



PRELIMINARY STATEMENT

A well-administered electoral process strengthens democracy in Paraguay, despite shortcomings in the legal framework and its enforcement

Asunción, 23 April

Summary

- Election Day was calm with an exemplary civic conduct and one of the highest recorded levels of participation in the country's democratic history. Electoral procedures were followed and respected, with some exceptions, such as the massive bussing of voters and the presence of campaign materials in the vicinity of polling centres.
- The Superior Tribunal of Electoral Justice (TSJE) conducted the elections with competence and transparency. The partisan distribution of positions at all levels of the electoral administration could be revised in the future, especially at the level of polling stations, which were only comprised by members of the three main parties.
- The transmission of preliminary results functioned as foreseen and contributed to reinforcing transparency of the process and acceptance of results. Infringement of the prohibition to disclose exit polls, and some unacceptable declarations by the TSJE Vice-President, could have compromised the E-Day success.
- The EU EOM received numerous credible testimonies regarding vote-buying by the main parties. Over the two days preceding the elections, the EU EOM directly observed solid indications of these practices as well as the existence of seven 'corralones,' where indigenous voters from the Boquerón and Presidente Hayes departments were rounded up and their votes bought. The EU EOM firmly condemns this infringement on human dignity.
- The legal framework provides an adequate basis for the conduct of democratic and genuine elections. The legislation has been recently improved; however, it is still necessary to review certain aspects to bring them fully in line with the international principles and commitments to which Paraguay subscribes.
- The campaign environment was generally peaceful. Freedom of assembly, movement and expression was ensured. Nevertheless, the polarization between the two main contenders increased over the final period of the campaign, intensifying its negative tone. It was a campaign of accusations without genuine political debate.
- The existing campaign financing regulations were insufficient, with no legal limits or controls on campaign expenditures, this hampered transparency and a level playing field.
- The EU EOM observed some examples of the abuse of public resources. Public officials including members of the government participated together with candidates in numerous inaugurations of public works and political rallies.
- The Paraguayan media largely covered the electoral campaign. Community radios offered an important alternative to the main tendencies of content production, increasing the level of pluralism. The EU EOM media monitoring results show the private media committed multiple infractions, including non-compliance with provisions regulating the distribution of paid airtime among contestants, the campaign silence period and the publication of opinion and exit polls.

Preliminary Findings

Background

Taking into account that parliamentary terms expire on 1 July 2013 and the presidential on 15 August 2013, and complying with constitutional provisions, the Superior Tribunal of Electoral Justice (TSJE) called General Elections for 21 April 2013. These elections were for the President and Vice-President, 45 senators and 30 substitutes, 80 deputies and 80 substitutes, 17 Governors, 228 members of the departmental Councils and 228 substitutes and 18 members of PARLASUR and 18 substitutes.

After the 2008 elections, and despite losing the presidency, the National Republican Association/Colorado Party (ANR) remained the largest political party in both Houses of Parliament, with 34 out of 80 seats in the Chamber of Deputies and 15 out of 45 seats in the Senate. The Authentic Radical Liberal Party (PLRA) was represented by 29 deputies and 14 senators.

An unstable political environment, and internal frictions within the ruling coalition of President Fernando Lugo's Patriotic Alliance for Change and PLRA, resulted in a controversial 24 hour impeachment process that ended with the President's ousting on 22 June 2012. President Lugo was succeeded by Vice-President Federico Franco, of the PLRA. Mercosur and Unasur harshly condemned what they viewed as a 'parliamentary coup' and both organisations decided unanimously to suspend Paraguay's membership.

The EU EOM Paraguay observes only the presidential and legislative elections and will refer to the other polls only in relation to their political significance at national level and inasmuch as they impact on the conduct of the presidential and parliamentary elections. These elections are not only important for the democratic development of the country, but also represent a key step towards the reintegration of Paraguay in the region.

