



EU Election Observation Mission to Venezuela Parliamentary Elections 2005

Preliminary Statement

Caracas, 6 December 2005

*Following an invitation of the National Electoral Council (CNE) to observe the Parliamentary Elections (National Assembly, Latin-American Parliament and Andean Parliament) of 4 December, the European Union Election Observation Mission (EU EOM) was deployed in Venezuela on 07 November 2005. The Mission is led by **Chief Observer Mr. José Albino Silva Peneda, Member of the European Parliament**. In total, the EU EOM deployed 160 observers in 20 of the 24 states to follow and report on the electoral process in line with established EU methodology and the "Declaration of Principles for International Election Observation" adopted under the auspices of the United Nations in October 2005. A Delegation of the European Parliament, led by Mr. Arunas Degutis, and including six MEPs, joined in the EU EOM on 1 December. This statement is issued before the process is completed; the EU EOM will remain in country until 21 December to observe the post-election period, including electoral complaints. A Final Report will be issued in February 2006. The EU EOM wishes to thank the CNE, the Venezuelan authorities and all the other actors for the excellent cooperation and availability demonstrated throughout its stay in Venezuela*

Preliminary Conclusions

Wide sectors of the Venezuelan society do not have trust in the electoral process and in the independence of the electoral authority.

The legal framework contains several inconsistencies that leave room for differing and contradictory interpretations.

The disclosure of a computerized list of citizens indicating their political preference in the signature recollection process for the Presidential Recall Referendum (so-called "Maisanta Program") generates fear that the secrecy of the vote could be violated.

The CNE, in a positive attempt to restore confidence in the electoral process, took significant steps to open the automated voting system to external scrutiny and to modify various aspects that were questioned by the opposition.

The CNE decision to eliminate the fingerprint capturing devices from the voting process was timely, effective and constructive.

The electoral campaign focused almost exclusively on the issue of distrust in the electoral process and lack of independence of the CNE. The debate on political party platforms was absent.

Both State and private media monitored showed bias towards either of the two main political blocks.

The EU EOM took note with surprise of the withdrawal of the majority of the opposition parties only four days before the electoral event.

Election Day passed peacefully with a low turnout. While the observers noted several irregularities in the voting procedures, the manual audit of the voting receipts revealed a high reliability of the voting machines.

These elections did not contribute to the reduction of the fracture in the Venezuelan society. In this sense, they represented a lost opportunity.

Preliminary Findings

Pre-Election Environment

The EUEOM takes note of the fact that wide sectors of the Venezuelan society do not have confidence in the electoral process and in the electoral administration. This standpoint, which has its roots in the high polarization that divides the Venezuelan society, became especially apparent during the Recall Referendum in 2004 as well as in the run up to these elections. The disclosure of a database containing more than 12 million citizens' personal data and their political preference (the so called "Maisanta" Program) expressed during the signature collection for the Recall Referendum generated widespread fears that this information could be used for intimidation purposes and undue influence on voters. This fact played a significant role in favor of the abstention.

The opposition parties focused their campaign on the perceived lack of neutrality of the CNE and alleged dangers posed to the secrecy of the vote by an automated voting system which was meant to include the fingerprint capturing devices. Central electoral campaign themes such as economics and tax policies, the importance of social programs, the role of the private sector in the economy or environmental policies were missing from the political parties' public interventions. The prohibition of state funds for electoral campaign purposes was often mentioned by parties as a factor, which impeded a more public and transparent campaign.

The use of state resources by pro-government parties to mobilize supporters was observed in Trujillo, Monagas, Anzoátegui, Carabobo and Guarico. Violations of the provision for public officials to take part in the campaign was observed in nearly all States and committed by almost all main political parties. The parties included quotes from local officials in their captions as well as pictures of officials in their campaign posters including in some cases, of the President. The violations observed in the last phase of the campaign were mainly carried out by pro-government parties.

Civil society organizations like *Sumate* and *Ojo Electoral* played, in different ways, a very important role in the elections. However, only *Ojo Electoral* sought and obtained accreditation to observe the elections.

In a context of mistrust and extreme polarization, the EU EOM acknowledges the efforts made by the CNE to increase the political parties' confidence in the process. These measures included reviews of various elements of the automated voting process such as the software of the electronic voting machines, the fingerprint capturing machines and of the results aggregation system, as well as the extension of the audit paper trail to encompass the manual recount of the voting receipts in 45 % of the polling stations.

