



European Union Election Observation Mission Presidential Elections Venezuela 2006

PRELIMINARY STATEMENT

The high turnout, peaceful nature, and general acceptance of results of the Presidential Elections in Venezuela open the way forward to substantial improvements in the quality and public confidence in electoral processes

Caracas, 5th of December 2006

This statement presents the preliminary conclusions of the European Union Election Observation Mission (EU EOM) to Venezuela 2006. The Mission was deployed on the 15th of November, following an invitation from the *Consejo Nacional Electoral* (CNE) to observe the Venezuelan Presidential Elections of the 3rd of December 2006.

The Mission led by Monica Frassoni, Member of the European Parliament, totalled 154 observers from European Union Member States, as well as from Switzerland and Norway, deployed in 17 States and in the Capital District. The observers are mandated to follow and evaluate the electoral process, in accordance with the European Union's established methodology; the "Declaration of Principles for International Election Observation", adopted under the aegis of the United Nations in October 2005; the Regulations for International Election Observation for the 2006 Presidential Elections, as established by the CNE on the 5th of October 2006, and the Memorandum of Understanding signed by the CNE of the Bolivarian Republic of Venezuela and the European Union on the 15th of November 2006. A delegation of the European Parliament, headed by Manuel Medina Ortega, and comprising six other parliamentarians joined the EU EOM on the 30th of November.

This statement is presented prior to the conclusion of the process. The European Union will remain in the country until the 19th of December to observe the post-election period, including possible complaints after Election Day. In February 2007, the Mission shall send a delegation of representatives to Caracas to present the final conclusions of its observation.

The EU EOM wishes to express its gratitude towards the *Consejo Nacional Electoral*, the institutional authorities, political parties, observation groups, and Venezuelan civil society for the cooperation and availability with which it has been received throughout its stay in the country.

EXECUTIVE SUMMARY

1. The electoral process complied in general with international standards and with national legislation as regards the management of the electoral administration and the electronic voting system. The high turnout in the Presidential Elections, and the peaceful environment in which they were held, together with the candidates' acceptance of results, open the way forward to improvements in the confidence that the general public has in the electoral processes, as well as their quality, and to dialogue between the main institutional and political stakeholders in the country.
2. The EU EOM applauds the efforts made by the new Board of Directors of the *Consejo Nacional Electoral*, appointed in April 2006, the political parties, and civil society movements, in creating sufficient conditions to hold elections that are acceptable to all stakeholders, factually demonstrating their desire to reach agreements on crucial aspects of the electoral process.
3. However, the EU EOM, has observed persistent problems during the campaign, such as the widespread institutional propaganda in favour of the President, and candidate, Hugo Chavez, and, to a far lesser extent, in favour of the Governor of the State of Zulia, and candidate, Manuel Rosales. Similarly, the Mission has noted an imbalance in the political coverage offered by the media, both public or private, and the CNE's inactivity in attempting to redress the situation; as well as the participation of public officials in campaign activities for the incumbent candidate, be it of their own free will, or due to pressure from third parties.
4. The electronic voting system established in Venezuela is efficient, secure, and auditable, and the competence of its technical experts is consistent with its advanced technological level.
5. The use of fingerprint readers (*captahuellas*) neither violates the secrecy of the vote, nor is a source of fraud. On the other hand, they are not directly relevant in the exercise of the right to vote; furthermore, they are not trusted by a significant part of the electorate, and in certain cases, they led to unnecessary queuing during Election Day.
6. EU EOM observers evaluated the quality of the electoral process positively in 85% of the polling stations visited on Election Day. Similarly, the appraisal of polling station officials, regarding their knowledge of electoral procedures, was positive in 76% of cases, which leaves a margin for improvement in the management of the electoral process. No major problems were detected regarding the audit of closing, the random selection of polling stations, and the subsequent counting of voting receipts. The correct number of ballot boxes was audited in all visited polling stations.

PRELIMINARY CONCLUSIONS

Pre-electoral Context and the Campaign

Since its arrival in the country in November, the European Union Election Observation Mission (EU EOM) perceived a significant improvement in the political climate, as compared to that prior to the Parliamentary Elections in 2005. This improvement is attributable, among other reasons, to the efforts carried out by the majority of opposition parties, and the government, to mobilise their electorate. Another reason could be the newly constituted Board of the *Consejo Nacional Electoral* (CNE).

