

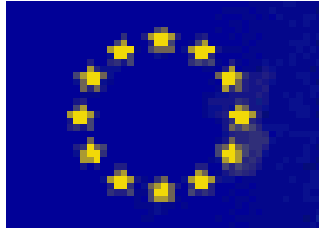


**European Union  
Election Observation Mission  
Venezuela 2005**



**FINAL REPORT**

**CARACAS. March 2006**



**European Union Election Observation Mission**

# **Final Report**

**Parliamentary Elections  
Venezuela 2005**

**[www.eueomvenezuela.org](http://www.eueomvenezuela.org)**

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*This report was produced by the EU Election Observation Mission and presents the EU EOM's findings on the Parliamentary Elections in Venezuela. These views have not been adopted or in any way approved by the Commission and should not be relied upon as a statement of the European Commission. The European Commission does not guarantee the accuracy of the data included in this report, nor does it accept responsibility for any use made thereof.*

## Section I

### Chapter 1

In response to an invitation from the *Consejo Nacional Electoral* (CNE), and in a spirit of partnership and co-operation, after the signing of an MoU, the EU deployed an Election Observation Mission (EU EOM) consisting of over 160 observers. The EU EOM focused its observation activities on the National Assembly Elections. The following are the main findings of the mission:

Venezuelan legislation clearly provides for democratic elections. However, the legal framework is confused with inconsistencies between the new provisions introduced by the 1999 Constitution and pre-existing electoral legislation.

The CNE is an institution with considerable human and technical resources. It technically administered the process well, and its logistical preparations for the electoral event were acceptable. However, its performance was overshadowed by accusations by the opposition of bias and partisanship.

The overriding feature of the pre-election period was an absence of confidence on the part of wide sectors of the society in the electoral process and in the independence of the CNE. In particular, opposition parties questioned the manner in which members of the current provisional CNE Steering Board had been appointed to their positions.

The electoral campaign was very limited, the debate on political party platforms was almost absent and was characterized by an excessive attention of the media on the issue of mistrust in the CNE.

The party duplication technique known as *Las Morochas*, although technically allowed by the law, is in contradiction with the spirit of the proportionality principle as guaranteed by the Constitution.

The pro-abstention campaign conducted by various sections of the opposition had a significant impact on public opinion. The circulation of a computerized list of citizens indicating their political preference in the signature recollection process for the 2004 Referendum (so-called *Programa Maisanta*) also played into the hands of the abstention movement by enhancing fears that the secrecy and freedom of the vote was at risk.

In the election preparations, the CNE demonstrated a clear willingness to meet the demands of the opposition in order to increase confidence in 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 eliminated the use of the electronic voter lists.

The principle of automated voting is clearly enshrined in the legal framework. However, the current development and applications of the automated voting process have surpassed the law in various aspects.

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 with the elimination of the fingerprint capturing devices. For this reason, the EU EOM took note with surprise of the withdrawal of the majority of the opposition parties only four days before the elections. The withdrawal took place after those parties had previously announced

their participation to the process if the CNE would eliminate the use of the fingerprint capturing devices.

The *Registro Electoral Permanente* (REP) was the source of continuous debate and concerns over alleged illegitimate entries. The CNE decision of not disclosing the addresses of the citizens registered to vote on data protection grounds did not contribute to resolve the issue. The recurrence and the nature of the allegations against the REP highlighted the need for a reform of the civil and voter registration system.

Most of the media monitored showed some kind of bias towards either of the two main party coalitions. The media reflected and fed into the polarisation of the country.

The political information present in the monitored outlets was ideologically diverse, but usually contained a highly emotional charge which is incompatible with the journalistic principles of impartiality and balance.

The use of images featuring public officials for campaign purposes was widespread. The excessive resort to the use of *cadenas* during the campaign period was also inappropriate and did not contribute to the improvement of the political climate. The CNE efforts to limit the use of this mechanism during the campaign were opportune and must be further encouraged.

Election Day in itself passed peacefully with a low turnout. Prior to the polls, isolated incidents attributed by the Government to the abstention movement, disturbed an overall calm environment. Although the CNE's logistical preparations were satisfactory, the observers noted a number of irregularities, such as intervention of officials to assist voters, breaches of polling procedures and election campaign activities outside the polling stations.

A large number of voters also had problems in understanding the functioning of the voting machines, often causing queues outside the polling centres. The assistance provided by polling station staff to voters raised concerns about the possible violation of the secrecy of the vote.

The manual audit of the voting receipts that followed the transmission of the results revealed a high reliability of the voting machines.

The transmission and aggregation of the results was fast and accurate. The activities that could be observed at the data processing centre in Caracas were secure and efficient, although the layout of the processing centre was not the most adequate for the observation and visualization of the process.

The Parliamentary Elections did not contribute to the reduction of the fracture in the Venezuelan society. In this sense, they represented a lost opportunity. In order to recompose this fracture, a more constructive and mature effort is required by all political forces.

Specific recommendations are detailed in Chapter 13 of this report.

## Chapter 2

### Introduction, Background to the Mission and Acknowledgments

Following an invitation from 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 EU EOM focused its activities on the observation of the National Assembly Elections.

The Mission was led by **Chief Observer Mr. José Albino Silva Peneda**, Member of the European Parliament. In addition to the 10 expert-strong core team, 40 Long Term Observers, including two representatives from Switzerland, arrived in Venezuela on 11 November to observe and report on the pre-election environment, the electoral campaign, the voting and counting activities and the results aggregation process. They remained in Venezuela until 10 December 2005. 102 Short Term Observers joined the EU EOM between 29 November and 8 December to observe the last electoral preparations, the polling activities and the manual audit of the results. A Delegation of the European Parliament, led by Mr. Arunas Degutis, and including six members of the European Parliament, joined in the EU EOM on 1 December and remained in Venezuela until 6 December. In total, the EU EOM deployed 162 observers in 20 of the 24 states. The EU EOM decided not to deploy observers in the states where of Amazonas, Apure, Cojedes and Delta Amacuro due to considerations based on the number of Long Term Observers available and the relatively low population percentage of the mentioned four states.

All observers were bound by the respect of the EU Code of Conduct for Observers and operated 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.

The composition of the EU EOM Core Team was the following:

Domenico Tuccinardi (ITA) – Deputy Chief Observer  
Pedro Lacunza (SPA) – Election/Legal Expert  
Xabier Meilan (SPA) – Media Expert  
Charlemagne Gomez (UK) – Observers' Coordinator  
Cathy Giorgetti (LUX) – Press Officer  
Martim Freire (POR) – Operations Expert  
Frans Jennes (BEL) – Security Expert  
Simon Hearn (UK) – Electronic Voting Expert  
Robert Krimmer (AUS) – Electronic Voting Expert  
Peter Wolf (AUS) – Electronic Voting Expert

The EU EOM was established on 7 November 2005. It released an introductory press statement on 18 November, as well as a Preliminary Statement on its findings on 6 December 2005. All EU EOM documents and more information on the mission, methodology and activities are available under the following website: [www.eueomvenezuela.org](http://www.eueomvenezuela.org)

The EU EOM remained in Venezuela until 21 December 2005 to observe the post-election period, including electoral complaints. This Final Report follows and integrates the preliminary findings contained in the Preliminary Statement. 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

## Section II

### Chapter 3

#### Political Overview

##### 3.1 Background

The political life of Venezuela has been characterized by a degree of polarization which has progressively escalated in the past decade, reaching extreme peaks in the period that preceded the 2004 Presidential Recall Referendum. The escalation of this polarization is not difficult to understand in the context of the political developments that characterized the past twenty-five years of Venezuelan history, with long spells of poor governance and failures by various governments to deal adequately with the country's social divisions. The current wave of polarization has its roots in the events that followed the victory of President Hugo Rafael Chavez Frias in the Presidential Elections of 1998 and the Constitutional Referendum of 1999 that inaugurated the so called 5<sup>th</sup> Republic and a deep transformation of the structure of the Venezuelan State. The new constitutional set up introduced by President Chavez was meant to begin a new era of participation in the political and democratic life of Venezuela by all sectors of the population. However, those sectors of the Venezuelan society that opposed the new model decided not to channel their discontent in a democratic and participatory manner. This climate of complete division and mutual distrust culminated, in a timeframe of slightly more than two years, in the attempted *Coup d'Etat* of April 2002 and in the Presidential Recall Referendum of 15 August 2004, two events that deeply marked the recent political history of the country.

The attempted overthrow of President Chavez represented the most dramatic point of tension from an institutional point of view. The major opposition parties were reported to be in support of the coup, seeming to accept the resort to such an anti-democratic means in order to regain a position of prominence. The attempted coup was defeated, but the overall tension in the country did not substantially decrease. However, the events that led to the Presidential Recall Referendum<sup>1</sup>, marked a new effort by the mainstream opposition to use democratic means to achieve their political objectives.

The referendum process was extremely long and controversial in all its stages but characterized by a significant popular participation. According to many analysts and observers present in that period, the Referendum widened, rather than diminished the fracture in the Venezuelan society. The National Electoral Council (hereinafter referred to as the CNE) was perceived by many in the opposition to bow to Government pressure to avoid such a referendum from taking place. In particular, certain events that preceded the official announcement of the referendum, like the signature collection process, the subsequent verification of signatures and the so called "repair process" were criticised by the opposition forces as having been marked by a number of CNE decisions that were aimed at an obstruction of the efforts to achieve the needed quorum of signatures within the constitutionally prescribed timeline. Once the Referendum was finally called, criticism from the opposition vis-à-vis the CNE did not cease. The international observers present, the Carter Centre and the Organization of American States (OAS), reported as well a lack of transparency in several CNE decisions. Nevertheless, the Referendum Day was characterized by a very high popular participation on both sides, with a turnout that had no equals in the recent electoral history of the country. The final results, by which almost 60% of the voters ratified President Chavez's mandate against an approximately 40% of voters in favour of his removal, were considered by the Carter Center and the OAS as "a clear expression of the will of the Venezuelan people", but were never fully accepted by some of the major opposition parties.

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<sup>1</sup> The recall referendum is an instrument to remove public officials from their elected positions. It is a rather uncommon provision introduced by the 1999 Constitution upon specific request of President Chavez himself.



### 3.2 The Post-Referendum period

After the Referendum, there have been two other electoral events before the Parliamentary Elections of 4 December 2005: the Gubernatorial Elections of 31 October 2004 and the Parish and Municipal Elections of 7 August 2005. In these events, it became evident that there were sectors of the opposition that still rejected the referendum results and continued to accuse the CNE of not being an independent and neutral institution. This position progressively evolved for some of the opposition parties into one of no participation to the elections. This position of no participation might as well have hidden the internal difficulties of the opposition, after the defeat in the Referendum, in elaborating a new common strategy that could gather enough popular support to challenge President Chavez.

The voter turnout, which was of 70% in the Referendum, decreased to 50% in the Gubernatorial Elections and dropped further down to 31% in the Municipal Elections. Both these elections marked more defeats for the opposition parties that seemed to have dispersed the support of those electors that voted in favour of the President's removal in the Referendum. In general terms, it would appear that the hopes that the Referendum could help the country overcome the extreme polarization and set fully in motion the mechanism of democratic competition and participation between the various factions did not materialize.

This situation of general stalemate and of distrust in the electoral authority by the opposition was aggravated by the practice of publicly disclosing a list of citizens (the so called *Lista Tascon*, from the name of the National Assembly Delegate that compiled and published it) with more than 3,4 million names and personal details of the citizens that originally signed for the Referendum. This list was compiled without violating any referendum rules, as the signature collection process was a public act with a consequent obligation to leave it open for scrutiny. Nevertheless, the CNE resolution governing the process did not pay due attention to the principle of the confidentiality of the data collected after the conclusion of the referendum process.

The post-referendum practice of consolidating the citizens' data and behaviour for the signature process resulted over time in a clear misuse of the collected information, intrusive of the civil and political rights of the citizens. This misuse was reportedly generalized and led to threats and various forms of pressure over the citizens (exclusion from public competitions, firing of personnel from public and private undertakings for being of an opposite political belief). Later on, the *Lista Tascon* was further used to develop a larger database (the so called *Programa Maisanta* from the name of the group that led the presidential referendum campaign against his recall). In one of the versions made available to the EU EOM, this program contained more than 12 million names with the personal details of Venezuelan citizens with the indication of their political preference during the signature recollection period.

### 3.3 Overview of Main Political Parties

The high polarization that characterizes the Venezuelan political landscape leads often to divide the political forces active in the country into two main blocs. However, while the pro-Government bloc, generally referred to as *Oficialismo*, has all the features of a functioning coalition, the opposition bloc is instead highly fragmented, often around individual leaders, and is united only in so far as it opposes the political program of the ruling coalition. In addition to the political parties, there are a limited number of non-governmental and civic associations, some of which are very influential and extremely well connected to the media, that play an important role in creating political opinions in opposition to the government and in some cases may even influence the strategies of a number of opposition parties.

The most important parties of the ruling coalition, running for the Parliamentary Elections under the acronym UVE (*Unidad de Vencedores Electorales*) are *Movimiento Quinta República* (MVR), *Patria Para Todos* (PPT), *Podemos* and *Partido Comunista de Venezuela* (PCV). In some constituencies however, and especially due to the parties duplication strategy known as *Las Morochas* (See Chapter 4), the political entities that are part of the ruling coalition may be

diverse. The only political message that the ruling coalition used for the Parliamentary Elections was simple and ideological in nature, highlighting the success of the social program of the Government and requesting the electorate to approve the political project of the President, turning the poll in a sort of second referendum on whether or not President Chavez was to remain in power.

Behind the denomination of *Oposición* there are in fact various forces that have failed to find a unitary platform that could appeal and aggregate the diverse "anti-chavista" electorate. In a simplification attempt, the opposition could be divided in two main groups of declared participation, plus one, important, pro-absenteeism sector. The participation to the polls was defended by the *Coalición Unidad*, whose most prominent representatives are *Acción Democrática* (AD), *Comité de Organización Política Electoral Independiente* (COPEI), *Movimiento al Socialismo* (MAS) and *Primero Justicia*. This grouping was faced with an arduous challenge, as it had to confront, on the one hand, a very solid and powerful ruling coalition, and on the other hand, the more radical opposition that accuses it of playing in the hands of the *Oficialismo* by participating to an electoral event which has an already clear outcome and run by a perceived biased CNE.

There second group of political parties that had originally declared their participation to the polls is composed of some small/medium-sized forces as *La Causa R*, *Proyecto Venezuela*, *Nuevo Tiempo* and a number of smaller entities, some of them of regional dimensions and various political origin, often grouped just around a strong leader, that positioned themselves as an alternative to both the current political establishment and also the main opposition group. In fact they often refer to the main opposition block as *Oposición Oficialista*, to signify their political distance from that political grouping.

The third opposition group is positioned outside the political parties' spectrum and it is organized around various non-governmental and civil associations. Their central standpoint is that there are no conditions to hold democratic elections in Venezuela and therefore it is preferable to stay out of the electoral contest to avoid legitimizing a regime whose alleged agenda is to eradicate all democratic guarantees. The most vocal forces behind this position are organizations like *Súmate*, *Verdad Venezuela*, *Alianza Popular*, *Gente del Petroleo*, *Alianza Bravo Pueblo*. It is interesting to note while all these organizations' activities during the pre-electoral period were clearly aimed at encouraging absenteeism, their public position on the theme varies considerably. In general, they base their standpoint on the controversial appointment of the CNE, considered absolutely partial and non-compliant with several legal provisions, the inflated and irregular figures of the voter register, the anti-constitutional use of *Las Morochas* and the endangerment of the secrecy of the vote. The campaign of absenteeism that some of these organizations have put in place is rather sophisticated, and it is based on the assumption that the secrecy of the vote is in great danger. This last assumption links the diffusion of the so called *Lista Tascon* and *Programa Maisanta*, with the possible abuse of the fingerprints information that CNE had allegedly planned.

