



REPORT TO THE PERMANENT COUNCIL^{1/}
Electoral Observation Mission – Dominican Republic
Regular General Presidential, Congressional, and Municipal Elections,
and Elections of Representatives of the Dominican community abroad
May 15, 2016
Presented by: Andrés Pastrana, Chief of Mission

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Background

The Central Electoral Board (JCE, by its Spanish acronym) of the Dominican Republic, via letter dated February 25, 2016, extended an invitation to the Organization of American States (OAS) to deploy an Electoral Observation Mission (EOM) to observe the regular general presidential, congressional, municipal elections and elections of representatives of the Dominican community abroad, called for May 15, 2016.

The Secretary General of the OAS accepted the invitation, subject to the availability of the necessary financial resources, and issued instructions to the Department of Electoral Cooperation and Observation (DECO) of the Secretariat for Strengthening Democracy (SSD) to begin the corresponding preparations.

The Electoral Observation Mission of the OAS (OAS/EOM) in the Dominican Republic was headed by the former President of Colombia, Andrés Pastrana, and deployed 38 experts and international observers, who visited 292 polling places in 18 of the country's provinces. Additionally, two observers observed the voting in Washington, D.C. and Maryland, United States.

The 2016 election was characterized by at least three salient features.

First, it was a general election called by the citizens to simultaneously elect the President, congressional representatives, and mayors for the first time in over 20 years.

1. Presented to the Permanent Council on September 7, 2016.



A second new feature of this process was the modification of Constitutional Article 124, establishing the possibility of presidential re-election to a second term immediately following the first.

The third distinctive feature was the implementation of new technology used for voter registration and identity verification and, in particular, for counting and transmitting results.

Pre-electoral Stage

As part of the preparations for this electoral process, the Dominican Republic utilized a new citizen identity card with additional security features, as well as a new voter registration list reflecting electors' biometric characteristics, which, at close of registration, included 6,765,245 electors; 50.48 % of which were women and 49.16 % were men.

With regard to inclusion, two positive measures taken for these elections are of note. The first was a pilot plan to implement the "home ballot²" option. The second was the "prison ballot," which allowed 1,579 citizens in preventive detention to vote.

The Mission was also present on May 1, 2016, to witness the second national election simulation exercise, conducted to identify and adjust, as needed, the systems and communications that were used for the first time on May 15. The EOM observed equipment, logistical, configuration, operational, and distribution difficulties.

In the days preceding the election, the JCE and a group of opposition parties requested the good offices of the Chief of Mission to bring about a dialogue between the parties that disagreed with the vote-counting procedure. In that regard, the Mission welcomed the fact that the Board had addressed some of the complaints, but regrets that at no time during the Mission's deployment did the Board meet for direct dialogue with the parties concerned. The Mission reiterated that fluid, ongoing, and formal communication among the electoral management body, political parties, and citizens is essential for any election process to be carried out successfully.

Changes to the Vote-counting Procedure

The electoral process featured the introduction of a new automated vote-counting system, although the previous preliminary results transmission system (TREP, by its Spanish acronym) had been a regional referent.

² The "home ballot" program was implemented on a pilot basis to allow for persons with severe physical disabilities to vote from their place of residence.



The introduction of the new system significantly altered the electoral process and organization since the most important person on the polling station, its President, was effectively replaced by the Technical Assistant, because the successful operation or failure of the equipment depended on him, in contrast to the spirit of citizenship that had prevailed earlier.

Additionally, the current Electoral Law (275-97) dates from 1997, which creates many legal loopholes and a lack of clarity in the new Dominican reality. This led the JCE to cover these loopholes through resolutions or agreements, which as a consequence bestowed on the Board powers that are traditionally legislative.

This power was used, among other things, for the JCE to change the vote-counting procedure in the days prior to election day. In that time, four resolutions and directives were issued redefining the methods for counting the vote at the polls. This created new challenges, such as training for election board members, political parties, and citizens on the new methods, which resulted in much uncertainty at a key stage of the process.

The vote-counting procedure that was originally to be automated and is not stipulated in Article 127 of the Electoral Law, which states that: “the secretary shall unfold the ballot, reading aloud the name of the group or party for which the vote was cast and passing it to the President, who shall examine it and show it to the other members and delegates present,” resulted in the use of both methods; however beginning with the automated vote-counting procedure and not the manual procedure as indicated in the Electoral Law. This situation led to serious disagreements between the opposition parties and the electoral authority.

Day of the Election

On Sunday, May 15, Dominican citizens expressed their will at the polls and, according to the data consolidated by the JCE, 61.74 percent voted for Danilo Medina, who was re-elected President for the next four years.

In terms of distribution of electoral materials, delays and shortcomings in the delivery of electronic kits were noted. In addition, a large number of technical assistants did not show up for work, something that had been anticipated on Saturday night by the JCE, who also pledged to investigate and provide a detailed explanation of this situation. The districts most affected by this situation were Santo Domingo, Santiago de los Caballeros, and the National District.