These two elements have helped to mitigate the profound crisis of mistrust in the electoral system, which reached its high point a few days before the Parliamentary Elections in 2005, when the opposition decided to withdraw from the electoral process. Since then, the opposition parties have concentrated an important part of their energy in recovering the unity and the favour of voters that they themselves had called to abstain in the past.

The efforts of the political parties to reach consensus, and the CNE's administration, have played a decisive role in the acceptance of existing electoral conditions, as have the actions undertaken by civil society movements and Venezuelan national observer groups. Among the latter, the EU EOM wishes to highlight the work of the Non-Governmental Organization *Ojo Electoral* for its commitment in achieving consensus around ground rules that all stakeholders could accept.

Notwithstanding the consensus on the existence of sufficient conditions to participate in elections, the EU EOM has noted persistent problems during the campaign, such as widespread institutional propaganda in favour of the incumbent President Hugo Chavez, and, to a much lesser extent for the Governor of the State of Zulia, candidate Manuel Rosales. Another problem lies in the unbalanced coverage provided by the media, both public and private, as well as the participation of public officials in campaign activities of the pro Government (*oficialista*) candidate.

The EU EOM received numerous complaints regarding pressure exerted on public officials to vote for President Hugo Chavez, or to participate in his election campaign activities. Although the Mission was unable to appraise the authenticity and generalization of each individual complaint, it was able to evaluate the most publicized case that hit the headlines during the election campaign: the speech by the Minister of Energy and Oil, Rafael Ramirez before public officials of the state oil company. This case initiated an administrative inquiry by the CNE, which acted *ex officio*, and by unanimity, but did not issue a verdict before Election Day.

Without prejudice of the CNE's authority to issue a verdict on the case, the EU EOM considers that such statements could clash with the international principle of freedom of the vote. More particularly, they could come into conflict with Article 4 (5) of the Inter-Parliamentary Union's Declaration on Criteria for Free and Fair Elections, adopted in 1994, of which the Venezuelan National Assembly is a party. According to the aforementioned article, "States should take all necessary and appropriate measures to ensure that the principle of the secret ballot is respected and that voters are able to cast their ballot freely, without fear or intimidation".

On the other hand, the majority of electoral laws, at the international level, limit the participation of public officials in campaign activities, and the Venezuelan legislation is no exception to this practice. Article 215 of the Basic Law of Suffrage and Political Participation, states that: “The workers and employees of the National, State, and Municipal Public Administrations are obliged to maintain political impartiality in the exercise of their functions, and as a result cannot abandon their normal work obligations to participate in electoral activities, of political parties, voter groups, or candidatures for positions chosen by popular elections, or bear electoral propaganda in the state facilities in which they perform their duties, in accordance with what is established in this Law”.

Notwithstanding, EU EOM observers witnessed the widespread participation of public officials, identified as such, in campaign activities. Furthermore, the Mission noted the dissemination of manifestoes in which public servants expressed their support for Hugo Chavez’s candidature. Such facts contradict good international electoral practices, and could even be contrary to Venezuelan Law itself.

Regarding voter education, it must be said that the CNE initiated various intensive public outreach campaigns, through electoral fairs, and publicity campaigns in the media, to inform Venezuelan citizens about the electronic voting system, and the inscription into the register. Having said this, the EU EOM has observed that they were, on the whole, insufficient, and that some voters require a greater degree of knowledge about the system to allow them to exercise their right to vote efficiently, as well as to increase their confidence in the electronic voting system.

Election Administration

The manner in which the CNE Board, appointed in April 2006, managed the electoral process has contributed to generate sufficient trust for the opposition parties to compete in the Presidential Elections in 2006, despite the fact that five of its main members (*rectores*) were appointed by a National Assembly in which these parties are not represented. Moreover, this has not stopped significant sectors of the opposition from considering the CNE, throughout the electoral process, as an insufficiently independent organ.

The dialogue held by the new electoral authorities with all political parties has led to agreements on issues, which in the past had generated heated debates. Among the most significant agreements, is that which relates to the selection of polling station officials through a public lottery, audited by the political parties. Equally important, is the increase in the number of polling stations in which voting receipts are to be counted (from 47% in 2005 to 54% in 2006); the new percentage includes all the voting centres in the country. Similarly, auditing procedures were introduced which counted with the participation of political party technical experts, and international observer groups. These audits demonstrated a high degree of consensus among all the stakeholders regarding the proper operation of the electronic voting system.