Among these groups, noteworthy is the political activism of the organization *Súmate*, that emerged since the Referendum process as sort of grey eminence of the pro-referendum movement and consolidated after that into a sort of political think-tank of reference for the entire opposition.

## Chapter 4

### The Legal Framework

#### 4.1. Political and Administrative Structure of Venezuela

The Republic of Venezuela underwent significant institutional changes with the Constitution that entered into force in 1999. The current Constitution of Venezuela defines the country, now called *República Bolivariana de Venezuela*, as a Federal State composed by 24 states or regions. The next layer of the political-administrative structure is composed of the municipalities, whose total number is 335. The municipalities are in turn divided in parishes (*parroquias*), a form of territorial divisions that reflects a religious origin.

The President, elected through a direct election, is the Head of the State and Head of the executive power. The President is elected for a six-year term with the option of being re-elected for a second mandate only. The next Presidential Elections are to be held in December 2006.

The legislative power resides with the National Assembly (*Asamblea Nacional*, hereinafter referred to as AN). The AN is a unicameral institution elected for a five-year term. According to Art 186 of the Constitution, each of the 24 states elects a fixed number of three deputies, plus a number of deputies resulting from the division of the total state population by a given quotient<sup>2</sup>. This quotient is obtained by dividing the total national population by 1,1%. In addition, there are three set-aside seats for indigenous representatives (See Chapter 9).

The judiciary is headed by a High Court (*Tribunal Supremo de Justicia*, hereinafter referred as TSJ), which is the highest instance and governing body of the judicial system in Venezuela. It is organized in Boards (*Salas*); the Plenary Board (32 members), the Constitutional Board (7 members), the Electoral Board (5 members), the Political-Administrative Board (5 members) and a Social, Civil and Penal Cassation Board (5 members each).

In addition to the three classic powers of the State, the Venezuelan Constitution envisages two new public powers, the electoral power and the citizens' power as state powers. The citizens' power is composed by three institutions in the Republican Moral Council: the Ombudsman, the Attorney General and National Audit Office. The electoral power is vested in the electoral authority, the National Electoral Council (*Consejo Nacional Electoral*, hereinafter referred as CNE see Chapter V).

#### 4.2 Relevant Electoral Legislation<sup>3</sup>

Despite contradictory provisions between the pre-Constitution and the post-Constitution pieces of legislation applied, the legal framework provides for democratic elections. It is composed of the Constitution (*Constitución de la República Bolivariana de Venezuela*, or CRBV, 1999), the Electoral Statute of Public Power (*Estatuto Electoral del Poder Público*, hereinafter referred as EEPP, of 2000), the Basic Law of the Electoral Power (*Ley Orgánica del Poder Electoral*, hereinafter referred as LOPE, of 2002), the Basic Law of Suffrage and Political Participation (*Ley Orgánica del Sufragio y Participación Política*, hereinafter referred as LOSPP of 1998) and the numerous CNE resolutions governing specific aspects of determined electoral processes, such as the registration of candidates, audit procedures, polling counting, tallying, adjudication, proclamation, international observation and a long list of issues. According to the LOPE, all

<sup>2</sup> The estimated population at the date of 31 December 2005 from the Instituto Nacional Estadística was 26.804.180 and the quotient was 294.846. See details on: [www.cne.gov.ve/elecciones/diputados2005/documentos/Cuadro\\_General\\_Asamblea\\_Nacional\\_2005\\_](http://www.cne.gov.ve/elecciones/diputados2005/documentos/Cuadro_General_Asamblea_Nacional_2005_)

<sup>3</sup> See also Annex I on applicable Legislation.

these aspects of the process should have been regulated in details in the General Electoral Regulations (*Reglamento General Electoral*) which was never approved by CNE. Last, the Law on Political Parties (*Ley de Partidos Políticos, Reuniones Públicas, y Manifestaciones*) of the year 1965 rules on the registration and de-registration of political parties.

The 1999 Constitution, entered into force after a referendum, introduced a number of significant changes in the electoral system (unicameral parliament, replacement of the obligation to vote with the right to vote, the vote for Armed Forces personnel, establishment of the electoral body as the fifth power of the state, the instrument of recall referendum, special representation for indigenous people in the AN) that have not yet been fully regulated by the subsequent lower legislation. The main piece of electoral legislation, the LOSPP, being chronologically anterior to the Constitution, could not contain any provisions on any of these aspects.

The Constituent Assembly that prepared the new Constitution, after the referendum approval of the new *Magna Carta*, passed as well other important pieces of legislation in order to fill the legal gaps and regulate temporarily some of the most evident inconsistencies opened in the lower legal framework by the new constitutional set-up. The EEPP was passed with this purpose. In the view of the Constituent Assembly, it should have served only to govern the first General Elections after the approval of the new constitution, those of 2000, known also as *Mega Elecciones*<sup>4</sup>. Due to the fact that the AN did neither pass a new electoral law nor amend the old LOSPP, the EEPP remained essential in order to govern the following elections, including the 2005 Parliamentary Elections.

The Basic Law of Suffrage and Political Participation, or LOSPP, is still in fact the most comprehensive piece of electoral legislation despite dating back to 1998. Having entered into force before the adoption of the new Constitution, its provisions are not always in harmony with the latter. In strict juridical terms, the LOSPP should remain applicable only as subsidiary legislation when not in contradiction with the Constitution. However, the fact that very important principles governing the current electoral process are only set out in the LOSPP and in no other law (e.g. the principles of the progressive automation of the voting process and the guiding principles of the software design for the automated voting), makes it still very relevant and applicable in many aspects. This is often a cause for confusion, overlaps and discrepancies on what instrument between the EEPP and the LOSPP should be applicable. The EU EOM noted that the validity of the EEPP and its controversial hierarchical priority on the LOSPP was challenged before the TSJ several times, but the TSJ always upheld it. The TSJ, in ruling in favor of the priority of the EEPP over the LOSPP applied a twofold argumentation. The first is that the EEPP, as being passed by the Constituent Assembly, belongs to the so-called "Constitutional Block" of legislation and it was therefore to be deemed higher in hierarchical terms than the LOSPP; the second is that given the fact that the legal transition to the "fifth republic" envisaged in the 1999 Constitution had not been completed, pre-constitutional laws could be applied only when not in contradiction with the new constitutional principles, including those contained in the "Constitutional Block" legislation<sup>5</sup>.

In order to solve the issue, the CNE often used its broad regulatory powers to enact regulations that could overcome eventual discrepancies in higher legislation, as envisaged by Article 293 of the Constitution. However, in doing so the CNE often approved regulations that were perceived by the opposition forces as an abuse of powers as completely bypassing the LOSPP or as innovating in other aspects of the process neither foreseen in the LOSPP nor in the Constitution. The best way to resolve the intricacies of this situation could be for the AN to adopt a new Basic Law on Elections that delineates clearly on all the key aspects of the electoral process in compliance with the Constitution, as well as international standards and best practices.

<sup>4</sup> The 2000 Elections were so defined because they concerned all institutional levels of the new Bolivarian Republic of Venezuela that were supposed to be elected through a single electoral event.

<sup>5</sup> There are several sentences on the EEPP validity after the 2000 elections. For a compendium of the legal arguments used to uphold it see: [www.tsj.gov.ve/decisiones/scon/Noviembre/2816-181102-02-1662.htm](http://www.tsj.gov.ve/decisiones/scon/Noviembre/2816-181102-02-1662.htm)

The Basic Law on Electoral Power, or LOPE, regulates the main aspects related with the electoral power, its institution and the election administration. However, important aspects of the election administration like the selection process of the so called electoral services are absent, whilst the nomination of the election staff at regional, municipal and polling station level are still regulated in the LOSPP and through CNE resolutions.

The Law on Political Parties is the oldest piece of legislation that is in force in the country (1965), and regulates only marginal aspects of the process. It gained sudden relevance for the Parliamentary Elections after the withdrawals from the electoral race of the main opposition parties because it regulates the conditions for political party registration and de-registration.

#### **4.3 System of Representation**

The electoral system in force in Venezuela is described in Article 12 of the LOSPP as one of "personalized representation". Article 63. of the 1999 Constitution states the law must guarantee two principles, "*la personalización del sufragio y la representación proporcional*", the direct election of candidates and the proportionality. The upholding of these two principles at the same time configures in practice a mixed system, in particular a mixed member proportional system.

Chapter II of the LOSPP clarifies indeed how the two above mentioned principles of proportionality and personal representation are guaranteed in the same electoral system. By "*personalización del sufragio*" it is meant that around half of the delegates to the AN must be elected through plurality/majority elections in single or multi-member constituencies, with the candidates scoring the highest number of valid votes winning the seat (First Past The Post). The proportionality principle is instead guaranteed by electing the second half of the AN deputies through blocked and closed party lists. The consequence of this is that there are in practice two electoral systems using different formulae running alongside each other. The voters have to cast two votes in two different ballot papers, contributing to the elections of the AN delegates under both system.

The EEPP regulates further the procedural aspects of the Venezuelan application of the mixed member proportional system and other important features of it like the electoral formula and the definition of the constituencies setting up rules that are essential for any electoral system. In Article, 15 it is established that "the 60% of representatives will be elected in nominal (single or multi member) constituencies, following the personalization principle, while 40% will be elected by list, following the proportional representation". The seats allocation process of the AN delegates to be elected proportionally is done by using the D'Hondt formula. The total number of valid votes obtained by each party list in a constituency is divided by 1, 2, 3, 4 up to the total number of seats to be distributed. The seats available in each given constituency are assigned to the highest quotients resulting from this division. To this allocation, corresponding to an "ideal" proportional distribution of the seats, must however be applied a subtraction of the seats obtained by each party through the plurality/majority system in the single and multi-member constituencies that assign the remaining 60% of seats.

#### **4.4. The phenomenon of *Las Morochas***

The subtraction operation described in the previous paragraph is the method used by the law (both LOSPP and EEPP) to guarantee the personalized representation and ensure that the combination of the two electoral systems ensures a certain overall proportionality between the overall results and the seats allocation. However, most of the political parties, in order to avoid the subtraction of the seats won in the plurality-majority races from the ones assigned proportionally, created "ad hoc" political parties that are only formally different from the "mother" parties that originated them, with the sole objective of avoiding the mentioned subtraction of seats to the main parties' proportional lists. This phenomenon is known in Venezuela as *Las Morochas*, which literally means "duplication".

The technique of duplicating the party lists to avoid the subtraction of seats elected through the plurality majority lists is a known side effect in other countries that used similar mixed electoral systems without specific threshold provisions (eg. Italy, Albania). Despite the fact that this technique is no novelty for Venezuela as it was used in previous elections, its political implication in the current political context triggered a heated controversy. The application of *Las Morochas* benefits in fact the large parties and promotes the formation of coalitions among medium and small-sized parties. In other words, this electoral strategy in order to be successful requires the establishment of very well organized and efficient electoral machineries. Small and fragmented political parties running on their own have basically no chances in a system that allows the utilization of the technique known as *Las Morochas*.

For the Parliamentary Elections, before the withdrawal of the major opposition parties, this technique was anticipated to be used by both coalition blocks in various constituencies as it is bound to favor those parties which are expected to be the majority in a given constituency. The constitutionality of this technique was then challenged before the TSJ by *Acción Democrática*, one the leading opposition parties, which was at the same time using it in the constituencies where it was expecting good results. On October 27<sup>th</sup> the TSJ ruled in favor of the upholding of the system in a controversial ruling, whose sentence has not been published to date in its full text, in spite of the five day deadline with which the sentence was supposed to be issued<sup>6</sup>.

By definition, a mixed system, while it attempts to combine the best characteristics of the proportional system and of the plurality-majority one, does not and cannot by itself guarantee full proportionality. In the specific case of the extensive use of the party duplication technique known as *Las Morochas*, its application certainly defeats the proportionality principle as enshrined in the Constitution, but it is technically allowed by the Venezuelan application of mixed member proportional system as described in Chapter II of the LOSPP and in Art 15 of the EEPP. If it is the principle of proportionality that should be given priority as advocated by some part of the opposition, then the mixed member proportional system is to be reconsidered, not just a consequence of it such as *Las Morochas*. Alternatively, if a mixed system should be maintained, alternative solutions can be explored, but the consequence could be of an even lower overall degree of proportionality. Other countries using mixed systems include the utilization of thresholds and other methods to eliminate unwanted side effects like *Las Morochas*.

The agreement on the electoral system is one of the most important features of a democracy, and a broad political consensus is needed in a community to reform it. The decision on the electoral system and its specific details is certainly one of the issues that requires a profound national debate and widespread endorsement. It would be advisable to open such debate in the widest possible manner to those political forces currently not represented in the AN, at the same time as the same AN embarks on its reform.

#### **4.5 Constituency boundaries**

Another important issue related to the electoral system is the definition of the electoral boundaries. According to the Constitution and the other electoral laws, the CNE is the responsible body to define the boundaries of the electoral constituencies for all the various levels of elections. Article 16 of the EEPP is very detailed in this regard. In particular, the principle of the indivisibility of the municipal or parish boundaries is stated. The Venezuelan electoral system, being a mixed one, includes two types of constituencies. In the proportional part the states are the constituencies, and are therefore 24. In the plurality-majority part there is a total number of 81 constituencies, to be revised annually on the base of a population index<sup>7</sup>. There were several allegations of gerrymandering raised by the opposition, mostly related to movements of people that are frequent before local elections. However, the EU EOM

<sup>6</sup> Press Note of the TSJ on [www.tsj.gov.ve/informacion/notasprensa/notasdeprensa.asp?codigo=2491](http://www.tsj.gov.ve/informacion/notasprensa/notasdeprensa.asp?codigo=2491)

<sup>7</sup> The index is calculated by dividing the population of a state by the number of nominal deputies to be elected in it. Once the quotient is calculated the CNE revises the constituencies boundaries following the criteria settled in the EEPP, such as contiguity and non division of municipalities or parishes.

was not presented with any compelling evidence to substantiate such a claim for the Parliamentary Elections. The legal provision of the LOSPP that requires the determination of the population estimates that will be used for the calculation of the quotient, does not equally determine a time for the delimitation of the constituency boundaries.

## Chapter 5

### The Election Administration

#### 5.1 The Electoral Authority as a Constitutional Power

The electoral management body of Venezuela has the unique characteristic of having a rank equal to the other state powers. This principle, introduced by the 1999 Constitution, represents an unusual evolution of the clear affirmation in Latin America of independent electoral commissions as the most efficient and common system of election administration. The 1999 Constitution clearly defines in its Article 136, the electoral power as the fifth power of the State. It furthermore states in its Chapter V that the electoral power is vested in the *Consejo Nacional Electoral* (CNE) and outlines the main prerogatives of the institution, which are further detailed in the LOPE.

Article 294 of the Constitution describes the fundamental principles governing the electoral institutions as independence, functional and budgetary autonomy, de-politicization, impartiality and citizenship participation, decentralization, transparency and efficiency of polling and counting. These guiding principles correspond in practice to a very wide array of functions: among the principal ones, apart from the organization and conduct of the elections, worth being mentioned are the allocation of seats and mandates to elected officials, regulatory and adjudication powers on disputes arising on the election laws, resolution and interpretation powers on doubts and unclear legal provisions related to elections, management and verification of political parties' and candidates registration, voter and civic education, emanation of regulations on political party financing and campaigning, maintenance, supervision and updating of the civil and voter register, budget formulation and budget administration.