Legal Framework

Overall, the legal framework provides an adequate basis for the conduct of elections in line with the international principles and obligations to which Paraguay subscribes. Paraguay's recent efforts to improve its election legislation have resulted in positive changes. However, certain provisions should still be considered, for example, those that regulate the right to suffrage, candidate registration and the appeal of results. Also, the Electoral Code, the Criminal Code and the Constitution should be harmonized to resolve existing inconsistencies and a number of administrative resolutions aimed at regulating legal voids need to be incorporated.

Of primary concern is the lack of enforcement of existing laws. Some obligations and prohibitions defined by the law are merely declarative, as the law does not provide any consequence for their non-compliance, such is the case of the prohibition to be affiliated to more than one party. On the other hand, while the Electoral Code establishes sanctions for some breaches of the law, such as violation of the obligation to vote, it fails to outline procedures for their implementation and as a consequence sanctions are not applied.

In Paraguay, rulings on unconstitutionality produce effects *inter partes* and not *erga omnes*. That is, these rulings do not invalidate the norms declared unconstitutional; rather they affect only the complainant. Contradictory rulings on the constitutionality of several articles of the Electoral Code, have exempted some from their compliance while others remained subject to them,

contravening as a result, the principles of equality before the law and rule of law, basic pillars for the conduct of any election process.

Such has been the case with the articles of the Electoral Code that regulate the timeframe of the electoral campaign and the publication of electoral surveys. Some parties and media outlets invoked their unconstitutionality alleging that these articles were contrary to rights to freedom of expression and press. While some rulings declared the unconstitutionality of these articles, exempting in these cases the plaintiff from their observance, other rulings rejected that the same articles were unconstitutional.

Election Administration

The TSJE carried out the tasks assigned in the election calendar in a professional and timely manner, adopting transparent decisions and giving due account to parties. A minority of political forces consider, however, that the TSJE is not an independent institution due to the manner in which the three main political parties (ANR, PLRA and UNACE) and their party agents on E-Day collectively agreed on the selection of the magistrates who directed or appointed polling station staff.

This collective agreement is more problematic at polling station level as it implies the complete exclusion of all other parties and at all levels of the electoral administration, reducing their role to that of mere witnesses on E-Day. The adoption of a mechanism to open positions at polling stations to more parties could significantly increase the confidence of political actors in those responsible for organizing elections. The exclusion of political parties from polling stations has very important implications in Paraguay, where polling station staff are by law entitled to the last word on the validity of votes cast.

Party quotas reach an extreme as parties elect thousands of temporary workers for the election body, which decreases the resources of the TSJE to promote its regular public servants based on professional merit. Furthermore, the allocation of economic and human resources within the electoral administration is very uneven and seems to respond in some cases more to party interests than to real institutional needs.

Voter Registration

Political actors accept the electoral census as a valid and reliable instrument, which enables the right to vote to all those who are willing and able to vote.

Taking note of the fact that many young adults do not register on the electoral roll, the main political forces agreed on a legal reform at the beginning of 2012. Since then, all those who turned 18 up to one day before the elections automatically entered into the electoral register. This measure will reduce in a short space of time the large number of youth who are not registered. However, in order for registration to make any real sense, this measure will have to be accompanied by campaigns to promote the vote, especially if voting continues to be mandatory.

The automatic register does not end all problems associated with the voter register. The lack of coverage of some citizens that have never been included in the civic register and the imperfect removal of deceased citizens are two issues that have been identified by the TSJE. The EU EOM urges the authorities to continue with mass campaigns to issue national ID's in the most

marginalized rural areas, which will contribute to improving the inclusive nature of the electoral register. As for the removal of deceased voters, apart from the current practice of making digital versions of death certificates, the TSJE could look at the automatic removal from the register of those citizens who have not exercised the right to vote in several consecutive elections.

Lastly, the number of voters registered abroad (21,981 people, or barely 0.6% of the register) was insignificant in these elections due to a lack of budget. The EU EOM believes that the electoral administration and the powers of State should negotiate to provide the necessary funds to register the largest number possible of Paraguayan residents abroad.