The parties that opposed the candidature of President Hugo Chavez demanded the strict compliance of the CNE with a list of petitions, which they presented to the EU EOM two weeks prior to the elections of the 3rd of December. The parties stated that the CNE’s non-compliance could lead to their rejection of the results. In the week before the elections, the EU EOM received confirmation from the CNE that all these petitions had been accepted. Furthermore, compliance with these petitions was confirmed on Election Day.

The use of the 12.000 fingerprint readers (*captabuellas*) that were distributed to voting centres with more than 700 voters in the Capital District, Zulia, Miranda, Tachira, Apure, Anzoategui, Monagas and Carabobo, proved to be less controversial than in the elections in 2005. Nevertheless, certain opposition candidates objected to their use, alleging that it was discriminatory, as they were not distributed throughout the entire country. Although it was accepted that they could not endanger the secrecy of the vote, it was nonetheless argued that they could be used to intimidate voters, especially public officials, and beneficiaries of social welfare programmes.

The role of the centre coordinators is still undefined in the electoral legislation, although as opposed to what occurred during the Parliamentary Elections in 2005, the CNE made an effort to clarify their role in television broadcasts on all stations (*cadena*s) as well as displaying informative posters in voting centres.

Legal Framework

The essential electoral legislation is enshrined in the Constitution of 1999, in the Basic Law of Suffrage and Political Participation of 1998, the Public Electoral Statute of 2000, the Basic Law of the Electoral Power of 2002, as well as the ten regulations, procedures and resolutions approved by the CNE specifically for the Presidential Elections in 2006.

The coexistence of the Basic Law of Suffrage and Political Participation with legal texts approved after the constitutional reforms has created some inconsistencies, which the CNE resolves through *ad hoc* regulations for each specific election. Such regulations, govern crucial aspects of the process, such as the accreditation of party agents, the rules regarding electoral propaganda, financing, and the process of establishing polling stations, all of which highlights important flaws in the general electoral laws. Furthermore, for the Presidential Elections in 2006, the approval of regulations was carried out at a very late point in the process. These problems, previously detected by the EU EOM in 2005, would be finally solved if the National Assembly approves a General Electoral Regulation.

The CNE deployed 48 regional (two per state) “election prosecutors” (*fiscales electorales*), 18 national financial advisors, and 12 legal advisors that worked together with the CNE’s Political Participation and Financing Commission to supervise the compliance with rules regarding the election campaign. By the 20th of November, the prosecutors had filed 1,135 complaints, of which only 61 (around 5%) reached the CNE. By this same date, the CNE had only managed to impose final sanctions, by majority decisions, in five cases (less than 0.5% of the total number of complaints). The insignificant number of sanctions reflects the fragile nature of the sanctioning instruments, and possibly, the low priority that the CNE confers to this aspect of the process.

The Electronic Voting System

After the Parliamentary Elections in 2005, the CNE, together with universities and political parties, carried out an audit of the permanent electoral register (*Registro Electoral Permanente* -REP), completed in May 2006. The results of this audit indicated that there were inconsistencies and anomalies, mainly in older data, which were not significant enough to have an impact on the presidential elections. All the stakeholders in the electoral process accepted the REP as a legal and valid instrument for the Presidential Elections of the 3rd of December 2006.

According to the analysed documents and the information provided by those that participated in the audits (the CNE, national observers, political parties, and external auditors), the EU EOM considers that the CNE has managed correctly both the logistical aspects of this electoral process and the audit

plans, and in general all the technical aspects of the electronic voting system. There has been cooperation between the CNE's technical experts, its suppliers, and the political parties' technical experts, and consensus has been reached on the definition, methodology, and testing systems for these audits. Nevertheless, technical cooperation has not always been accompanied by administrative dexterity; the CNE's excessive bureaucracy has occasionally hindered the flow of communications. Similarly, the absence of procedures by which the CNE can reply in a timely and formal manner to questions and comments has been noted, which would lead to a greater transparency in the system.

Quantitative and qualitative improvements have been observed in the electronic voting system, as compared to the Parliamentary Elections in 2005. For example, the percentage of voters who vote electronically has been increased to 99.81%; changes have been introduced in the electronic voting machines' software to prevent the possibility of reconstructing the voting sequence, which was already very unlikely. Similarly, the software of the fingerprint readers has been modified to prevent the risk that data could be sent to the central database in a sequential manner. Furthermore, a different encryption data code has been used in each electronic voting machine. The fact that this electronic voting system has already been used in four nationwide elections in Venezuela, confirms the capacity of the CNE to ensure the technical sustainability and the improvement of the system.