#### 5.2 The CNE Structure

The CNE is a very large and well-funded institution, with a rather centralized structure for a federal state like Venezuela. The Steering Board (*Directorio*) of the CNE is composed of five rectors appointed by the National Assembly. Immediately below the Steering Board, there are three main commissions, chaired each by a Steering Board member: the National Electoral Junta (*Junta Nacional Electoral*), the Civil and Electoral Register Commission (*Comisión de Registro Civil y Electoral*) and Political Participation and Financing Commission (*Comisión de Participación Política y Financiamiento*), each of them composed by a number of divisions run by directors designated by the Steering Board. At the State level, there are 24 regional offices that have a permanent structure and are managed by a director that answers directly to the Steering Board on all the functions carried out by the three national commissions.

The National Electoral Junta is the central executive and implementing body of the CNE for electoral activities. It is headed directly by the Steering Board member. The National Electoral Junta manages, implements and supervises every election-related operations. Under its direction are the Regional Electoral Juntas, the Municipal Electoral Juntas and the Polling Stations Committees. The electoral staff working for the Regional and Municipal Juntas are non permanent but they are selected for electoral events at least two months in advance. The positions are generally filled with civil servants coming from other sectors of the local administration, in accordance with the Electoral Service, (*Servicio Electoral*) a mandatory scheme foreseen in the LOPE to ensure appropriate and qualified human resources on electoral periods to the different levels of the electoral administration. The LOPE however, does not indicate clearly the selection criteria to fill all these positions, and LOSPP provisions are therefore applied by default to fill this gap. Members of the juntas at the various levels are to be chosen by a lottery among a list of graduates provided by the education authorities at the regional level and by professional bodies and scrutinized by the Regional Offices of the CNE. Polling station officials are in fact selected according to two "ad hoc" CNE Resolutions, 050223-075 of 23 February 2005 and 051014-1185 of 11 November 2005. They should be selected



among the Education institutions, including both professors and students. The legal framework does not make any reference to the questioned role of the Polling Center Coordinator (*Coordinador de Centro de Votación*), a liaison position placed in between the municipal juntas and the polling station committees to facilitate the logistics, whose terms of reference are unclear and which has often originated controversy for the tendency to assume an overall decision-making role within the polling center.

The Civil and Electoral Register Commission is the body in charge of the centralization of all the information pertaining to the Civil Register. At the same time, it sets up, maintains, oversees and updates the Civil and Electoral Register.

The Political Participation and Financing Commission is the body in charge of promoting civic participation on public affairs, setting up, verify and update of political parties' registration, and guarantee the respect of democratic participation principles. In addition, it controls, rules and makes enquiries about financing and political campaign expenditures. The commission is composed by the National Office of Political Participation (*Oficina Nacional de Participación Política*) and the National Office of Financing (*Oficina Nacional de Financiamiento*).

The CNE is an organization with considerable human and technical resources in permanent activity. In addition to the organization of all the national and local elections it is as well mandated for organizing various trade unions and professional bodies' elections. The activity by which the CNE regulates its yearly activities and triggers all electoral operations is the approval of the electoral chronogram, which is the overall calendar in which all key activities of the particular elections to be held on the year are scheduled. The chronogram usually details the deadlines for the following activities: drawing and revision of electoral constituencies, registration of candidates, nomination of Juntas, training at all levels of election administration, electoral campaign dates, logistics and deployment plans, complaints periods, voters' register cut-off, revision and final display, selection and production of ballot papers, assemblage of voting machines, audit activities, voter education programs, selection of polling centers' personnel, enactment of various rules and regulations. Overall, the CNE has around 3.000 permanent officers. This figure increases remarkably during the elections period. For the Parliamentary Elections, only for the IT needs related to the automated voting system the CNE hired 15.000 individuals as voting machines operators, technical support staff and data operators for the results aggregation (*totalización*) activities.

### 5.3 The CNE Steering Board

The events that accompanied the nomination process of the current CNE Steering Board were extremely contentious, and one of the main political arguments used by most of the opposition forces in the electoral campaign to de-legitimize the process. The current Steering Board is in fact still a provisional one: the recent announcement from the AN that a new CNE will be appointed soon is an important step forward in the consolidation of the electoral institution and it is hoped that all political forces, including those not currently represented in the AN, could fully participate in the selection of a Steering Board that meets the highest standard of professionalism and independence, as foreseen in the legislation.

The requirements needed for CNE Steering Board candidates are described in Article 296 of the Constitution<sup>8</sup> and the appointment process is regulated in detail by the LOPE (Article 17 to Art 30). The Steering Board is nominated by two thirds of the AN upon the presentation of a shortlist of candidates ranked by the Electoral Selection Committee (*Comité de Postulaciones Electorales*) on the basis of their professional and academic experience. This Committee is composed by 11 AN members and 10 other members proposed by various sectors of the

<sup>8</sup> Article 296 of the Constitution highlights the independence and ability to represent various strata of the society requested from the Steering Board members: "*El Consejo Nacional Electoral estará integrado por cinco personas no vinculadas a organizaciones con fines políticos; tres de ellos o ellas serán postulados o postuladas por la sociedad civil, uno o una por las facultades de ciencias jurídicas y políticas de las universidades nacionales, y uno o una por el Poder Ciudadano.*"

society. These 10 members are previously selected by two thirds of the AN upon the reception, pre-selection and submission of candidatures by a Preliminary Committee which is composed by the 11 members of the National Assembly that will then become automatically members of the Electoral Selection Committee, once the AN appoints the 10 representatives of the civil society as members of the Electoral Selection Committee.

After the AN enactment of the LOPE in September 2002, the first Steering Board of the CNE had to be appointed with urgency in order to administer the Presidential Recall Referendum process. The AN however, failed to reach an agreement on five names that could muster the required majority of two thirds of the Assembly<sup>9</sup>. It would appear that the parties represented in the AN had reached an informal agreement on four of the five names to be appointed, but there was no agreement on the fifth name and on the President. Nevertheless, and given the blockage in the AN, in a decision dated 25 August 2003, the Constitutional Board of the TSJ<sup>10</sup>, availing itself of the prerogative laid out in Article 336 of the Constitution and following its previous decision on the case<sup>11</sup> appointed the five members of the CNE Steering Board. The TSJ decision, in addition of the appointment of the five Steering Board members, nominated and assigned the chairpersonship for each of the three commissions of the CNE and appointed the president.

Later on, after the conclusion of the Presidential Recall Referendum Process, the CNE Steering Board President, was appointed as a TSJ magistrate, and another member of the Steering Board resigned from his position. The TSJ, in a decision dated 20 January 2005<sup>12</sup>, had to intervene again to fill the gaps. In this decision, the TSJ appointed as first new member one of the candidates already selected as deputy in its previous decision and as second new member did not appoint the previously selected deputy, but instead a person that was not even included in the Selection Committee shortlist.

The TSJ undoubtedly ensured with its first decision-making the unfolding of the electoral process in line with its constitutionally guaranteed prerogative to fill a legislative omission. However, the controversial nature of its second decision did not contribute to the resolution of the debate on the alleged lack of neutrality of the institution, and on the contrary turned the electoral institution itself into a central element of the political controversy<sup>13</sup>. The opposition parties perceived and repeatedly questioned the legality of the CNE Steering Board appointment as one of the central arguments of the electoral campaign. In addition, the perceived alignment of four Steering Board members on pro-government positions added a permanent element of mistrust for the doubtful sectors of the opposition and provided the more radical pro-abstention sectors of the same opposition with a powerful campaign argument. The significant efforts made by the CNE before the Parliamentary Elections to guarantee the opposition parties of the transparency and reliability of the process were not in themselves sufficient to overcome the original problem.

The AN recently announced the members selected to serve on the Electoral Selection Committee, which will in turn select a new CNE Steering Board. While the solicitude with which the new AN is moving on this central issue is a sign of responsibility, it is hoped that the AN will maintain the highest standards of transparency and inclusiveness throughout the selection process. It is fundamental for the democratic development of the country that the appointment process is done in full accordance with the constitutional provision of

<sup>9</sup> According to Article 30 of the LOPE, after the Selection Committee delivered the shortlist of candidates to the AN on 18 April 2003, the latter had 10 days to nominate the Steering Board members, which did not happen.

<sup>10</sup> See <http://www.tsj.gov.ve/decisiones/scon/Agosto/poder%20electoral.htm>

<sup>11</sup> On 15 May of 2003 the lawyers Hermann Eduardo Escarré Malavé and Luis Guillermo Govea lodged an action of unconstitutionality on legislative omission against the AN. The TSJ, in a decision dated 4 August 2003, accepted the case but conceded 10 additional days to the AN to appoint the Steering Board. Failing the AN to do so, the TSJ decided to nominate the Steering Board on the basis of the principle of legislative omission. See [www.tsj.gov.ve/decisiones/scon/Agosto/2073-040803-03-1254%20y%201308.htm](http://www.tsj.gov.ve/decisiones/scon/Agosto/2073-040803-03-1254%20y%201308.htm)

<sup>12</sup> See <http://www.tsj.gov.ve/decisiones/scon/Enero/01-200105-03-1254.htm>

<sup>13</sup> The first TSJ sentence recalls Article 13 of the LOPE that the same TSJ did not follow in its second decision.

independence and that the future Steering Board offers all possible guarantees of the widest representation but also professional credibility.

#### **5.4 Registration of parties and candidates**

The rules for political parties' registration are set out in the Basic Law on Political Parties of 1965. According to this law, For the Parliamentary Elections, the CNE issued Resolutions 050722-471 and 050722-472 of August 2005 that completed the provisions of mentioned Basic Law on the various applicants' categories. According to these regulations, candidates can be independent, belonging to political parties, citizens' groups (*Agrupaciones de Ciudadanos*) and electors' groups (*Grupos de Electores*), all described in the regulations as political organizations<sup>14</sup>. The requirements for registration are simple and included the collection of signatures for each electoral level (political parties are only required to collect 0.5% of the voters' register, while the other organizations are required to collect 1% of the voters' register signatures). In order to be registered at the national level, a political organization must be registered at least in 12 regions.

The registration of candidates for the Parliamentary Elections was regulated by Resolution 050831-503 of September 2005. The application document had to contain an approval of the authorized person from the political party. Every candidacy was composed of a ticket comprising of a principal candidate and a deputy.

The application procedure included two different steps. The first one was automated and required that each applicant entered his or her personal information in a reserved page of the CNE web site. Secondly, all applicants were required to submit to the relevant Electoral Juntas by a certain date all the other documents required in the mentioned regulation. Among the documents that every candidate had to attach there was the identification, address certificate, voter list inscription of the candidate and of the deputy, an individual political program for the plurality-majority races (in case of independent candidates) and common party program (in case of candidates standing for the proportional race in the party lists), accreditation from the political organizations to represent it, certificate of 4 consecutive years of residence, the candidate declaration to accept the candidacy, the certificate of candidates' selection in primary elections within their own political organization.

After that, the relevant Electoral Junta had five days to present eventual objection to each candidate. In absence of any objection, the candidate application would have to be considered as positive and the candidacy accepted. The official CNE figures reported that there were originally around 2.700 candidate tickets applications. There were around 330 rejections due to incomplete applications and 264 withdrew in the days before the elections. On Election Day there were 2.132 tickets that remained in contention.

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<sup>14</sup> The wording political party was deliberately left out by the legislator to signify that the possibility to participate to elections was open to all organizations.

## Chapter 6

### Voter Registration

#### 6.1 The voter registration system

The Venezuelan voter registration system finds its main legislative references in the LOPE and the LOSPP. As mentioned in Chapter V, the Civil and Electoral Register Commission of the CNE is the body in charge of the voters Register. It is divided in three main offices, the National Office of the Civil Registry of the National Office (*Oficina Nacional de Registro Civil del Poder Electoral*, hereinafter referred as ONRC), the National Office of the Voter Register (*Oficina Nacional de Registro Electoral*, hereinafter referred as ONRE) and the National Office of the Civil Register and Identification Supervision (*Oficina Nacional de Supervisión de Registro Civil e Identificación*, hereinafter referred as ONSRCI).

The voter registration system in place in Venezuela can be defined as mixed, something in between a passive and an active system. This is because even though the ONRC has a special list of all Venezuelan citizens in voting age, it requires every citizen to make a positive affirmation of his/her right to participate to the elections through an application. The initial source of data for the voter register comes from the Identification Office (hereinafter ONIDEX) of the Ministry of Interior. The ONIDEX is the office issuing the Identification Card, the basic document needed for all other steps. The ONIDEX has a database for Venezuelans citizens since they obtain their ID card and a second one for foreigners living in Venezuela. On a monthly basis the ONIDEX sends updated information to the ONRE, which keeps all records coming from the ONIDEX in a special list, until the citizens themselves go to the Voter Registration office to "activate" their voter registration after reaching 18 years of age. All Venezuelans of at least 18 years of age are entitled to be in the voter register, except those under civil or criminal interdiction who appear marked in the voter register with a note.

#### 6.2 The Voter Register

The Voter Register (*Registro Electoral Permanente*, hereinafter REP) is permanent in Venezuela, and its citizens can update their voter registration detail throughout the year in the Voter Registration Centres and in special Update Centres that are set up during specific periods upon approval of the CNE Steering Board. Special registration campaigns can be organized and mobile teams set up to give citizens living in remote areas or difficult areas the possibility to activate or update their registration entries. Normally, the CNE Steering Board approves on a monthly basis the modifications to the REP, disclosing the figures through press releases with the reports on the updated situation of the voter register<sup>15</sup>

According to Article 95 of the LOSPP, the REP must contain for every voter, name, surname, identification number, sex, date of birth, nationality, profession, any physical disability, note on illiteracy, address<sup>16</sup>, polling center and station, requirements to be selected for electoral services and any eventual interdiction note. The REP may have special marks entered as codes to distinguish special categories such as deceased voters or interdicted citizens.

Article 118 of the LOSPP established that the registration cut-off date to produce the preliminary voters' lists for the elections is 90 days prior to the Election Day. There is then the possibility to make corrections in the 30 days following the cut-off date in a sort of Display Period when preliminary voters' lists are displayed at the Voting Center for public scrutiny. 60

<sup>15</sup>15.11.2005 <http://www.cne.gov.ve/noticiaDetallada.php?id=3567>

<sup>16</sup> Art 95.3 of the LOSPP reads: "La residencia del elector con todos los detalles de su ubicación exacta, con indicación de la Vecindad Electoral, parroquia; Municipio y Entidad Federal".

days prior to Election Day, the corrections must be entered, the REP frozen for the production of the final voters lists. These must be printed and distributed throughout the voting centers in the following days. The political parties, upon request may receive authorized copies of the lists in this period.

In recent times, considerable efforts have been made by the CNE to add new features in the REP that are not included in the LOSPP, such as the voters' fingerprints. However, the introduction of the fingerprints to improve the quality of the REP might not solve entirely certain structural problems related to the way the REP is compiled and its dependence on the ONIDEX database. In the long term, it might be preferable to invest in a secure, reliable and modern civil ID card program to solve the identification problems of those citizens who apply to be in the REP. Unless the ID card program reaches a reliable standard, all the efforts linked to the identification through biometric devices applied at the registration center and polling station level could be seen as disproportionate and suspicious measures. Another solution could be to consider a complete migration towards a fully digitalized civil registry and a passive voter registration system whereby every citizen reaching the voting age is entered automatically from the civil registry in the voters' lists. This solution would entail of course the enactment of adequate data protection provisions on the one hand, and a complete transparency in its implementation on the other, giving all interested parties the possibility to check a standard set of non-sensitive information to check suspicious entries.