The polling stations opened on average one hour later than the time stipulated by law, despite all these initial difficulties. Most polling stations were comprised of the titular members. Polling stations were adequate and well organized for the voting process, thus guaranteeing the



secrecy of the vote. These observations point to the evident effort that had been made to ensure that suitable polling stations were available so that election day could go on as planned.

The Mission also noted a significant presence of party representatives, especially delegates from the parties of the leading candidates. It is also important to mention that canvassing was going on in the vicinity of and inside the polling stations, in violation of the provisions of Article 108 of the Electoral Law. The Mission also observed groups of people around the voting precincts and, in that context, received 13 official complaints of different irregularities, including the purchase of votes and identity cards. These complaints were referred to the corresponding authority.

The polls were closed between 6:00 and 7:00 p.m. to compensate for the difficulties that arose at the beginning of the day. Late in the day, around 3:00 p.m., the JCE instructed that voting would be extended by one hour, which caused confusion. Many polling stations were not informed of the change and proceeded to close the voting as originally planned. Vote-counting procedures were not uniform: in some polling stations, votes were counted manually with the ballots displayed, while in others, the counting was automated and the ballots were not displayed.

The biggest weakness on the day of the election had to do with the use of technical equipment. In many precincts, there was no equipment, technical assistants did not show up, or there were problems with connectivity and the operation of biometric machines and automated ballot-counting machines. The electoral authorities had to order the voting to begin even though voter identification machines were not working.

The fact that members of polling stations had been properly trained and were familiar with the manual process, and that party delegates had a good attitude and experience, helped to put the process on track without additional setbacks. The difficulties with the machines were repeated at the closing of the polls. The manual method established by law but initially interpreted as a contingency plan by the JCE ultimately was essential at this stage of the day. The most noticeable consequence of this situation was the delay in the issuance of the official announcement of results.

Post-election Stage

This stage was marked by problems in the vote-counting process and, therefore, in transmitting and disseminating the results. The last official bulletin containing 100 percent of the tabulation sheets counted was made public 13 days after Election Day.

This situation led to disagreements and political party demonstrations. In that regard, the EOM received different complaints regarding the loss of confidence in the electoral authorities and



written reports by different political actors, which were forwarded to the competent national authorities and were taken into account in this report.

The Mission especially deplores the incidents of violence that occurred after the closing of the polls and that left six people dead.

It is important to note that the Mission, as it did not have the resources it considered necessary and had originally proposed, was unfortunately unable to remain on-site until the end of the process, nor was it able to implement all of the observation methods developed by DECO or take a representative sampling of results. Nonetheless, the EOM continued to monitor remotely via electronic media and through the National Office.

In that regard, it should be noted that on Sunday, June 12, 2016, in the framework of the OAS General Assembly session, Secretary General Luis Almagro received and heard from a diverse group of presidential candidates and party activists, who expressed their complaints and objections to the electoral process and submitted to him documentation of different types, which was forwarded to the corresponding national organizations.

Conclusions and Recommendations

After a careful analysis of the legal framework for these elections, as well as the field work done by the experts in electoral organization and technology, equitable participation of men and women, campaign financing, access to the media, and electoral justice, the Mission reiterates the importance that the legal framework governing the electoral process undergo a deep structural reform.

A matter of utmost importance of which the EOM is aware relates to Judgment 163/13 of the Constitutional Court and Law 169/14, and their impacts on guaranteeing the political rights of those affected. It notes, however, that this matter is before the relevant entity, the Inter-American Commission on Human Rights.

In order to contribute to this process of change, the Mission offers the following observations and recommendations:

Electoral Technology

The JCE made efforts to ensure greater security in voter identification procedures and to streamline the voting and vote-counting process. The solution consisted in using three new devices: one for voter identification, a second for automated ballot counts, and a third to print out the official tally sheets.



On the day of the election, serious difficulties arose with the implementation of these technological tools:

- Lack of training of the technicians and their unfamiliarity with the way the equipment worked;
- Lack of conditions for peripheral infrastructure so the equipment could work properly;
- Lack of human resources to run the equipment;
- Flaws in security code recognition.

The Mission believes it is important for procedures related to vote counting to be more clearly defined in the law, given that this is a fundamental component of an electoral process that should not be subject to internal regulations issued by electoral institutions. The implementation of technological innovations should be implemented gradually so that both the electoral authority and the political parties and society as a whole can be prepared for such significant changes.

The Mission also recommends developing and carrying out several simulation exercises, sufficiently in advance, to enable the electoral authority to identify and correct errors. This will ensure that on the day of the election the technological innovations can perform the function they were designed to do--to bring certainty and transparency to the process.