The political parties' technical experts and the observers that participated in the audits have gained a high degree of knowledge regarding the electronic voting system, and have contributed positively to increase the levels of public confidence in the security and transparency of the system. Moreover, this information has not always been shared by the political parties' leadership or with the general public. During the election campaign, various rumours, and technical doubts, were spread regarding the electronic voting system, contradicting the technical experts that participated in the audits.

The polling station officials, selected by public lottery, the operators of the electronic voting machines, and the technical backup experts attended specific training sessions. This training endeavour, undertaken by the CNE, although considerable, did not always prove to be sufficient to resolve particular situations, and at times, the efficiency of the process was further undermined by unclear definitions of some of the procedures.

Physical security, backup and contingency plans, as well as data security measures, encryption, and electronic signatures are defined according to internationally accepted standards. Moreover, the system implements various levels of vote verification, which allow for the identification of possible inconsistencies in the different parts of the process (voting, counting, and aggregation). The tests carried out by the CNE, and the existence of verification instruments allow us to conclude, that although it is impossible to discard the existence of some inadvertent mistakes, this electronic voting system is effective, secure, and auditable.

According to the electoral regulations for the Presidential Elections, the CNE declared the mandatory use of fingerprint readers (*captahuellas*) as a step prior to exercising the right to vote. The EU EOM confirms that the use of the fingerprint readers does not violate the secrecy of the vote, as there is no connection between these devices and the electronic voting machines, and given the impossibility of reconstructing the sequence of the fingerprint register. Having said this, validating and authorising the citizens' right to vote and guaranteeing the principle of one vote per voter are redundant functions of the fingerprint reader system as there are already legally established instruments for these purposes, such as the voters lists and the use of indelible ink (Although in the end the ink proved to be easily delible).

Therefore, although the use of the fingerprint reader is neither a violation of the secrecy of the vote, nor a source of fraud, it is not truly part of the procedure for electronic voting system, as enshrined in the law. In reality, the main function of the fingerprint reader system is to update the electoral register, a function that does not appear to be directly relevant to the exercise of the right to vote. Furthermore, throughout Election Day it was observed that part of the electorate has a negative perception of the system and that at times it slowed down the voting process, generating large queues, possibly due to an insufficient number of fingerprint readers per voting centre.

Media Coverage

The regulations published by the CNE on the 31st of July 2006¹ state that, “The media, both public and private, shall offer comprehensive and well balanced news coverage of all newsworthy items related to the election campaign. To this end, they will observe a rigorous balance regarding the space and hierarchy of information regarding the activities carried out by all candidates, political organizations, and voter groups nationwide”.

Despite these clear indications, the majority of media outlets, both public and private, did not fulfil their obligations with respect to the law, demonstrating a strong bias and broadcasting partisan information, in open support of one or the other of the two main candidates. Moreover, the CNE has not taken sanctioning measures, authorised by law² to redress this situation, even when the CNE Board Member responsible for the media publicly declared that the news coverage on the state-owned television channel, *VTV*, was broadly uneven and in favour of the incumbent candidate, Hugo Chavez. It is worth noting that this conclusion was not formally endorsed by the Chair of the CNE, and has not led to any sanctions.

However, the electoral authorities have initiated an administrative inquiry to establish whether the television channel *Telesur* (which is partly state-owned) infringed electoral regulations in broadcasting the results of a poll on Election Day, prior to the CNE’s public announcement of preliminary results in its first result bulletin on the night of the 3rd of December.

The EU EOM has been monitoring a sample of Venezuelan media outlets³ to determine the extent of their compliance with regulations regarding the election campaign, and to evaluate whether their coverage was comprehensive and well balanced.

The results of the media monitoring clearly reveal the extreme polarisation of the Venezuelan media landscape. The state-owned television channel, *VTV*, awarded 86% of its political information broadcasting (excluding commercials) to the *oficialista* candidate, with a predominantly positive tone. On the other hand, the coalition *Unidad* and its candidate Rosales received only 14% of the airtime, and in a predominantly negative tone. As for, *RCTV* and *Globovisión*, the two main private channels, these presented the opposite situation. On *RCTV*, the coalition *Unidad* received 69% of airtime, in a generally positive tone, whereas the *oficialista* sector totalled 29% of the airtime, of which more than half was negative. On *Globovisión*, Manuel Rosales’ candidature obtained 65% of the coverage, and

¹ Consejo Nacional Electoral, Resolution N 060731-586, *Normas sobre publicidad y propaganda de la campaña electoral para la elección presidencial diciembre 2006*, Article 18.