The discovery of a design flaw in the software of the voting machines, with the consequent remote possibility to violate the secrecy of the vote was dealt with by the CNE in a timely and adequate manner. The possibility of endangerment of the secrecy of the vote was evaluated by EU EOM experts as remote.

The breach of the secrecy of the vote could only be possible if the sequence of both the identification of the voters and the votes cast was reconstructed. This reconstruction would require access to three different dispersed sources of information by a qualified user. These sources are the memory of the voting machines, the memory of the fingerprint capturing devices and the entire code of the encryption key (that was divided among the political parties and the CNE) used in the system to protect the voting data.

The elimination of the fingerprint capturing devices from the voting process was a significant move aimed at restoring the confidence of the parties. It was therefore with surprise that the EU EOM took note at this stage of the withdrawal of the main opposition political parties from the electoral contest without any new additional motivation.

Legal Framework

The legal framework for the elections is composed of the Basic Law of Suffrage and Political Participation of 1998, the Constitution of 1999, the Electoral Statute of Public Power of 2000, the Basic Law of the Electoral Power of 2002. Due to the National Assembly's inability to find a qualified majority on the adoption of a new Basic Law, crucial aspects of the electoral process have not been harmonized with the provisions of the new Constitution 1999. These inconsistencies opened room for differing and contradictory interpretations of various aspects of the process (e.g. voter registration, CNE competences), and exemplified the already existing divide between opposing sectors of the society.

The current composition of the CNE Steering Board is a contentious issue. Following the inability of the National Assembly to reach the required majority to elect the CNE Steering Board, the Supreme Court, availing itself of the extraordinary powers granted by the Constitution in case where the National Assembly is unable to take a decision, designated the Members of the Steering Board before the Recall Referendum. More recently, one of the members of the Steering Board was nominated by the Supreme Court under a procedure contradictory to the one used for the first extraordinary nomination of the Steering Board.

The system of representation in force in Venezuela is described as one of "personalized proportionality" by the Basic Law of Suffrage and Political Participation of 1998. This ambiguous definition is used to designate a mixed member proportional system. The use of the electoral technique known as *Morochas*, which allows the duplication of parties in order to avoid the subtraction of the seats gained in the plurality-majority list from the proportional list, certainly defies the spirit of the Constitution, but it is technically allowed by the mixed system of representation laid out in the Basic Law of Suffrage and Political Participation.

The principle of the automated voting system is enshrined in Art. 154 of the Basic Law of Suffrage and Political Participation 1998 and in Art 33, Item 42 of the Basic Law of the Electoral Power of 2002. The current development and applications of the automated voting process have however surpassed in various aspects the legal framework.

Election Administration

The National Electoral Council (CNE) is an institution with significant human and technical resources. The CNE technically administered the process well, and its logistical preparations for the electoral event were adequate. Its performance was however tainted by the accusations of bias and partisanship that have accompanied its work since the past Recall Referendum process. In the election preparations the CNE demonstrated a clear willingness to meet the demands of the opposition parties to increase confidence on the process. Among the main steps taken to reduce the opposition concerns over the automated voting process, the CNE increased the number of polling stations to be audited from an initial 33% to 45% and reduced the use of the electronic voter lists to 2%. However, this was perceived by the opposition parties as insufficient.

The security and transparency measures introduced in the automated voting process are in line with the most advanced international practice. The various types of system reviews put in place by the CNE represented an important opportunity to explain and review various aspects of the automated voting system to experts of political parties and observers. Apart from the paper trail audit on election day, there were four types of reviews that the EU EOM observed including of voting machines software and hardware, results aggregation software, voting machines assemblage and production, and election day simulation. Despite the fact that no proper audit procedures were agreed in advance, a significant disclosure of information was achieved. However, access to information for party experts could be further improved. The political parties were selective in presenting to the media the activities and the findings of the audit sessions.

The voter register (*Registro Electoral Permanente*, hereinafter REP), has been the source of continuous debate and several allegations of illegitimate entries. This is not a novelty in the Venezuelan elections; however, the sharp increase of registered voters before the Presidential Recall Referendum cast serious doubts on the composition and entries of the most recent REP. These suspicions were heightened in the pre-electoral period by the refusal of the CNE to make available the address of the voters to political parties due to an unclear constitutional data protection provision. However, political parties were given sufficient access to the voter register. Structural and long standing problems in the REP are likely to exist, and can only be solved in conjunction with the revision of the Identity Card program which is the basis for the voter registration system.