### 6.3 The main issues related to the REP

The REP was once more at the center of a number of controversies related to its reliability during the electoral campaign, even though in a less animated manner than during the 2004 Referendum. The main arguments brought to the fore concerned the number of deletions in the register and to the alleged presence in it of several tens of thousands of foreign citizens naturalized under dubious circumstances. These relatively new issues were mixed with the resurfacing of old ones, connected to the immediate pre-referendum stages, when more than one million citizens had been registered in the space of two months (from May to July 2004) during an operation known under the name of *Misión Identidad*. The operation aimed at providing with ID cards those Venezuelan citizens not registered yet in the ONIDEX databases, and was carried in conjunction with the Voter Registration Office of the CNE so that the citizens could simultaneously receive their civil and voter registration. While the objectives of such operation were laudable, its timing, immediately after the announcement of the Recall Referendum, raised various concerns that it could be used to increase opportunistically the voter lists. Other concerns raised by the operation were connected to the unclear procedures and allegations of irregular naturalization of foreigners. Despite these concerns however, none of the opposition parties participated actively in the process in spite of being invited to join the mobile teams implementing the operation as political parties' witnesses.

Another criticism levied against the CNE on the REP concerned the fact that the voters' register copies distributed to the parties did not contain the entire address information as requested by several parties. This request was in accordance with the LOSPP provisions<sup>17</sup> stating that all data contained in the voters' register shall be disclosed to political organizations upon request and it also was a normal practice in the past, with the exception for the elections that took place after the Referendum. The CNE justifies its refusal to divulge this piece of information on the grounds that Art .60 of the Constitution<sup>18</sup> prevents it from disclosing this data. However, this provision was never invoked for the pre-Referendum elections. In general terms, the EU EOM believes that it might be difficult to conclude from this constitutional provision the specific data protection measures to be put in place without a specific Data

<sup>17</sup> Article 95 of the LOSPP reads: "*Los datos señalados en este artículo deberán ser incluidos en las copias de la lista de electores que se le entreguen a los diferentes partidos o grupos de electores cuando así lo soliciten*".

<sup>18</sup> Article 60 of the Constitution reads: "*Toda persona tiene derecho a la protección de su honor, vida privada, intimidad, propia imagen, confidencialidad y reputación. La ley limitará el uso de la informática para garantizar el honor y la intimidad personal y familiar de los ciudadanos y ciudadanas y el pleno ejercicio de sus derechos*".

Protection Law that details them. The EU EOM takes note that there is a need to protect the sensitive information of the citizens and develop in details the constitutional principle enshrined present in Article 60. of the Constitution, in conjunction with the reform of the ID Card program, but in full respect of the need to ensure complete transparency on the voter register.

Another voter-register related concern mentioned to the EU EOM is the organized movements of registered people (known as *Migraciones*) from one electoral district to another, depending on the specific force of the ruling coalition candidates in one or another of these districts. These activities took place allegedly before the municipal elections of August 2004 and the EU EOM was not presented with any compelling evidence to support this allegation.

Beyond the technical soundness of the various allegations raised, it is difficult to deny that the REP suffers from structural problems that date back several years. The main problem is the impossibility to perform a transparent cross check with the Civil Registry, which is not yet digitalized. While independent audits of the voter register based on representative samples might be important to clarify some of these doubts, only a long term plan to establish a centralized civil register can put an end to the political accusations around it. A rough comparison made by the EU EOM between the number of registered voters and the available population estimates suggests that there might be several hundred of thousands of eligible citizens still not included in the REP. The internal audit commissioned to CAPEL (*Centro de Asesoría y Promoción Electoral*) by the CNE might throw some light and it could be seen as the first step, but it will not restore the full confidence in the voters' register by the opposition parties, as an internal audit only cannot offer the sort of independent assessment that it is needed in such a climate of distrust.

The EU EOM was informed of a new initiative to digitalize the civil register and link it more interactively with the voter register. The entire program would be managed and implemented by the CNE. While it is desirable and logical to include the CNE in such a program given its specific technical expertise, it is questionable whether it should be given the overall control over such a sensitive database. A digitalized civil register that includes a new ID card program is fundamental in such a polarized political environment and with such sophisticated context of automated voting. The EU EOM considers that the biometric features being developed for the REP as fingerprints and retinal details would be in fact much more appropriate in the context of a new civil register than as additional feature to improve the current REP.

## Chapter 7

### The Venezuelan system of electronic voting

#### 7.1 Introduction

Venezuela has a very technologically advanced electoral system. The degree of automation that is present in the system encompasses almost all aspects of the process and not just voting. Among the other aspects of the process that are highly automated should be mentioned the registration of candidates, counting and transmission of results, results aggregation and adjudication of seats. In addition a lot of activities related to public information, voter education are carried out through a heavy use of web-based applications. The Parliamentary Elections were the fourth electoral event where voting machines as described in the next paragraph have been used after the 2004 Recall Referendum, the 2004 Gubernatorial Elections and the 2005 Municipal elections. A different system of automated voting, based on ballot papers scanned by special ballot boxes equipped with scanners had been used in previous electoral events since 1998.

The move to electronic voting has been mainly dictated, like in other countries, by a long history of fraud allegations and voter impersonation cases and the automation of the voting system has been viewed by the legislator as the only real guarantee against massive frauds. The legal basis for the electronic voting system is clearly established by Article 33 Item 42 of the LOPE and in Article 154 of the LOSPP. Despite the clear legislator's choice for an automated voting process and the enormous investment made by the CNE to develop a system that offers the best possible safeguards in terms of security and integrity, its practical implementation is heavily questioned by many opposition sectors of the Venezuelan society due to lack of trust they have in the electoral authority. Even though the LOSPP provisions are inclusive enough to include both automated and electronic voting systems, many aspects of the current electronic voting system have in fact developed so fast that have surpassed the legal provisions that regulate it (the introduction for previous electoral events of the fingerprint capturing devices and the experimental introduction of the electronic voting books, the role of the IT technicians in the polling stations and their relationship with polling stations officials, audit procedures) and become a cause of concern for many opposition parties. However, even with new legislation that defines in detail the electronic voting system, this will always remain object of a particular scrutiny and controversy without a clear change in the perception that many opposition parties have of the role and performance of the CNE.

At the polling station level, the system was designed with two electronic elements, the electronic voting machine (hereinafter VMs) to support the vote casting and the finger print capturing devices (*captahuellas*) to support the identification process. Although they are two distinct systems, if integrated in one, as was originally proposed for the Parliamentary Elections, they can provide a complete electronic record of election, i.e. a record of votes cast and who cast them. It is important to note that, it is not necessarily the case that the automatic collection of this information violates the secrecy of the vote. Only if these two systems are linked, either in real time or offline, and the sequence of voters is the same in both activities and recorded or revealed, could this violation occur.

#### 7.2 The voting machines

The VMs have been supplied to the CNE by a company called Smartmatic. There are two models of VMs being supplied, the SAES3000 and the newer SAES3300. The different models are essentially the same but the SAES3300 is a larger and upgraded machine. The hardware of the oldest model is supplied by Olivetti and was originally designed as lottery terminals, whilst the hardware of the upgraded model (SAES3300) is made in Taiwan by Smartmatic. Of the 27,300 VMs used in the Parliamentary Elections approximately 5,000 are SAES3300.

The VM software was developed by Smartmatic in conjunction with the CNE: for the Parliamentary Elections all the VMs were configured, securely packaged and despatched by the CNE from a distribution centre in Caracas. Key components of the VMs include a touch screen, a printer, a modem for transmitting results and a USB port inside the locked machine. A remote activation button is connected to the machine through a cable. For these elections, also connected by cable were the 'electronic ballots' – two approximately A3 sized touch activated sensor tablets. Paper ballot sheets are attached to these tablets and the voter selects parties and candidates by pressing the oval next to the logo on the tablet. The VMs are powered by means of electricity or by connection to a *converter* connected to a standard car battery, and run Windows XP Embedded as an operating system. All unnecessary components (including support for wireless communications) have reportedly been removed from the operating system. The voting software is programmed in a new programming language developed by Microsoft and called "C#".

During the assembling, all VMs are initially installed with the same software image. USB memory sticks with customized data for all polling stations are created separately. When the memory sticks are inserted into the VM for the first time they initialize the machine for a particular polling station. After that all data for this polling station (configuration, votes cast, stored tallies and log files) are stored as encrypted XML files both on the VM hard disk and the memory stick. If a VM fails it can simply be cloned by removing the memory stick and inserting it into a blank spare machine.

### **7. 3. The Fingerprint Capturing System and the Electronic Books**

Fingerprint scanning is the acquisition and recognition of a person's fingerprint characteristics for identification purposes. This allows the recognition of a person through quantifiable biometric characteristics that verify the identity of an individual.

The CNE's fingerprint capturing system (System of Voter Authentication, hereinafter SAV or *Captahuellas*) consists of a fingerprint scanning device connected to a personal computer. Similar to the voting machines the SAVs have a window based platform using NTFS (the Windows File System) and can transmit data directly to a central data centre via either land line, cell phone or satellite connections. The central data processing facility, located at the Bolivarian University, contains a data base of all eligible voters (the REP as frozen for a specific electoral event) together with a record of their fingerprint, if this has been captured by the system on a previous occasion. According to the information given by the CNE, the database of registered voters currently contains approximately 6.8 million stored fingerprints out of an electorate of approximately 14.4 million. The fingerprint capture machines and related technology support are supplied by Cogent Systems.

The SAVs were nowhere envisaged in the legal framework and were supposed to be situated outside the polling stations but inside the polling centres. The CNE decided on Monday 28 November to eliminate the use of the SAVs for the Parliamentary Elections after the discovery of the theoretical possibility to reconstruct the voting sequence (see paragraph 7.3.2). In the words of the CNE they were to be used primarily as a data capture exercise to collect the voters' fingerprints still missing in the voters' database, for voter access control and as a method to check for fraudulent multiple voting. The SAVs would have checked if the voter was at the correct polling centre, recorded the voters' attendance at the polling centre and used the fingerprint to check if the voter had already voted elsewhere in the state or country by use of the direct online access to the central database of registered electors. In addition the SAVs could provide each voter with details of which polling station to attend and the page and line on which they appear in the voters' list of the polling station they are assigned to. The CNE's plan was to use its fingerprint capturing system outside of 3,375 polling centres throughout the country. This would have involved the use of 12,380 SAVs and covered around 7.8 million of voters. The geographical distribution of the SAVs was supposed to be in those areas where the density of stored fingerprints was low in order to improve the database's comprehensiveness. Each SAV would have contained the details of all registered voters of the state in which the SAV



was to be located. Similar to the VMs, the SAVs underwent also 'audits' by the political parties and the national observers.

In addition to the SAVs, the CNE were to trial the use of 779 electronic books ( e-books or *cuadernos electronicos*) in three states (Cojedes, Nueva Esparta and two municipalities in Sucre). The e-books are similar to SAVs in their structure but instead of being used as a voter identification tool outside the polling stations they were to be used inside as a substitute for the hard copy voters' lists. The e-books are essentially the voters' lists in electronic form and replicate exactly the manual process. Each e-book contained only the electors for that polling station and were to be used in tandem with the voters' lists in hard copy. Had they been used in this election, the e-books would have been offline, with transmission of data taking place after the close of poll to the central server.

The procedure for the use and transmission of data from a SAV envisaged by the CNE was to be as follows:

1. Voter presents ID (*Cédula*) and is searched for on the elector database stored on the SAV.
2. If the voter is on the regional database stored on the SAV and eligible to vote at the polling centre their attendance is recorded and their finger prints scanned and stored.
3. If the voters fingerprint is already in the local voter database stored on the SAV the new fingerprint scan can be compared to that voters minutiae file. (Minutiae files are not images of fingerprints but data files containing the unique characteristics of the fingerprint).
4. If the voters fingerprint is not in the regional voter database stored on the SAV the fingerprint scan can be transmitted to the central data centre and a search made to find out if the voter's fingerprint is already stored on the nationwide database but registered to another ID.

The procedure described appeared to the EU EOM as a secure one. However, the theoretical possibility that the information eventually transmitted by the SAVs to the central data processing level could be misused and manipulated by CNE officials to perform various checks on the identity of the voters, expressed by some opposition parties, could not be ruled out. The SAV system can work either in real time or offline with transmissions to the data centre occurring either instantaneously or at the close of poll. If operating in real time the information at the central data centre would provide anyone with access to the system detailed information not only on the flow of voters during polling day but also the identity of who actually voted.

As with the VMs, the storage of the files concerning the sequence with which voters identified themselves on these systems, either SAV or e-book, is critical to the sequence of saving the files. It is important to note that, due to the fact the SAVs use was not envisaged by any legal provision; had the finger print scan system detected an attempt to multiple vote (using different IDs) the operators of the system would not have been allowed to prevent the individual from entering the polling station and vote if the space next to the voters name was still blank, which was the only requirement needed together with the production of the ID card, to cast a vote. However, the incident would have simply been recorded by the polling stations officials.

#### **7. 4. System integrity and security measures**

The Venezuelan electronic voting system was developed by Smartmatic who was in charge of all programming of the VMs and the development of the Results Aggregation Center software. The CNE, however, owns the source code of all Smartmatic software they use. An IT team at the CNE fully audited the source code, both to verify functionality and to identify areas that need improvement or redesign. Requests for redesign by the CNE included improved randomization methods to hide the sequence of the stored votes and the need for confirmation when casting blank ballots. In the future, the CNE plans to take over all the software development work from Smartmatic. After that Smartmatic will only be in charge for logistics and hardware service and assembly.

While the source codes are owned by the CNE they are for commercial reasons not made available for public scrutiny and no independent third party audits have been conducted on any part of the electronic voting system. The major point of concern was the possible matching of information from the identification phase and the vote casting phase as that would allow to breach the secrecy of the vote. Therefore the order of the votes in the VMs had to be scrambled. This was done in the way described in the following paragraph.

#### **7. 4.1 The vote scrambling**

A key issue in the process was the order in which the files are stored onto the VMs and their external memory. If the Vote Files are stored sequentially then if the sequence of the voters to the voting machine is also known (i.e. by the sequence of files in the SAVs or *captahuellas*) then in theory it could be possible to determine the votes cast by each voter.

To address the sequencing issue the CNE and Smartmatic devised a system to randomise the order in which the Vote Files are saved. In the VMs, the system worked as follows:

- Random number of 1 to 10 dummy (empty) files are created and saved.
- The Vote File of the first voter is then saved after these dummy files.
- The dummy files are then deleted, leaving space in the file structure to be filled by the next set of dummy files and Vote File.

Example, Voter 1 (dummy files generated=5), Voter 2 (dummy files generated = 2), Voter 3 (dummy files generated=10)

Voter 1

1. 1st Dummy File
2. 2nd Dummy File
3. 3rd Dummy File
4. 4th Dummy File
5. 5th Dummy File
6. Voter 1 Vote File

Voter 1's vote file is saved after the five dummy files in position 6 of the file structure. The dummy files are now deleted.

Voter 2

1. 1st Dummy File
2. 2nd Dummy File
3. Voter 2 Vote File
4. 4th Dummy File
5. 5th Dummy File
6. Voter 1 Vote File

Voter 2's vote file is saved after the two dummy files in position 3 of the file structure. The dummy files are now deleted.

Voter 3

1. 1st Dummy File
2. 2nd Dummy File
3. Voter 2 Vote File
4. 4th Dummy File
5. 5th Dummy File
6. Voter 1 Vote File
7. 6th Dummy File

8. 7th Dummy File
9. 8th Dummy File
10. 9th Dummy File
11. 10th Dummy File
12. Voter 3 Vote File

Voter 3's vote file is saved after the 10th dummy files in position 12 of the file structure. The dummy files are now deleted.