Registration of Candidates

In line with the electoral calendar, on 3 March, the TSJE certified 607 lists of candidates with a total of 11,658 candidates to compete for 746 positions.

The registration of candidates was inclusive. Six complaints pertaining to candidate registration were lodged, all of which were resolved according to the established procedure. However, some regulations should be reviewed to bring them fully in line with the international obligations ratified by Paraguay, to allow, for example, the participation of independent candidates.

On the other hand, the law does not ensure the effective resolution of electoral disputes arising from candidate registration. The deadline to nominate candidates was 15 February. However, three appeals in the primaries, filed by PLRA and Avanza País, were not resolved by the TSJE until 15 April, which was well beyond the deadline for registration. At the time of report writing, another appeal in the primaries of the PLRA was still pending.

Campaign Environment

The campaign started on 18 February (on 20 March in the media) and finished on 18 April. The vast majority of participants did not respect these deadlines.

The campaign environment was generally peaceful. Freedom of assembly, movement and expression were ensured and no major incident was reported. Nevertheless, the polarization between the two main contenders increased over the final period of the campaign, intensifying its negative tone. The confrontation between two candidates, Horacio Cartes from the ANR and Efraín Alegre from Alianza Paraguay Alegre (APA), dominated the campaign which was active and visible but in some areas rather low key.

Two debates, with the participation of four candidates selected on the basis of the opinion polls, took place on 17 and 24 March. Frente Guasú objected to the selection criteria and lodged an unsuccessful request for legal protection.

The campaign was driven by personality rather than political programs. More than programmes and political discussions, the citizens witnessed a campaign of accusations with the insistent repetition of slogans and emotional promises without specific solutions.

The electoral agreement between UNACE and PLRA had the effect of increasing the intensity of serious accusations of corruption against politicians who allegedly abused their positions for financial or other benefits. These charges created a tense atmosphere and transmitted a negative image of politics.

The EU EOM observed some examples of the abuse of public resources in the campaigns led by PLRA and ANR. Public officials and sometimes members of government participated alongside PLRA candidates in numerous inaugurations of public works and political rallies in the departments of Amambay, Caazapá, Guairá, Itapúa, Misiones and Paraguari. The ANR acted in a similar way in departments where it governs, including in Alto Paraguay, Alto Paraná, Boquerón and Itapúa.

Campaign Financing

To enhance the transparency of the sources of party financing and in the use of resources, amendments to 15 articles of the Electoral Code were enacted in 2012. However, these positive changes were not applicable in these elections since the amendments were passed after elections were announced, therefore, the regulations on party and campaign financing in force were insufficient, with no limit or control for campaign expenditures. The enormous difference in economic resources between the two largest parties, ANR and PLRA, and the other contestants was evident throughout the campaign period. The current law on party financing did not provide effective mechanisms for control or auditing. There are no limits to donations to parties and no limits on expenditures.

Media

A large number of media outlets freely and actively covered the election campaign, providing a plurality of views. Despite the increasing importance of social media, citizens still rely mostly on traditional media for information on political issues, with newspapers setting the public agenda of electronic media. A remarkable number of community radios were involved in important civic education and voter information projects both in Spanish and Guaraní languages, increasing the level of media pluralism. The TSJE was engaged in a praiseworthy voter education campaign through the electronic media.

Employing a variety of formats, the Paraguayan electronic media started to cover the activities of the political actors competing for the general elections long before the official start of the political campaign. While media coverage of the campaign was mainly focused on a limited number of contestants (those with greater popularity and higher financial resources), the EU EOM was surprised to observe that less prominent contestants sometimes failed to benefit from the opportunity to access free airtime during the last ten days of the campaign, as ensured by the Electoral Code.