Media Coverage

The Venezuelan media display a great diversity of political opinions. However, considered individually, the main media outlets only exceptionally referred to the various political actors in a manner which could be considered both fair and balanced. Most of the private media tended to offer more space to the views of the political forces critical of the Government, and when expressing their political preferences, they often disregarded basic journalistic principles.

On the other hand, state-owned media should provide fair recognition to the views of all Venezuelans and therefore has strong obligations in terms of objectivity, fairness and impartiality. However, it did not fulfill these obligations. The tone of the coverage of opposition parties in the publicly owned media was significantly more negative than the one reserved to the parties in government. Furthermore, the intense promotion of government policies on the state media during the campaign worked as an indirect publicity of the parties in power. The excessive resort to *cadena*s (addresses to the nation simultaneously broadcast through all the nation's electronic media) which proliferated in the days prior to the elections could represent a breach of the campaign silence.

The EU EOM notes that the frequent presence of the President on State TV and radio is an unusual practice and did not contribute to the improvement of the political climate.

The Mission believes that the excessively inflammatory opinions encountered in much of the Venezuelan media, especially after the withdrawal of most of the opposition parties' candidates, did not contribute to an informed and calm political atmosphere, but rather agitated further an already tense public opinion which seems to grow increasingly tired and cynical about politics.

The use of images featuring public officials for campaign purposes was widespread and must be condemned as a generalized, flagrant violation of CNE regulations on that matter. Furthermore, the excessive focus on parties and personalities given by the media in its coverage of the campaign has resulted in a striking scarcity of information about the platforms of the contesting parties.

Election Day

Polling stations opened on average between 7,00 and 8,00 am. The delays were mainly due to the late arrival of the staff and a general slowness in the opening procedures. In 70% of the polling stations observed there were missing polling officials replaced by political party agents, reserves or ordinary voters.

The presence of the armed forces of *Plan República* inside the polling stations was noted in 25% of the polling stations observed. This was contrary to the provision that allowed the security forces to be inside the voting centres but not inside the polling stations.

The political party agents were observed in 70% of the polling stations visited. In 68 % of these cases there were only agents from pro-government parties. Domestic observers were present in 6% of the polling stations observed. Their presence was observed in 18% of the polling stations where the EU EOM observed the audit of the count.

The majority of the voters in the polling stations observed experienced problems with understanding the functioning of the voting machines and required assistance. In 41% of the cases observed there were voters unable to complete the process in the prescribed three minutes. This indicates both a lack of adequate voter information and training for election officials on the automated voting system. The assistance to the voters was often provided by the polling station staff, security forces and the political party agents, raising concerns about the secrecy of the vote.

Campaign activities in favor of pro-Government parties were noted in the vicinity of a large number of the polling stations observed. The type of campaign activities observed included food distribution, cars with megaphones and posters, information stands and provision of transport for voters. Few cases of intimidation were observed, with party members asking voters to sign and thumbprint on a piece of paper that they had voted and who they had voted for.

The polling hours were extended by the CNE throughout the country. The motivation for this decision was the delays in the opening and the bad weather conditions. This led to confusion and allegations of attempts from pro-government parties to boost the turnout.

The paper trail audit (manual recount) of the electronic count was observed in 75 different polling centers. Despite a lengthy implementation of the audit procedure, the results indicated a clear reliability of the results, with few cases of discrepancy observed between the number of voters marked in the voter register and those counted by the machine and between the paper receipts and the votes recorded in the voting machines. The general conclusion of the observers was that the voting machines seemed very reliable.

The aggregation of results proceeded with high speed. The announced preliminary results cover almost 90% of the results. The preliminary turnout announced by the CNE is of 25%. However, there is no clarity on the level of invalid votes that oscillate between 5 and 10%.

Preliminary Recommendations

The legal framework that governs the electoral process must be harmonized with the constitutional provisions on the elections.

The National Assembly should appoint a CNE Steering Board composed of independent professionals of various extractions that enjoy the trust of all the sectors of society.

The prohibition of public funding to parties for the electoral campaign should be reconsidered.

The electronic voting system should be audited by an independent institution.

The REP should be audited in conjunction with the ID register by an independent institution.

The CNE should launch as soon as possible training and civic education programs aimed at familiarizing electoral officials and the electorate with the electronic voting procedures.

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