After 3 votes the file structure would appear as follows:-

- 1.
- 2.
3. Voter 2 Vote File
- 4.
- 5.
6. Voter 1 Vote File
- 7.
- 8.
- 9.
- 10.
- 11.
12. Voter 3 Vote File

The continued addition of Vote Files to the above structure would result in a randomised list (albeit in case of small polling stations with a very low turnout, a limited number of dummy files created, might still allow theoretically groups of 10-20 voters to be identified in their voting order). Further when a file is saved the Windows operating system also stores the save date and time of this file. This can be easily be seen by looking at the file properties with any file explorer. The VM software overwrote this information for all votes with a default date (10:00 of Election Day) which eliminated the possibility of finding the sequence through this property.

#### **7. 4.2 The Issue of the Voting Sequence**

This procedure for randomising the sequence of the Vote Files was demonstrated to political parties and observers at the meeting on the 23rd November 2005. Through further investigation of the software, operated under request by technical experts accredited as observers by the opposition party *Primero Justicia* and the observer group *Ojo Electoral* that had been present at the audit sessions, it transpired that CNE and Smartmatic may have overlooked the fact that as part of the process of saving the Vote File in the file system a modification is made in the MFT (Master File Table) on the windows operating system.<sup>19</sup> In this case, the attribute stored in the MFT was the date of last saving the Vote File. Thus, regardless of the fact that the Vote File was being saved in a random position in the file structure, using this attribute the sequence of the votes could be reconstructed. This last modification date information is not transmitted to the central vote tabulation centre but remains located on the hard drive of the VM and on its external memory.

A report on the findings of the meeting of 23 November was prepared by the national observers and political party representatives that attended the audit session and sent to the CNE. This report recognised that whilst the sequence of the votes could be reconstructed this could only be achieved with access to either the hard drive of the VMs or their external memory (also called flash memory or pen-drive) and access to the encryption key that protects the data. If

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<sup>19</sup> Background: Different operating systems use different kinds of 'file systems' to store and catalogue files on disk. DOS used the FAT file system (FAT standing for 'file allocation table'). MS Windows NT, while being able to use FAT-formatted disks introduced a new and more sophisticated file system called NTFS (NT file system) as the default type, and this is what recent versions of MS Windows have also used. On an NTFS disk, the master file table is basically a database containing information about all the files on the disk, where physically those files are located, and their attributes (modified date, ownership, sharing permissions, etc.).

this sequence of the vote was then compared to the order that voters presented themselves at the VMs, individuals' voting intentions could be reconstructed. At polling stations where SAVs were planned to be used, the order in which voters had presented themselves to vote could potentially have been determined if the two data sources were cross-checked. This possibility, while to be assessed as very remote, did indeed exist. The consequent CNE decision to stop the use of the SAVs was indeed sensible and appropriate.

The EU EOM was present at the audit session of 23 November and had the possibility to observe the events in its entirety. 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 VM memory, the SAVs memory and the entire encryption key code (divided among the political parties and the CNE) used in the system to protect the voting data. In addition to that, the EU EOM is of the opinion that this possibility was truly due to a mistake from the CNE and Smartmatic and not to a fraudulent attempt to reconstruct the voting sequence<sup>20</sup>.

## 7.5. The audits

The CNE organized a number of information sharing sessions on various aspect of the automated process in an effort to enhance the confidence of all stakeholders on the reliability and transparency of the system. These sessions were defined by the CNE as "audit" activities in compliance with the legal requirements outline in Article 168 of the LOSPP and in several articles of the CNE Resolution N° 050622-286. Audit activities are also more and more a requirement for all electronic voting systems according to the most advanced international practice and the CNE clearly made an important effort to comply with them. During October and November the CNE initiated therefore a number of activities to discuss and evaluate its voting system. These events were attended by representatives of some political parties and national observers (*Ojo Electoral*). The EU EOM attended a number of them not in the quality of auditors but only as observers.

Various types of information sharing sessions were conducted and observed<sup>21</sup>:

A) Random examination of VMs out of the storage just before shipping them to polling stations. The sample machines were then stored in a separate area of the Smartmatic warehouse waiting for the pre-dispatch audit on November 27. The pre-dispatch audits were planned as a mixture of functionality test and software and hardware checks in the presence of party representatives and observers. About 30 minutes passed between the lottery determining which machines go to the audit and the actual retrieval of the machine from the storage. However, these delays highlighted certain disorganization in the process.

B) High level explanations, usually in the form of PowerPoint presentations, giving a general overview of structure and workflows of the audited system. While those presentations were easy to follow for non-technical observers, they only provided a very limited insight into functional details and were in themselves not sufficient to establish trust in the audited systems. However, when requests of more detailed information were made, those were always met with positive responses.

C) Source code reviews. These activities, initially only planned as static presentations of the code structure, later on evolved, upon request of some observers, into debugging sessions, i.e. dynamic analysis of the running programs where specific operations, for example the casting of

<sup>20</sup> Smartmatic and CNE main developers were present during the audit and actually presenting the system. During the entire audit sessions, they did not appear to try to hide anything. Even when the analysis on the reconstruction of the voting sequence became deeper and deeper, CNE and Smartmatic and CNE staff remained open and very confident. When the bug was revealed they were obviously taken by surprise. They had no strategy to justify it and made no attempts to play down the issue.

<sup>21</sup> For more details on the so called "Auditorias" organized by the CNE, see Annex II

a vote, could be followed step by step as processed by the computers involved. While those sessions provided a first significant insight into voting machines and tabulation system they could only be followed and understood by a very limited number of observers. For a number of reasons even this type of reviews still only provided a partial insight into the systems: no detailed system documentation was available, neither for use during the audits nor for further study outside the audits. The time available was limited to about two days and during that time the systems could only be audited in the controlled Smartmatic environment. Nevertheless, observers were free to look at any detail they were interested in and received accurate answers to all their questions.

It is the opinion of the EU EOM that the so called audit activities could be better described as system reviews or in other cases as information distribution modules, but not as audits. Proper auditing would have required a significant amount of additional time for testing and analysing information. Overall, they represented an important forum for discussion and transparency among experts of political parties, civil society and of the election administration, but they were not audits. The CNE itself seemed rather unprepared to stage proper audit activities and there were no written procedure to be followed. The content of the session was more determined by the specific type of technical interaction that could be established between the CNE officials and the attendees. At the same time, only few parties sent their representatives to the audit sessions and not all of those representatives had the technical skills necessary for gaining an insight into the systems presented. This weak participation might be a reflection of the difficulty to identify and make available qualified observers for this highly technical process. Another possibility is that available experts may not have been willing to participate due to the public nature of the audits. While this cannot be confirmed independently, it remains a fact that a lot of media coverage, photographing and filming surrounded the audits and could be considered to have created an intimidating environment.

The so called audit activities conducted can be considered as a first important confidence building measure a forum for a fruitful information-sharing process. The discovery of the above mentioned flaw on the VM demonstrated the value of such exercise. Such discovery also had the merit to highlight the need for independent and in depth system audits. The "audit" activities conducted, due to their limited nature, both in time and in resources, cannot in fact replace a full system audit by a commonly accepted independent third party. Such a third party audit is desirable for improving and confirming software quality and trust in the system.

## **7. 6. The voting process**

At the beginning of polling on Election Day, the VM operator prints an opening protocol the so called *acta cero*, which certifies that no votes are stored in the system. After that voting begins. For every voter, a polling station member activates the VM by pressing the activation button. After that, the voter has three minutes to cast his/her vote. When the voter selects a party on the voting tablets the chosen party will immediately appear on the VM's screen. Until the votes are finally cast the voter can change any selection by simply pressing another party's oval. The screen continuously displays all selected parties/candidates for every contest. Once the voter is satisfied with the votes on screen s/he presses the 'Vote' button on the screen to cast the vote. It is important to note than the tablet is only for the selection of candidates/parties while to vote the voter needs to touch the screen.

At this point the voter receives a warning if the vote for one or more of the three electoral contests being held was left blank. If the voter confirms the blank votes s/he completes her/his vote, if not s/he can continue changing her/his selections. There is no additional confirmation stage. After casting the vote the VM prints a small receipt that the voter can check and the insert into the receipt box. The vote cannot be spoiled or undone after the receipt has been printed out. If the voter does not cast her/his vote within three minutes the voting process will be automatically deactivated though the voter may request a second three-minute voting period. In this second period all previous selections are removed and voting begins from scratch. If the voter does not complete within the second three minutes they lose their vote.

After polling closes, the VM operator, according to the procedures, first prints a result sheet (*Acta de Escrutinio*) per electoral race, and only then connects the VM to the communication network to start the transmission of results to central data processing facility. Most VMs transmit their results directly to the results aggregation center, either via landline, cell phone network or satellite connections. Only a small number of polling stations have none of these connections available. Results from those locations are physically transferred on memory sticks to the closest data transmission facility. The results aggregation center in fact only accepts incoming calls from predefined telephone numbers and no transfers are accepted before closing of the polling stations. Log files recorded on the VM can only be viewed locally and are not sent to the results aggregation center.

## **7.7 Final Considerations**

The Venezuelan voting system possesses a number of features that are in line with the most advanced international standards of e-voting. In certain aspects, such as the paper trail audit (the so-called Voter Verified Audit Trail, see paragraph 11.5)) the system developed in Venezuela is probably the most advanced system in the world to date. However, given exceptionally polarized environment and feelings of distrust amongst certain sectors of society in the electoral process, further careful consideration should be given to aspects relating to security and transparency.

Another area where the process can be considerably improved concern the non-technological aspect of the electronic voting system. In particular, a targeted training program for all election officials at various levels needs to be developed and integrated in normal professional development activities for CNE staff. In parallel to this, the need to invest significant amount of human and financial resources in civic and voter education programs on the functioning of the VMs was strikingly evident on Election Day (See paragraph 11.3) where the need to assist the voters raised concerns about the possible violation of the secrecy of the vote and a higher turnout might have triggered serious security problems with the queues. An electoral administration that makes such a gigantic investment in technology cannot afford to leave out of its scope such activities which at the end have a significant bearing in determining the efficiency and reliability of a system and if neglected play in the hands of those that argue that VMs are not transparent enough to run elections.

Last but not least, it will be important to consider other reforms of the electoral process (such as the voter registration system and its relationship with the planned new civil registration) before introducing permanently in the process electronic applications like the fingerprint capturing machines that might cause unnecessary allegations and open potential vulnerabilities with regards to voter secrecy without addressing the basic problems of the proper identification of voters.

## Chapter 8

### Media

#### 8.1 Background

Venezuela has a diverse mass media scene with an almost complete coverage of the territory. According to the UNDP Human Development Report, in 2001 there were 33 TV and 647 radio stations, and tens of newspapers and magazines in the country, as well as a lively community TV and radio sector<sup>22</sup>. In 2001, radio penetration was 74%, and TV 96%. Four out of five Venezuelans watched TV an average of four hours a day.

Most of the media outlets are private. Due to the anti monopoly provisions, there are no large corporations dominating the market. There are four large national, open TV channels: *Venevisión*, *Televén*, *RCTV* and *Globovisión*. The latter is a 24-hour news outlet, while the others focus mostly on entertainment. The three newspapers of reference are *Últimas Noticias*, a popular tabloid and the one with the largest audience, *El Nacional* and *El Universal*, both with a broadsheet format and a very critical stance against the current Government. *Unión Radio* is Venezuela's largest chain of radio stations with a nationwide coverage. One of its four channels is news-oriented, whereas the other three ones deal with music and entertainment.

The State owns the national TV *Venezolana de Televisión* (hereinafter referred as VTV) as well as the educational TV channel *Vive TV* and *Telesur*, a newly incepted 24-hour Pan-American news channel, and the radio channel *Radio Nacional de Venezuela*. Their audience is very low compared to the private media.

The most important private media adopted an editorial line of clear opposition to the government of President Hugo Chávez short after his victory at the elections in 1998. This situation of complete antagonism to the Government is counterbalanced by the fact that the President, under Article 192 of the Telecommunications Law, can order all electronic media, private and public the simultaneous broadcasting of free messages by the President himself, the Vice President, the ministers and other institutions including the CNE, (a practice known as *cadena*). This privilege, rather common in Latin America, is generally used in other countries of the region only under exceptional circumstances. In Venezuela however it is used instead in a very discretionary and frequently; in the last two weeks of the electoral campaign alone for example, there were five *cadenas* broadcast without any specific threat to the security or the occurrence of emergency situations that might have justified them.

#### 8.2 Legal framework

The 1999 Constitution recognizes freedom of expression, and forbids censorship and hate speech in its article 57. A more controversial article 58, contested by media representatives at the time of its approval, acknowledges the right of Venezuelans to information which is timely, truthful and impartial.

The Law on the Exercise of Journalism (*Ley de Ejercicio del Periodismo*) rules over journalistic activities and confers on the National College of Journalists the powers to implement it. A Code of Ethics sets the basic principles of the practice of journalism, as well as the obligations of reporters with regard to the people, the sources, their professional college, their company and the State. The Law dates back to 1994 and the Code to 1976.

More recently, in December 2004, the Law of Social Responsibility of Radio and Television was passed to regulate the contents of the electronic media. The law sets three time periods and fixes content limitations on each of them, as well as different quotas of national productions.

<sup>22</sup> See UNDP, Informe sobre Desarrollo Humano en Venezuela, 2002.

The aim of the law was to fill a widely recognized gap in the legislation, but also to counter what the Government considered abusive attacks of the private media. For this reason, opposition parties, private media and press associations did not welcome the law, and, one year after its approval, they maintain that it created a situation of self-censorship in order to avoid sanctions. In turn, the Government defends the law as a tool to generate a climate of peace and tolerance.

The Constitutional Law of Suffrage and Political Participation and the regulations of the CNE define the nature of access to the mass media for the political parties in electoral times. During the campaign for the Parliamentary Elections, the electoral authority, in accordance with *Conatel* (the state agency regulating electronic media), decided that the free time allotted to the parties on radio and TV would not be counted as the compulsory publicity time provided to the electronic media in accordance with the Law of Social Responsibility. However, publicity and information about the party platforms remained scarce.

### **8.3. Media monitoring**

#### **8.3.1. Methodology**

The EU EOM monitored a sample of Venezuelan media to assess whether they abided by the regulations for the electoral campaign and whether they covered it in a fair and balanced manner.

Six media monitors were trained to measure the space and time given to political actors (parties and candidates, but also the president, the executive and legislative powers, regional and local governments, the electoral authorities and election observers), and ascertain whether it corresponded to information, opinion or advertising. For each of the items coded, the monitors were instructed to register its tone (positive, neutral or negative).

The media sample comprised of five newspapers (*Últimas Noticias, El Nacional, El Universal, Vea* and *El Nuevo País*), four TV stations (*Radio Caracas TV, Venezolana de Televisión, Televén* and *Globovisión*), and two radio stations (*Radio Nacional de Venezuela* and *Unión Radio*), chosen among the national media with the largest audience. These outlets were monitored during the period from November 19 to December 8. The selected electronic media were monitored at prime time hours<sup>23</sup>. Weekend issues of the print media were excluded from the sample.