On the other hand, and in practice, the TSJE's instructions regulating the timeline for transmissions ("preferably between 6:00 PM and 22:00 PM and according to each media's convenience") undermined the equal treatment of contenders. Several media dodged the Electoral Code's prohibition to fix higher tariffs for electoral advertising than for commercial announcements and the requirement to notify the TSJE regarding tariffs for electoral advertising within 8 days after the official announcement of pending elections.

In two cases, TV channels with larger audiences decided not to broadcast paid electoral advertisements on the assumption that their aggressive content was not in keeping with the Electoral Code. The EU EOM considers that the media should not be responsible for making such decisions. The EU EOM media monitoring results show the private media committed multiple

infractions of the provisions regulating the campaign silence period and the publication of opinion and exit polls (see *infra* polling and counting).

Despite a constitutional prohibition for media owners to be political candidates in presidential, legislative and local elections, the EU EOM observed that several contestants own local radio and TV stations or exercise indirect influence on media outlets owned by close relatives. Compared to previous elections, an increasing number of journalists stood as candidates in this electoral race, with a tendency to abuse media visibility to gain popularity.

A few cases of intimidation of journalists gave rise to concern about how their difficult economic situation increased their vulnerability to pressures from political parties, authorities and media owners. The lack of legislation guaranteeing access to public information is not fully in line with regional and international commitments that Paraguay has ratified.

Participation of Women

Under the Constitution, women enjoy the same rights as men. Also, the Constitution explicitly provides for the promotion of the access of women to public functions. The legislation provides for affirmative action mechanisms to increase the number of women in elected positions. The Electoral Code stipulates that for primaries, every fifth candidate must be a woman. The law further states that women may be placed in any position on the list. As a result, most are placed in unwinnable positions. There is no gender quota for candidate lists for elections.

Women make up 38.3 % of the candidates. Two of the 22 candidates for President and Vice-President were women. While the EU EOM observed that women are well represented in lower administrative positions of the Electoral Justice, only two of the 16 electoral judges and 7 of the 30 members of the Electoral Tribunals are women. Although parties and candidates did not deliver campaign specific messages addressed to women voters, in the last two weeks, public debates on two gender related topics gained media attention, forcing presidential candidates to position themselves on the issues of same-sex marriage and the decriminalization of abortion. Gender related issues were well covered in the electoral programme of only one party, *Kuña Pyrenda*.

Domestic Observers

These general elections were the most observed elections in the democratic history of Paraguay. There were 1,500 national and more than 500 international observers. It would be advisable that both national and international observation be regulated by law, to avoid misunderstandings as to who can observe and under what conditions.

Polling and Counting

Election Day was calm and was only altered by events not directly linked to the elections.

The 111 EU EOM observers visited 571 polling stations across 17 departments and in Asunción during the day. Observers attended the opening in one third of the polling stations visited. In two out of every three observed polling stations, polling did not start punctually due to the absence of some of the polling station members or to inadequate training.

There was an uneven presence of party agents (*apoderados* and *veedores*) at polling centres and polling stations. ANR-Partido Colorado was present at 82% of the polling stations visited by the EU EOM; the Partido Liberal Radical Auténtico at 51%, and UNACE at 30%. Out of the three largest parties, only Frente Guasú (18%), Partido Patria Querida (9%) and Avanza País (8%) had a significant presence.

In general, the election procedures were carried out correctly. The right to vote was widely respected. The integrity of the vote was only affected by slack interpretation of the secrecy of the vote, mostly due to the poor positioning of voting booths. EU observers only noted 3 formal complaints in the polling stations visited, as well as another 13 that did not result in official complaints.

The two most frequent irregularities were the massive bussing of voters, which was observed in one out of every eight polling stations, and the presence of campaign materials in the vicinity of polling centres. Closing and counting procedures were followed in an orderly and peaceful manner, although with some delays and the predictable tension while waiting for the election results.