² *Ibid.*, Chapters V, VI, and VII.

³ Five television channels are being monitored (*VTV*, *Venevisión*, *Televén*, *RCTV* and *Globovisión*); as well as six daily newspapers (*El Universal*, *El Nacional*, *Últimas Noticias*, *Nuevo País*, *Vea* and *El Mundo*).

Hugo Chavez 35%, showing a similarly biased tone. *Televen* and *Venevisión* dedicated less time than other channels to political coverage, and their tone was not very critical, but from a quantitative perspective, both openly favoured *oficialista* positions.

Among the monitored newspapers, *El Universal* devoted more space to political information, whereas *El Mundo* and *El Nuevo País* are those that gave less to these matters. *Últimas Noticias* and, particularly, *Vea* offered a coverage that was favourable to the incumbent candidate, whereas *El Nacional*, *El Universal*, and *El Nuevo País* were characterised by criticising President Hugo Chavez and his coalition. According to the EU EOM media monitoring, the *El Mundo* newspaper is the most balanced in its news reporting.

As a direct result of their partisan nature, the Venezuelan media did not offer voters with a comprehensive and well-balanced coverage of the political programmes and platforms of the different candidates.

The CNE regulations are also very clear on the matter of the “inclusion of any type of propaganda and electoral publicity, in favour or against any political organization or presidential candidate in the news coverage on public works, and in official messages and statements”⁴, is forbidden. The excessive resort to various forms of institutional propaganda (publicity paid by a State institution, for example: a Ministry, a public corporation, or a regional or local authority) favoured the incumbent candidate, representing a generalised use of state resources in the election campaign. To a far lesser extent, the EU EOM also observed the existence of institutional information regarding the State of Zulia, in favour of the governor of this State, and presidential candidate, Manuel Rosales.

On the other hand, the EU EOM takes note of the drastic reduction of presidential statements broadcast on all electronic media (*cadena presidencial*), and the suspension of the *Aló, Presidente* programme during the election campaign, which totally disappeared from the media during the Mission’s presence in the country. This fact represents a significant improvement, as compared to the situation observed in 2005.

Election Day

Voting procedures took place in a peaceful atmosphere, complying with regulations and legal procedures. The EU EOM deployed 154 observers in total, who worked in two-person teams, observing the process in 943 polling stations.

EU EOM observers evaluated the electoral process positively in 85% of visited polling stations. The generalised presence of party agents, both for the incumbent candidate, and for the opposition, contributed to this state of affairs.

As regards voting centre coordinators, the observers’ reports did not highlight any significant problems in the exercise of their functions.

The evaluation of polling station officials, as regards their knowledge of electoral procedures was positive in 76% of the observed polling stations.

⁴ *Ibid.*, Article 20 (4).

In nearly half of the observed polling stations, difficulties were reported in the use of the electronic voting machines by voters, especially older people. This increased the need to assist older voters, which could have led to some concerns in guaranteeing the secrecy of the vote.

The presence of campaign materials and/or activities around voting centres was observed in 30% of the visited polling stations. These activities were reported regarding all parties, especially the *oficialista* parties. In 5% of the observed polling stations, these activities were perceived as intimidating.

Overall, the soldiers and reservists within *Plan República* limited themselves to the exercise of their competences, although in some isolated incidents they interfered in the electoral process, by assuming an excessively active role.

The fingerprint readers contributed to slow down the process, and to long queues, especially in the early hours of the morning. In the majority of visited polling stations closing time was extended although there were no voters queuing to vote, in many cases awaiting further instructions from the CNE.

The audit of closing, the draw to select polling stations, and the counting of voting receipts took place without any significant problems. In all observed polling stations, the correct number of ballot boxes was audited.

In those cases where discrepancies were detected between audited votes and counted votes (in 25% of the observed audit processes), these were in their majority limited to a small number of votes (between one and five).

During Election Day, it was observed that the CNE and its suppliers had set up various backup and monitoring systems, which allowed for an effective coordination in the management of the electronic voting system, including the transmission and aggregation of results.

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