#### **8.3.2. Findings<sup>24</sup>**

Several findings apply in a general manner to all the media monitored:

1. There was a striking scarcity of information about candidates (and their platforms) in the media in the three weeks leading up to Election Day. None of the outlets monitored devoted more than 10% of their political information to the parliamentary candidates.
2. Most of the media monitored showed some kind of bias towards one of the two main party coalitions (*UVE* and *Unidad*) by means of conceding to the coalition of their favour more space and time, or by giving to it a more favourable (or unfavourable) coverage.
3. The political information found on the selected outlets was ideologically diverse, but usually edited or presented in a highly emotive manner, incompatible with the journalistic principles of impartiality and balance. Factual discrepancies among the media when reporting on the same

<sup>23</sup> The monitoring schedule for TV was 6.00 AM to 8.30 AM, 12.00 AM to 1.00 PM, and 8.00 PM to 11.00 PM, during the week, and 7 PM to 10 PM, during the weekend. As for the radio, the daily monitoring hours during week days were 6.00 AM to 8.00 AM, and 6.00 PM to 9.00 PM; and 7.00 PM to 9.00 PM, during the weekend.

<sup>24</sup> For complete media monitoring statistics, see Annex III.



events were frequent. Several media reports contained serious accusations against political actors whose authenticity had not previously been double checked with a second or third source, or even without identifying the source at all.

4. There was a widespread use of advertising as a tool for political battle. Attacks against political adversaries disguised as advertisements often did not bear the identification of the person or organization that paid for them.

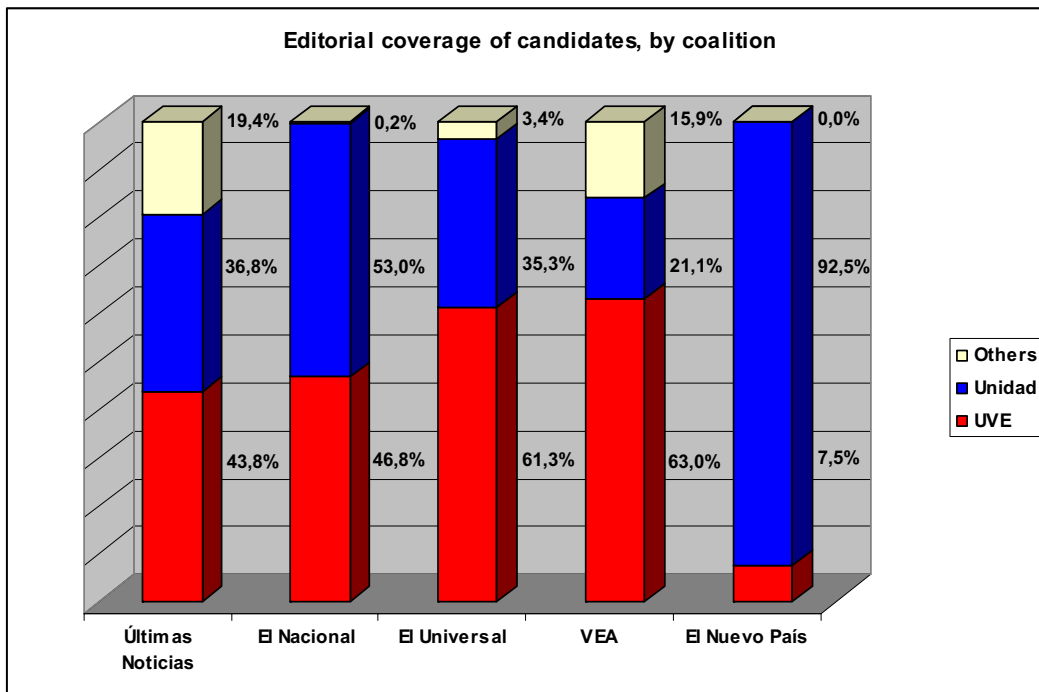
Overall, the media reflected and fed into the general polarisation and divisions found within the country's society. It is worrying that the state-owned media, which as such have a particular onus as regards impartiality and fairness, also gave way to this kind of criticisable practice.

### 8.3.2.1. Print

The monitored print media reserved a different degree of space of their political information for the candidates and their platforms, oscillating from 3% in *Vea* to 9% in *El Nacional*. Most of the space used was for information, with the exception of *El Nuevo País*, where two thirds of the items referring to candidates were opinion articles.

In most of the newspapers analyzed, the candidates belonging to the coalition of parties currently in government were the ones receiving the largest chunk of editorial content (i.e., information and opinion, but not publicity). *El Nacional*, and specially *El Nuevo País*, which gave more information to the candidates of the coalition *Unidad* are the only exceptions.

Among the newspapers monitored, *Últimas Noticias* was the one with the most balanced attribution of space, and the one giving the largest coverage to the candidates who did not belong to any of the two big coalitions. The diagram below shows the editorial coverage reserved to the candidates by the five monitored newspapers.

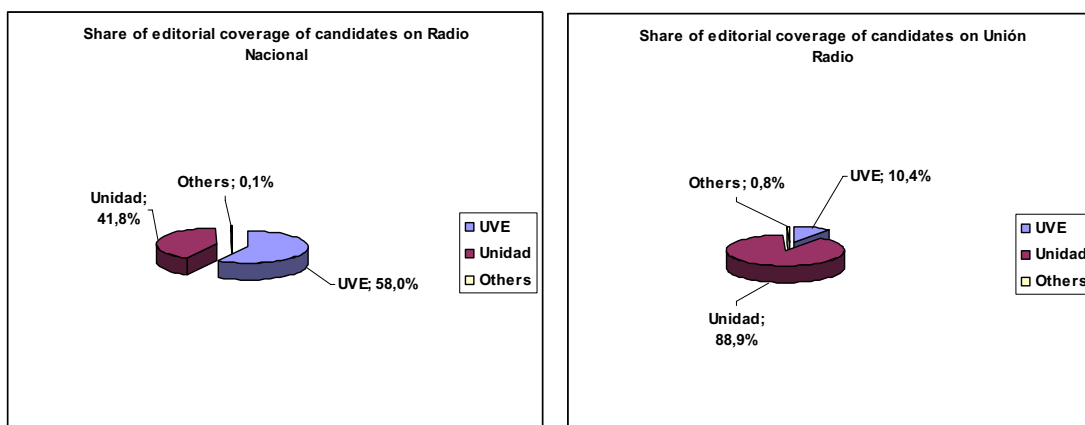


Most of the editorial content about the candidates turned out to be neutral, with a few exceptions.

### 8.3.2.2. Radio

The State-funded *Radio Nacional* featured a slightly larger amount of items about candidates (8% of its political information) than *Unión Radio* (around 7%). In both cases, most of the editorial content given to the candidates was opinion, which amounted to, approximately, two thirds of the total time.

*Radio Nacional* was far fairer than *Unión Radio* in distributing the time available for the candidates of the two main coalitions (58% for *UVE* and 42% for *Unidad* in the former, versus 10% for *UVE* and 89% for *Unidad* in the latter). The diagrams below show the shares of editorial coverage reserved by the two radios to candidates.



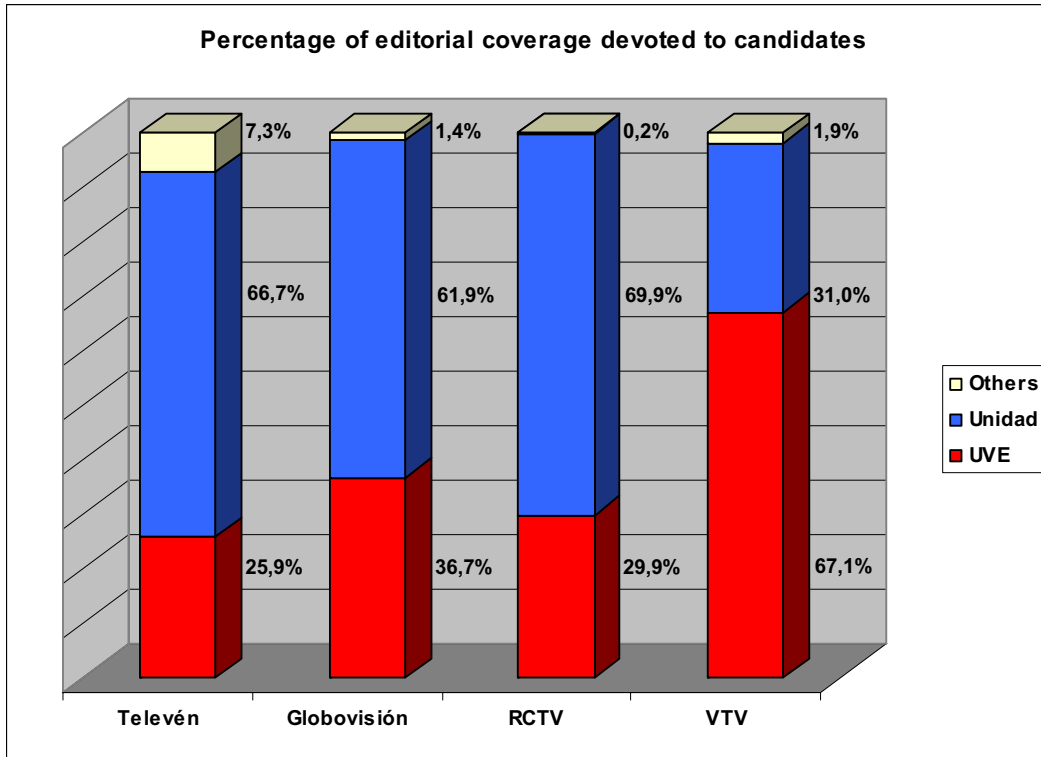
However, as far as the tone is concerned, *Unión Radio* was far more balanced than the state-owned radio, since the vast majority of its editorial content about the candidates was neutral, as opposed to *Radio Nacional*, where most of the content related to the candidates for the parties currently in power was positive, and most of the one reserved for the candidates of *Unidad* was negative.

### 8.3.2.3. TV

The state-owned channel *VTV* and *Globovisión* were the TV channels monitored giving more space to political issues (100 and 80 hours respectively, throughout the monitored period), with approximately a coverage three times higher for political matters than the private channels *Televén* and *RCTV*. However the differences among the channels were much smaller for what concerned the candidates' coverage: *Televén* and *RCTV* gave 3 hours each to the parliamentary candidates, not so far from the 4 hours reserved by *Globovisión*, and from the 6 and a half hours of *VTV*.

When referring to candidates, *Televén* and *RCTV* gave prominence to opinions (four of every five minutes allocated to the candidates). *Globovisión* and *VTV*, on the other hand, distributed evenly between information and opinion their time for candidates.

All the TV channels showed bias towards some candidates: all the private channels conceded more time to the opposition candidates (around two thirds of their space), whereas *VTV* reserved a similar amount of time to the parties in government. The diagram below shows the percentage of editorial coverage devoted by the monitored TV channels to candidates.



As for the tone of the editorial content on candidates, most of it was neutral. However, it is worth noting the large amount of positive information found on *VTV* about the pro-government candidates, as well as the highly negative charge of the editorial content about the opposition parties of *Unidad*.

## Chapter 9

### Minority and Gender Issues

#### 9.1 Gender breakdown of the elected institutions

According to recent estimates the population of Venezuela is almost evenly divided between men and women, with women making up slightly over half of the population. As in the majority of the other countries, they are still under represented in the major national and local institutions. Despite the fact that women were granted passive and active voting rights since 1946 in Venezuela, they are not yet adequately represented in the institutions<sup>25</sup>.

In April 2005, the CNE enacted Resolution 050401-179 in order to promote the participation of women in the elections as set out in Article 144 of the LOSPP. According to this provision, women candidates must represent at least 30% of the overall number of candidates standing for elections in the party lists competing for the proportional seats, and party lists not in compliance with such rule shall not be approved. The CNE resolution 050401-179 diluted considerably the provision of the LOSPP and foresaw a simple contravention in case of breach of the mentioned provision. The EU EOM received no information on whether specific sanctions were issued for those lists not in compliance with the CNE regulation. Furthermore, there was still no particular encouragement or safeguards to ensure that a minimum percentage of women are nominated in plurality-majority races or ranked high on party lists where they could stand a real chance of winning a seat.

For the AN elections, a total of 16% of women stood as candidates. In the various states the percentage oscillated between 2<sup>26</sup>% and 38%<sup>27</sup> at regional level. Out of 167 seats, 28 were won by women candidates, for a total of 17% of the available seats. This number of elected women candidates represents the highest number ever elected to the AN. However, this is likely to have been determined only by the particular conditions that characterized these elections, e.g. the withdrawal of all the major opposition political parties and the election of an assembly which has 118 delegates coming from the same party (MVR), and not by a real improvement of the conditions for the participation of women in Venezuelan politics. The restrictive and inadequate implementation of Article 144 of the LOSPP through CNE Regulation 050401-179 is to be evaluated in reality as a factor that prevented a further increase in women participation.

A different picture was observed in the election administration structure. Women made up the vast majority of polling station committees in many states and many women cover different functions in the municipal and regional branches of the CNE, especially in the capacity of coordinators. In the executive rankings of the CNE it was observed a lower presence of women even though at the highest level, two out the five Steering Board members are women.

#### 9.2 Indigenous People Participation

The indigenous population of the country is approximately 315,815 inhabitants which are located in 10 States, 62.4% in Zulia, 14% in Amazonas, 11% Bolívar, 6,6 in Delta Amacuro, 2,2% in Anzoátegui, 1,9% in Apure, 1,1% in Monagas and 0,22 between the States of Mérida and Trujillo<sup>28</sup>. Overall, there are 25 ethnic groups which have their own identity, history, values and language. These ethnic groups are distinguished in five groups according to their linguistic affiliation – Caribe, Arawak, Independiente, Chibcha and Tupigurani.

<sup>25</sup> According to the UNDP Human Development Index, the percentage of women in the legislative, managerial and senior civil servant positions is around 27%.

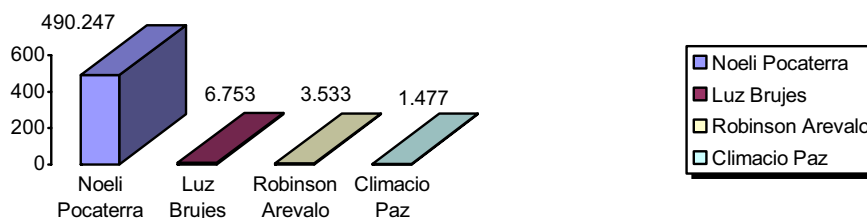
<sup>26</sup> Sucre

<sup>27</sup> Amazonas

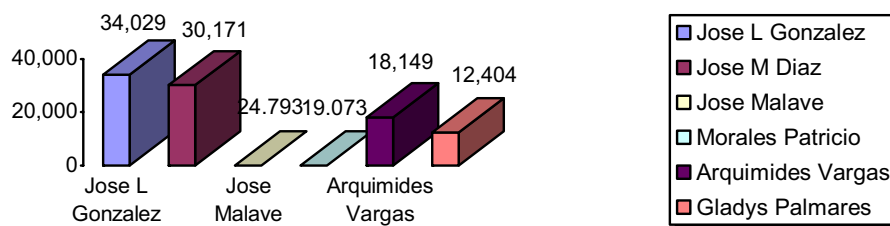
<sup>28</sup>Source: [http://www.cdi.gob.mx/conadepi/iii/legisla\\_venezuela.pdf](http://www.cdi.gob.mx/conadepi/iii/legisla_venezuela.pdf)

The indigenous populations have the right to political participation and in addition to the possibility to stand as candidates for any of the AN seats, they have three set-aside seats guaranteed by Article 125 of the Constitution<sup>29</sup>. The area of Venezuela which has indigenous population is divided in three regions, the Western, the Eastern and the Southern Region, and there is a set-aside seat for each one of the three regions<sup>30</sup>. The candidates with the simple majority of vote in each region win the corresponding set-aside seat. The overall number of indigenous candidates was 31, and non-indigenous people may also candidate themselves to represent the indigenous people, provided their fluency on one of the indigenous languages and the fulfilment of other stringent conditions such as the past or current exercise of traditional authority charges, a proven track-record in pro-indigenous social activities and at least 3-year membership in a legally recognized indigenous organisation. All voters registered in the constituencies electing indigenous candidates are entitled to vote for them. The total number of indigenous candidates for the normal seats is not known as candidates do not have to declare their ethnicity, but in case there was no indigenous issue in the Parliamentary Elections. The diagrams below show the results for the candidates representing the indigenous population in the Parliamentary Elections

**Results for Indigenous candidates - Western Region**



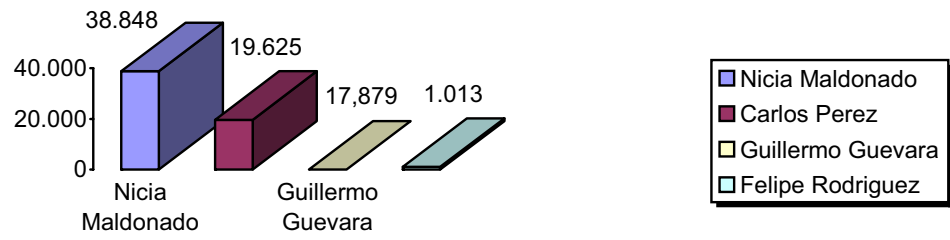
**Results for Indigenous candidates - Eastern Region**



<sup>29</sup> Detailed conditions for the indigenous participation are found in the Transitional Dispositions 7 for the enactment of the 1999 Constitution.