In the period leading up to E-Day, and almost since its arrival in the country on 2 March, the EU EOM received many credible reports of voter coercion, such as the distribution of gifts and the buying and selling of votes. This practice is theoretically punishable by prison sentences in Paraguay and was mostly practiced by the two parties with the largest financial resources (ANR and PLRA). The credibility of these reports is based on the fact that they were obtained from party representatives who bought the votes themselves or by members of Electoral Tribunals and Courts in nine of the 17 departments in the country.

As E-Day approached, EU EOM members directly observed clear signs of vote-buying in the departments of Caaguazú, Cordillera, Boquerón and Alto Paraguay, and the massive bussing of voters to their polling centres. The most shocking of the observed irregular practices was the rounding up of members of indigenous communities in fenced, open-air spaces (*corralones*), where they were given food and drink until the time to vote, after which time they were sent back to their communities. This practice was observed on separate occasions, three times with the indigenous of Mariscal Estigarribia, a district of Boquerón department, three times in Teniente Irala Fernández, a district in the Presidente Hayes department, and once in Loma Plata, also in Boquerón department. In the seven cases observed, the organizers were members of the ANR. The EU EOM firmly condemns this assault against human dignity.

Transmission of preliminary results (Preliminary Results Programme TREP)

The TSJE succeeded in its commitment to release preliminary results for the presidential election at around 8PM on E-Day, also publishing results certificates on the Internet. This fact undoubtedly contributed to the transparency and quick acknowledgement of the winner of the presidential election. The success of the operation must be attributed to a series of systematic simulations conducted by the institution in the two months prior to the election as well as to the professional competence of its technicians.

The announcement and acknowledgement of results, however, were put at risk by the behaviour of some media outlets, which aired results projections based on exit polls during E-Day, something which is clearly forbidden by article 306 of the Electoral Code until one hour after the polling stations are closed. The fact that the media referred to the candidates with fake names or initials shows that the media know they are breaking the law.

The unacceptable declarations by the TSJE Vice President, Juan Manuel Morales, issued at 11:00 in the morning, endorsing the results of the exit polls and calling the PLRA sympathizers to face defeat, aggravated even more the potentially negative impact of the polls and forced the TSJE President to publicly discredit Morales.

The EU EOM will stay in the country until 16 May to observe the post-electoral events, as well as the tabulation of provisional results at the Electoral Tribunal and the definitive counting at the TSJE.

The European Union Election Observation Mission (EU EOM) has been present in Paraguay since 2 March following an invitation from the Government of Paraguay and the Superior Tribunal of Electoral Justice (TSJE). The Mission is led by Chief Observer, Renate Weber, Member of the European Parliament (Romania). In total, the EU EOM deployed 111 observers from 27 EU Member States and Norway across the country to assess the whole electoral process in accordance with international and regional commitments for elections as well as the laws of Paraguay. A delegation of seven members of the European Parliament, headed by Ignacio Salafranca MEP, also joined the mission and fully endorses this Preliminary Statement. 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. On E-Day, observers visited over 571 polling stations in all 17 departments of Paraguay and in Asunción to observe voting and counting. The EU EOM will remain in country to observe post-election developments and the tabulation of results and will publish a final report, containing detailed recommendations, within two months of the conclusion of the electoral process. The EU EOM wishes to express its appreciation to the Government of Paraguay and the TSJE and other Paraguayan authorities, political parties and civil society as well as the people of Paraguay for their cooperation and assistance in the course of the observation. The EU EOM is also grateful to the Delegation of the European Union to Paraguay and the European Union member states' diplomatic missions resident in Paraguay for their support throughout.

An electronic version of this Preliminary Statement is available on the Mission website (www.eueom.eu/paraguay2013). For further information, please contact: Ricardo Martínez de Rituerto EU EOM Press Officer, Tel. +595 986103926, ricardo.mderituerto@moeuepy.eu

European Union Election Observation Mission
Hotel Sheraton. Avenida Aviadores del Chaco 2066, Asunción
