging to this group of persons. Eligible voters with limited mobility could register online to vote in accessible polling stations or at home. In total, 5319 people registered to vote in an accessible polling station and 409 registered to vote from home. The TSJE also made available braille templates and sign language materials in every voting centre.

Elections' Day

Organised and calm atmosphere with polling stations following procedures that ensured the integrity and transparency of the process

The EU EOM observed elections' day in 440 polling stations throughout the country. Most of the observed polling stations opened on time or with a 30-minute delay. The composition of polling stations comprised three members representing ANR and PLRA, and the third member being UNACE or *Frente Guasú*. Among them, there was a considerable representation of women. Voting took place in an organised and calm atmosphere. The assessment of the conduct of the voting was 98 per cent positive. Campaign activities and political party stands were observed in a few cases in the vicinity of polling stations. Political party representatives, mostly of ANR and PLRA and to a lesser extent *Frente Guasú*, were present in the polling stations. The EU observers reported a low presence of domestic observation. Polling stations followed the procedures that ensure the integrity and transparency of the voting process. It was noted that in some polling stations there was inadequate protection of the secrecy of vote due to inappropriate polling station layout. The performance of polling staff was mostly assessed as good or very good. Despite long queues, voters waiting at the time of closing of the stations were allowed to vote. Most polling stations were accessible to voters with special needs. Exit polls were announced throughout the day violating the law, which establishes that exit polls should be disseminated only one hour after closing of voting.

Counting started immediately after closing in polling stations observed. The integrity of the counting process was sufficiently assured and procedures were followed. Representatives of political groups were provided with copies of the results forms. The overall assessment of the closing and counting process was good or very good in 88 per cent and the transparency of the process as good or very good in 89 per cent of the polling stations observed. Election results forms were scanned and transmitted via TREP to the TSJE right after the counting.

An electronic version of this Preliminary Statement is available on the Mission website www.moeuepy2018.eu.

For further information, please contact:

Silvia de Felix, EU EOM Press Officer, Tel. (+595) 983 125 596, silvia.defelix@eomparaguay2018.eu

European Union Election Observation Mission

Sheraton Asuncion Hotel
Av. Aviadores del Chaco 2066
Asunción