<sup>30</sup> The Western Region is composed of the States Zulia, Mérida and Trujillo, the Southern Region of the States Amazonas and Apure and the Eastern Region of the States Bolívar, Delta Amacuro, Monagas, Anzoátegui and Sucre.

### Results for Indigenous candidates - Southern Region



## Section IV

### Chapter 10

#### The Pre-Election Environment

##### 10.1 General Considerations

The entire pre-election environment was dominated by a further escalation of the polarization in the society, typical of all the last important electoral events of Venezuela. In this context of extreme polarization, the EU EOM noted the diffused mistrust in the electoral system and in the electoral administration manifested by wide sectors of society, especially the opposition political parties and various organizations representing the civil society. The high abstention rate that characterized the Parliamentary Elections, while confirming on the one hand the traditionally high abstention trend that has marked all recent electoral polls in Venezuela where the presidential position was not in contest, is on the other hand the demonstration that the disillusionment or disinterest in the political matters of the country is very deep and widespread encompassing also supporters of the pro-government bloc.

The EU EOM further noted that the electoral authority of the country is perceived as a partisan and biased institution by wide sections of the Venezuelan society. The discussion on the role and actions of the CNE permeated in an excessive manner the entire electoral campaign, obfuscating any other traditional discussion on otherwise central political themes. The lack of confidence (with various degrees of intensity) in the CNE and the electoral system declared by all opposition forces has old roots, but it continues to be exacerbated by certain side effects of the Referendum process. It has in particular been argued that millions of Venezuelan citizens could see their political rights endangered by the misuse that has been made of their personal data and their political preferences through deplorable instruments such as *Lista Tascón* and *Programa Maisanta*. The compilation and public disclosure of these databases was permitted by the Referendum provisions, but the use that has been made of them as intimidation and pressure tools by all political forces since then is contrary to basic human rights principles. The part of the opposition that had campaigned in favour of the abstention from the beginning of the Parliamentary Elections process ably managed to amplify this climate of fear and distrust to progressively erode the popular support of those opposition parties that had expressed their intention to participate in the process.

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 system reviews of various elements of the automated voting process such as the software of the electronic voting machines, the fingerprint capturing devices 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.

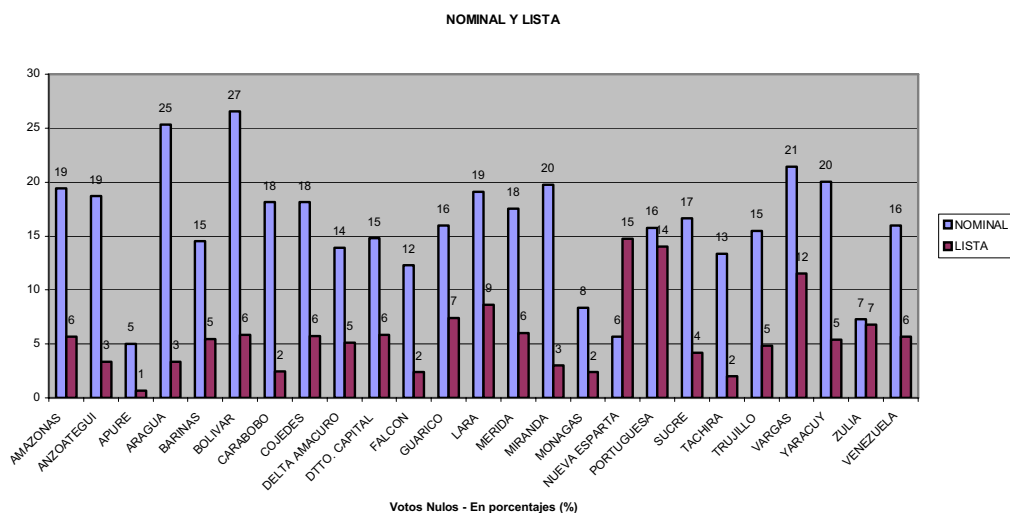
The discovery of a design flaw in the software of the voting machines and of the consequent remote possibility to violate the secrecy of the vote (see paragraph 7.3) was also dealt with by the CNE in a timely and adequate manner. The subsequent decision of the CNE to eliminate the fingerprint capturing 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 of the withdrawal of the main opposition political parties from the electoral contest at this stage, without providing any substantive or new rationale for this position.

##### 10.2 Voter Education

The CNE is tasked under Article 33 of the LOSPP to "guarantee and promote the participation of the public in the electoral process, referenda and other consultations with the public." The main efforts of the CNE concentrated on the installation of sample VMs, sample ballot

dissemination, educational leaflets production, and the diffusion of voter education messages through the mass media. For the voting simulation activity, the CNE installed 1000 sample VMs in all 335 municipalities between the 24<sup>th</sup> October and the 12<sup>th</sup> November 2005. This exercise culminated in an Election Day simulation taking place on the 13<sup>th</sup> November across the country. Nevertheless, the disinterest of the electorate towards the elections and the apparent lack of encouragement on the part of the CNE to attract voters to test out the machines and participate in the simulation resulted in few potential voters attending these events. The CNE attributed the lack of interest in these voter education exercises to the full understanding of the electronic system by the electorate. This conclusion was proved wrong on Election Day where in 70% of polling stations observed by the EU EOM the electorate experienced some difficulties in using the voting machines.

The CNE further invested time in distributing samples ballot papers. In total, 2.870.633 sample ballots for the elections for the Latin American and Andean Deputies and 3.760.015 samples for the National Assembly elections were distributed. They were disseminated in the period 8 - 22 November and were meant to reach out approximately to 20% of the electorate. Nevertheless, the number of invalid votes oscillated between 1 and 15% for the proportional lists and between 5 and 27% for the plurality-majority lists. In the whole country, the percentages oscillated between 16% in the single and multi-member constituencies and 6% in the proportional lists<sup>31</sup>. While these high figures could be partially explained with the fact that many of the invalid votes were actually for candidates that withdrew from the contest too late to be cancelled on the electronic ballots, the EU EOM noted clear difficulties for a large number of voters (See Chapter XI) with the use of the VMs and with the understanding of the plurality-majority candidate lists. This is an obvious and unfortunate consequence of the failure on this occasion by the CNE to ensure adequate levels of voter education. The following diagram illustrates the breakdown per States of the invalid votes.



In order to reach out to the electorate, the CNE also produced what was known as *Gacetillas*, a medium sized leaflet containing a basic description of the constituencies, the candidates, a sample of the electronic ballot paper, the different elections and the number of seats for each election as well as how to vote with the automated voting system and the manual one. At a national level the CNE produced 2.882.000 copies of these leaflet. Out of this total, 25%, (720.500 copies) were included in national and regional newspapers for distribution country

<sup>31</sup> For abstention results see Annex IV and for more details [www.cne.gov.ve/int\\_divulgacion\\_parlamentarias/index\\_principal.php?e=2](http://www.cne.gov.ve/int_divulgacion_parlamentarias/index_principal.php?e=2) -



wide and the remaining 75% were circulated amongst the regional CNEs, political organisations, groups of the electorate, civil associations and so on. Nevertheless, it is feared that many of the *Gacetillas* were not properly distributed and many remained in the regional headquarters with political parties and other groups failing to collect them. The EU EOM did not observe a dissemination programme that reflected the efforts apparently made by the CNE in this respect. Overall, the massive technological display put in place by the CNE to automate the process was not accompanied by a similar effort in enabling the electorate to take full advantage of the system.

### **10.3 Training of Polling Staff**

Polling staff are selected according to the procedures stipulated in Article 41 of the LOSPP. A polling station is made up of 3 members and 1 secretary. Each polling station member is chosen by lottery among the registered voters of their municipality of registration. However, if there are two elections taking place within the same year, the mandate of the polling station officials' span over both elections. Therefore the mandate of those polling officials serving for the Municipal Elections of August 2005 was also valid for the December 2005 Parliamentary Elections.

A consequence of this was that many of the appointed polling station members did not turn up for further training, others simply expressed apathy towards the forthcoming elections. The low interest in participating might also be due to the alleged missed payments by the CNE for the services rendered by the same staff in occasion of the previous electoral contest of August and by the encouragement from many opposition parties not to partake in the process. This encouragement became a clear call to boycott the process after the withdrawal of the opposition parties and their call to abstain from voting. As a result, in many states a severe shortage of staff occurred on Election Day, thus resulting in Regional CNEs asking for "volunteers" to come forward at the last moment. It was alleged that these new "volunteers" were recruited amongst the pro-government parties. Despite this call, there were many instances where it was observed that polling staff had to be recruited on the spot on the day of the elections. In the majority of the cases observed by the EU EOM, this was carried out in line with the polling staff replacement procedures outlined in the LOSPP.

According to the CNE official figures, some or all members of 49.87% of the overall number of polling stations attended the training. Nevertheless, the standard of the training sessions for the polling staff members and the dedication to promote these sessions by the CNE was evaluated by EU EOM observers as being quite inadequate across the country in terms of time dedicated to the topics and especially in terms of quality of the information provided to the trainees on the practicalities of the VMs and the complexity of the ballot.

### **10.4 The Electoral Campaign**

The official campaign begun on 30 October and was due to end at 05.30am on the morning of 2 December. The campaign was mostly calm and violence-free, apart from two incidents that disturbed it at its very end: the explosion of three devices in Caracas causing minor injuries to four people on 3 December, and the attack on the pipeline serving the largest oil refinery in the country, located in the state of Zulia, the night before the elections. Government spokespersons linked the incidents to opposition attempts to destabilize the country after the announced withdrawal from the elections of the major opposition parties.

Very few rallies were organised by either side and both political blocs mainly concentrated on door-to-door campaigns and targeted their audience through small organised meetings. In all states, the presence of the pro-government forces in the guise of posters and leaflets was more prominent, although it must be said that a fully-fledged campaign from both sides never fully took off the ground. Both sides also made large use of the regional press. Many opposition parties called for abstention and even placed advertisements in the local newspapers and in

some cases called directly for voters to abstain from the electoral process, which is in contravention of article 204 of the LOSPP<sup>32</sup>. The scarcity of traditional campaign events, especially on the part of the opposition parties, was mainly attributed to be a result of the lack of general interest surrounding these particular elections, the election fatigue that hit many of the interlocutors and the fact that parties were unable to fund their campaign.

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 almost completely missing from the political parties' public interventions and did not constitute an element of debate between the two blocs. The prohibition of state funds for electoral campaign purposes was often mentioned by opposition parties as a factor which impeded a more public and transparent campaign. The opposition parties focused their campaign on the perceived lack of neutrality of the CNE and alleged threats posed to the secrecy of the vote by an automated voting system which was meant to include the fingerprint capturing devices. The pro-government parties tended instead to present the electoral contest as another referendum pro or against the President, with some isolated efforts to emphasize the impact of the social programmes, the so called *Misiones*, in order to highlight the President's successes in reforming the state. Some of the propaganda carried out by the pro-government parties in this respect might have been contrary to Article 210 of the LOSPP. After the withdrawal of the majority of the opposition parties, the EU EOM observed a deterioration in the language used by pro-government parties against the opposition (both political parties and civil associations), with more inflammatory and aggressive language. High party officials, including the president and members of the government, indulged in this practice, which was witnessed both in rallies attended by EU observers as well as in the mass media.

Many parties from both political blocs used the images of state and regional officials for campaigning purposes in contravention of article 210 and 215 of the LOSPP. After the order issued on 23 November by the CNE for all parties to remove propaganda material in violation of the law, many of the parties reacted positively and less propaganda with local figures was noted especially amongst the opposition. This was particularly prevalent in the local press. In general, the CNE appeared to do little to sanction those parties who continued to be in violation of the law. However, it must also be said that the regional CNEs stated that they received a relatively small amount of complaints to act upon. Nevertheless, in one known instance, in Nueva Esparta, the Regional CNE ordered the *Guardia Nacional* to collect the election material of a candidate of the party MVR, but all material was returned the following day under the premise that the illegal parts would be modified and brought in compliance with the law<sup>33</sup>. The use of state and municipal figures in the political campaign continued in the majority of the states<sup>34</sup> even after the CNE announcement.

After the official withdrawal of many of the opposition parties, a decision was subsequently made by the CNE to prolong the length of the campaign for an additional 24 hours before Election Day, mainly to allow the parties that wanted to remain in the contest to make their position clear to the electorate. This decision is not in accordance with Art 209 of the LOSPP, which states that all campaigning activities must cease 48 hours before the commencement of the polls. The majority of the parties remaining in the election race took advantage of this extension and carried on campaigning with the use of megaphones and distributing leaflets and information. The days in between the withdrawal of the main opposition parties and Election Day were marred by some incidents attributed by the Government to the pro-abstention movements in attempt to destabilize the country and discourage the citizens from going to the polls.

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<sup>32</sup> This was especially observed in the State of Yaracuy until the CNE instructed the local press to abstain from running this type of propaganda on behalf of the political party called *Convergencia*.

<sup>33</sup> In some of these incriminated posters the image of the President was covered in black ink and the name was changed to "El Comandante". However, several of the same placards on the road towards the airport were neither recovered nor modified.

<sup>34</sup> Observed in all States where the EU observers were present, except Vargas.

### 10.5 Interference by State Administration and Use of State Resources

Interference of state officials in campaign activities and misuse of state resources for the campaign were observed in the majority of the States by EU EOM observers. Despite the LOSPP prohibition at this regard, various heads of municipalities were seen to actively participate in campaign events<sup>35</sup>, take a sudden active role in public works that could provide occasions for electoral propaganda, and emphasize the use of *ferias* and *misiones*<sup>36</sup>. It was also observed that state means of transport<sup>37</sup> were used for campaigning.

Attempts to intimidate the voters although perpetrated in a very subtle manner, remained a ubiquitous tool to pressurize the electorate by the majority of the political forces. The EU EOM received many reports on the use of the *Lista Tascon* and *Programa Maisanta* as being used as a tool to influence people to vote or in many cases to abstain from the voting process<sup>38</sup>.