The events on the day of the election confirm that the introduction of technology is not a technical matter alone. The implementation of technological advancements should take into account political and social considerations, in order to build the consensus essential to increase confidence.

Campaign Financing

The model of public financing of political parties and campaigns in the Dominican Republic is not designed to create conditions of equity in the electoral contest. This is due to two fundamental characteristics: (1) There is no type of regulation of private financing; and (2) The election law establishes that 80 percent of the public financing shall be distributed equally among the parties that obtained more than 5 percent of the valid votes cast in the last elections and the remaining 20 percent among the other parties.

On this point, the OAS/EOM recommends, as previous OAS missions to the country have done, that urgent steps be taken to design a law that promotes greater fairness in the distribution of direct public funding. Limits should also be established on funds from the private sector.



With regard to accountability mechanisms, the OAS/EOM suggests strengthening the capacity for oversight, control, and sanction of cases involving violations of existing norms. In this regard, it is advisable to develop models for interinstitutional coordination among all government offices involved in the management and oversight of resources, including the Chamber of Accounts, the Central Electoral Board, the banks, and the Ministry of Treasury.

Access to the Media

The Mission was also able to observe the high degree of unfairness in access to the media by the political parties in contention. It is worth mentioning that legislation in the Dominican Republic establishes access to state-owned media outlets free of charge. However, these represent only 0.5 percent of the total number of media outlets in the country. In other words, campaigns are waged primarily through privately owned media outlets.

On top of this, the law does not establish advertising limits. For smaller parties that receive less direct public funding and are less able to raise private funds, this situation puts them at a disadvantage. The OAS/EOM received complaints from different political forces that said they had been unable to place advertising as the space had already been bought up by the parties with more resources.

The Mission considers it necessary to establish a legal framework to regulate media access, one that establishes fair access to public and private media outlets and that guarantees the right to information, understood as both the right of parties and candidates to disseminate their proposals and the right of citizens to be well informed.

System of Representation

The electoral system of the Dominican Republic makes a distinction between the election of the Senate and of the House of Representatives. For the Senate, the majority system is used. The candidate who receives the most votes in the province is elected senator (therefore, there are 32 senators). Senators receive the votes cast for them as well as those cast for representatives from whichever parties are in the same alliance. In other words, a vote for a representative implicitly means a vote for the organization's senator. This election mechanism does not allow voters to choose individual candidates from different alliances in the election for the two houses of Congress. This means that one party usually obtains an absolute majority in the Senate.

Although this system for allocating seats creates conditions for governance, it also limits pluralism in the legislative branch and contributes to the concentration of power. Taking that into account, the Mission recommends considering the possibility of separating the elections of senators from those of Members of the house.



Equitable Participation by Men and Women

The increase in the participation of women in Dominican politics has gone hand in hand with the implementation of gender quotas for candidates to elected public office. Under the law, at least 33 percent of those on lists of candidates for congressional representatives and members of municipal councils should be women. In the case of mayors, if the candidate is a man, the candidate for deputy mayor should be a woman. Quotas for women are also applied in municipal districts. For this election, of the total number of candidates, 44.3 percent were women. However, for offices to which the quota does not apply, such as in the case of the Senate, women's participation is much lower (13 percent).

In that regard, it is important to mention that in the political parties the majority of national leadership posts are held by men. Women candidates interviewed by the Mission said that it was difficult for them to participate in decision-making within the parties and to secure funding for their campaigns.

In order to continue supporting participation by women in leadership positions, the Mission recommends evaluating the effectiveness of the existing affirmative action measures and adjusting them so that they can more effectively fulfill their purpose of increasing the number of women in popularly elected posts and guaranteeing that they can stay in power. Another possibility that could be evaluated is the need to include public financing geared toward training and empowering women in political parties.

Electoral Justice

This electoral process was the first in which the Superior Electoral Court (TSE, by its Spanish acronym) had been involved from the start of the process. At times, this led to tensions between electoral institutions, ones ultimately resolved but that made clear the need for review and adjustment of the existing model for challenging decisions, by which the TSE has the authority, both legal and effective, to review the legal and constitutional regularity of all administrative actions taken by any authority in this area.

In that regard, the Mission considers it advisable to establish a comprehensive system for challenging decisions that includes electoral justice mechanisms that may be used to resolve disputes in a timely manner, and that are designed to guarantee the principles of liberty, transparency, equity, and objectivity in elections. This will promote respect for the rule of law that should characterize the institutions and individuals involved in the process alike.

Acknowledgements



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Lastly, the Mission wishes to express appreciation to the Central Electoral Board, the Superior Electoral Court, and the different government authorities for their openness, which enabled the delegation to compile the information needed to carry out its work. It also wishes to express appreciation to Bolivia, Israel, Luxembourg, Peru, Spain, and the United States for their financial support that made the deployment of this Mission possible.