### 10.6 The CNE Electoral Preparations

Overall, the CNE is an institution with very large technical and human resources. Its apparatus is able to cope with sudden policy changes and adjust to them with high efficiency. The pre-electoral period was dominated by intense negotiations between the electoral authority and a platform of opposition political parties in a manner that is very unusual in other elections. This continued negotiations resulted in various procedural and operational changes that intervened in the process at a late stage and impacted the electoral calendar, but the CNE operational machinery generally coped very well with all of them.

The CNE, in an effort to provide guarantees to the opposition parties on the reliability and transparency of the automated voting system, implemented several transparency measures and accepted a number of additional requests from the same parties. Among the most important acceptance of the opposition requests, worth mentioning are the increase from 34% to 45% of the percentage of polling station results<sup>39</sup> to be audited manually immediately after the counting (see Chapter VII), the limitation of the utilization of the electronic voters' lists (*Cuaderno Electrónico de Votación* or CEV) on a pilot basis, the elimination from the voting process of the fingerprint capturing machines as a measure to identify in an expeditious manner the voters at the polling station. In practice, the only important opposition request that the CNE decided it would not accept was the disclosure of the voters' addresses details, as the CNE claimed that this request would breach the provision on the privacy of personal data guaranteed by Article 60 of the Constitution.

For the Parliamentary Elections, a total number of 9.387 polling centers were opened, with 27.330 polling stations equipped with VMs (14.415.864 voters registered) and 36 polling stations in the country (1.538 voters registered) and 184 polling stations in embassies (51.645 voters registered in 116 embassies) equipped with traditional paper ballots. The total number of available VMs was around 29.000, serving 27.330 polling stations plus a 15% as reserve. In addition, a result aggregation centre at the national level had to be set up and regional centers in each of the 24 states. In addition to this, a separate organization was necessary for the various audit activities that the CNE put in place (see Chapter VII). Even in this field, the electoral authority decided to widen the content of the initial auditing plan. The logistic machinery of the CNE worked remarkably well and all election material was in place in due time in all facilities observed.

<sup>35</sup> Observed in Anzoategui, Guarico

<sup>36</sup> Observed in Barinas, Yaracuy and Zulia

<sup>37</sup> Observed in Trujillo, Anzoategui and Zulia. In Anzoategui, police cars were used to transport election material and municipal buses were observed by observers transporting voters to a rally.

<sup>38</sup> The EU EOM received by various parties, associations and private citizens copies of the two database, in particular the *Programa Maisanta*. In Monagas and Táchira, the EU EOM received reports of citizens who voted "yes" in the Referendum were denied loans and other benefits from state banks. In Monagas and Táchira

<sup>39</sup> Part of the opposition originally requested the manual audit of 47% of the polling station results.

The EU EOM observers indicated that the coordination between the regional and municipal levels of the CNE was not always fluid and there was not always a constant flow of information. In addition, despite the municipal and voting centre coordinators not being foreseen in the electoral law, in some states, observers noted that their role seemed to encompass a more important mandate<sup>40</sup> than what normally assigned to them. The municipal coordinators seemed to take on the tasks of coordinating all the activities of the municipal and regional CNEs bypassing the different levels of hierarchy and liaising directly with the CNE Headquarters in Caracas of the electoral administration at municipal and regional levels. A clear definition of their role would be important for future elections.

The EU observers perceived the electoral administration to be in the main transparent at the regional levels and in the great majority of cases the EU observers were provided<sup>41</sup> with the information they required. All observers found that all logistical arrangements had been put in place and there was no logistical impediment to hold successful elections, on the contrary the CNE was well prepared.

### 10.7 Domestic Observation and Civil Society

Despite the fact that Venezuela has a vibrant civil society, this sector mainly stayed away from direct involvement in election observation activities. Domestic observation groups were unfortunately not numerous and did not play a major role in this electoral process. The only exception being *Ojo Electoral*, a group that for the strong polarization present in the country possesses a remarkable impartiality and high analytical skills. It was the only domestic observation group to be accredited and was present in 15 out of the 24<sup>42</sup> states. Additionally, they played an important role of mediation between the CNE and the opposition parties that originally wanted to participate in the electoral contest. Due to a deficit of resources they were unable to deploy the desired number of observers to the field on Election Day, and therefore mainly observed in the state capitals. Another smaller observation group, called *Red de Veedores*<sup>43</sup> observed the elections though they did not receive the accreditation they officially applied for. The organization deployed observers in 10 states and in some cities abroad.

The civil association *Sùmate*, despite their declared role in defence of the civil rights of the Venezuelan people, did not seek an official accreditation to observe the electoral process. Nevertheless, many of their activities and reports were based on methodological concepts and instruments similar to the ones applied in election observation. Throughout the pre-electoral period *Sùmate* played a very visible and critical role of the activities of the CNE, enjoying considerable media attention. Even though the group never declared itself in favour of abstention, all their activities and statements motivated the opposition electorate to move towards abstention's positions. The furious media attacks that the leadership of *Sùmate* received on public TV channels on the days around the elections through a spot prepared by the unknown group called *Periodistas por la Verdad* are not in line with any standard of respect of the human, civil and political rights enshrined in the Constitution or any journalistic practice.

Other women's group and minority groups played a very marginal role in encouraging the information flow of the elections, but in no means, were any of these groups significant in the election process.

<sup>40</sup> Nueva Esparta, Yaracuy and Bolívar.

<sup>41</sup> There were occasions in Bolívar, Falcón and Yaracuy whereby the EU observers had difficulty in obtaining certain information regarding the elections in those respective areas.

<sup>42</sup> States where *Ojo Electoral* was not accredited: Aragua, Barinas, Portuguesa, Sucre, Táchira, Vargas, Monagas, Nueva Esparta and Falcón.

<sup>43</sup> [http://www.veedores.org/index.php?option=com\\_frontpage&Itemid=1](http://www.veedores.org/index.php?option=com_frontpage&Itemid=1)

## Chapter 11

### Election Day

#### 11.1 EU EOM deployment

On Election Day the EUEOM consisted of 162 observers including a group of six members of the European Parliament and their support staff as well as three locally recruited Short-Term Observers recruited among the EU member states embassies' staff. Overall, observer teams were deployed in 20 out of the 24 states<sup>44</sup>. There were seven teams<sup>45</sup> in Caracas, four in Vargas, four in Trujillo, three in Monagas, four in Anzoátegui, four in Aragua, three in Barinas, four in Bolívar, five in Carabobo, three in Falcón, three in Guárico, four in Lara, three in Mérida, two in Nueva Esparta, three in Portuguesa, three in Sucre, two in Táchira, three in Yaracuy and six in Zulia. After the observation of the manual audit of the polling station results, the Long Term Observers continued the observation of the result aggregation process at the regional level. The EU EOM observers were present at 80 opening and 76 closing events, and observed a total of 517 polling stations throughout the day.

#### 11.2 Opening

The overall impression gathered by the observers of the opening procedures was that the process was orderly and transparent. Nevertheless, the majority of the polling stations observed opened only between 07.00 and 08.00. The delay was mainly due to a general deficiency of polling officials, with many of the officials already selected not showing up on time or simply boycotting the process. In some instances the delay was due to technical glitches<sup>46</sup> of the VMs. All problems with the VMs were solved either by the assigned technician or with the replacement of the faulty VMs. All polling stations observed eventually opened. Missing material<sup>47</sup> was only observed in 2% of the stations. In any case, the late opening of the polling stations observed, the technical failures of the VMs or the missing material did not have any impact on the way the results were later processed.

The selection of polling staff had been a cumbersome task in many of the states, with many training sessions being held with very few attendees. The absence of polling staff that withdrew after the opposition parties' withdrawal became apparent only on Election Day whereby it was observed that 11% of polling stations observed opened and functioned without having the required quorum of four<sup>48</sup>. Furthermore, it was observed that in over the 70% of the polling stations visited there was the need to resort to the method of substitution<sup>49</sup>, with 11% of the cases not complying with the procedures outlined in the LOSPP. The lacunae of adequately trained polling staff members became apparent later on during the polling operations. In many instances observed it was the voting centre coordinators or in some cases, the *Plan República*<sup>50</sup> officials who indicated to polling officials how the polling operations had to be run. This lack of training also manifested itself strongly during the paper trail audit procedures.

#### 11.3 Polling

Polling took place in an orderly and peaceful manner with no important incidents of violence being reported. As expected, voters did not turn out in large numbers and the level of

<sup>44</sup> Teams were not deployed in Delta Amacuro, Amazonas and Apure for security reasons and in Cojedes due to the low population size.

<sup>45</sup> The teams accompanying Chief Observer José Albino Peneda, are included in this figure.

<sup>46</sup> Observed in Trujillo, Valencia, Miranda, Sucre, Caracas and Zulia

<sup>47</sup> Trujillo, Aragua, Lara and Zulia.

<sup>48</sup> Observed in all States except, Monagas, Portuguesa, Nueva Esparta, and Táchira.,

<sup>49</sup> As outlined in article 71 of the Ley Organica del Sufragio y Participacion Política and the manual for polling staff members

<sup>50</sup> *Plan Republica* is a mechanism for security and logistical support to the electoral process provided by the Army on electoral period, involving more than 120,000 army officers.

absenteeism was as high as 80% in some States. The nationwide official turnout figures published after the elections announced a turnout of 25%, with therefore an absenteeism of 75% of the registered voters. Polling staff were considered generally to be impartial; in 11% of polling stations visited the observers considered that some officials present did not maintain an impartial behaviour. This was attributed mostly to exaggerated efforts from the officials to help the voters understand with the VM. The officials included polling staff members, *Plan Republica* officials who were sometimes present inside a polling station and the coordinators of the voting centres.

The most apparent shortcoming in the process was the lack of comprehension of the voting procedures by a large number of voters and their difficulties with understanding of the functioning of the VMs. In 79% of the polling stations observed voters had problems in voting with the VMs and in 75% of the places observed voters sought the assistance of polling officials to use the VMs. The difficulties experienced by the voters in the observed cases were mainly due to the design of the VMs, the layout of the ballots (difficulties in identifying the parties and candidates of their choice, the size of the candidates' symbols), the reader unfriendliness of the VM tablets and the complexity of the election system. There were cases observed where voters could not complete their vote in the assigned three minutes<sup>51</sup>, and, in a less evident measure, cases where the voters had been unable to cast their ballots<sup>52</sup> at all due to the lack of time and poor understanding of the voting procedures. There were very few observed cases of voters turned away from the voting centres<sup>53</sup> for being listed in different polling stations' lists and equally few cases in which voters were seemingly allowed to vote without their ID card<sup>54</sup>.

The fact that many voters had to be assisted by polling station staff<sup>55</sup> raised concerns as to the extent to which the secrecy of the vote was ensured. There were many situations in fact where observers considered that a breach of the secrecy of the vote<sup>56</sup> might be possible. This was mainly due to a combination of limited command of the voting procedures by many polling station officials, ineffective voter education program explaining the functioning of the VMs and the objectively complicated layout of the ballot. In numerous circumstances it was observed that the assistance was also provided by other personnel present in the voting centres like coordinators, members of the *Plan Republica* and party witnesses who were in the main from the pro-governmental parties<sup>57</sup>. Observers also witnessed in some instances that the person providing assistance to the voters actually cast their vote for them<sup>58</sup>, although it was assumed that it was done at the behest of the voter.

Another significant feature of the day was that campaigning activities were observed in 18<sup>59</sup> out of the 20 states where the EU observers had been present. The campaigning activities in their main were being carried out by pro-government parties and took the guise of open campaigning with posters and leaflets<sup>60</sup>, megaphones<sup>61</sup> and music<sup>62</sup>, setting up of information stands<sup>63</sup>, distribution of food and beverages<sup>64</sup>, conducting exit polls and collecting voters details<sup>65</sup>, and transportation<sup>66</sup> of voters to the polling centres. The presence of *Plan Republica* officials was perceived in some instances to be excessive<sup>67</sup>. Although Article 165 of the LOSPP provides that *Plan Republica*'s presence in polling stations is only permitted upon request of

<sup>51</sup> Observed in all States.

<sup>52</sup> Observed in all States except, Monagas, Nueva Esparta, Yaracuy and Zulia.

<sup>53</sup> Observed in Anzoátegui, Aragua, Táchira, Portuguesa, Nueva Esparta and Falcón.

<sup>54</sup> Observed in Sucre, Vargas, Barinas and Lara.

<sup>55</sup> Observed in all States.

<sup>56</sup> Observed in all States

<sup>57</sup> Observed in all States.

<sup>58</sup> Observed in Guárico, Barinas, Yaracuy and Bolívar

<sup>59</sup> Observed in all States except Caracas nor Vargas.

<sup>60</sup> Observed in Guárico, Barinas, Portuguesa, Anzoátegui, Yaracuy and Bolívar

<sup>61</sup> Observed in Trujillo,

<sup>62</sup> Observed in Zulia and Portuguesa

<sup>63</sup> Observed in Sucre, Guárico, Trujillo, Nueva Esparta, Mérida, Barinas, Portuguesa, Yaracuy and Bolívar

<sup>64</sup> Observed in Barinas, Monagas, Portuguesa, Yaracuy and Bolívar

<sup>65</sup> Observed in Falcón, Trujillo, Bolívar, Zulia, Yaracuy, Guárico and Portuguesa, Yaracuy and Bolívar.

<sup>66</sup> Observed in Sucre, Nueva Esparta, Mérida, Bolívar

<sup>67</sup> Aragua, Táchira, Bolívar, Monagas, Falcón, Sucre, Miranda and Yaracuy

polling stations' officials, this provision was not respected and in some cases the assistance provided went beyond the mere security role and included various forms of assistance to the voters. This undue extension of competences was especially felt in the rural polling stations. In many states *Plan Republica* officials were observed as having an active role in the process, either by actually directing the staff or by offering assistance to the voters. This observed intrusiveness of *Plan Republica* officials seemed to be due to an overzealous attention to their role and to a lack of specific training of the limit and nature of their functions.

The EU observers evaluated the reliability of the VMs as very high. Technical problems with the VMs were observed in 10%<sup>68</sup> of the polling stations visited. In all cases however the VMs were either rapidly fixed or eventually replaced. The problems observed were deemed as not affecting the overall voting process in the observed polling station in any way. There were a few isolated incidences where the voters claimed that vote cast in the VMs did not correspond with the paper receipt issued by the VM, and of voters forgetting to place the receipt in the urn. These occurrences were also assessed as not having any impact on the overall results. Domestic observers were present at only 6% of the polling stations visited by the EU observers, with this number increasing to 19% during the counting and aggregation of the results.

#### 11.4 Closing and Transmission of results

Throughout the country, the majority of voters that turned out at the polls had cast their ballot well before the foreseen closing time of 16.00. There was an official instruction for polling centers in the States of Monagas, Vargas, Nueva Esparta and Lara to close at 17.00 due to the torrential rainfalls during the day. However, with a very extensive interpretation of Article 158 of the LOSPP<sup>69</sup>, the CNE authorized to extend voting hours throughout the nation as it was deemed that due to the late opening in many stations, the polls had to ensure operability for at least 10 hours. This extension led to confusion in some cases among polling staff and allegations from the opposition of CNE bowing to pro-government parties' pressure in an attempt to boost the turnout. This also caused a non uniform closing time of the polls across the country. In only one case did the EU observers report that a polling station closed at the prescribed 16.00 in Trujillo, while all others remained open until at least 10 hours after their respective opening times. In one observed incident in Sucre, observers were witness to a voting centre closing down only to open again upon instructions of the *Plan Republica* to allow seven more people to be able to vote manually.

The transmission of results proceeded with high speed and accuracy. Once the polling stations closed, the polling staff normally printed out a copy of the results form (*acta de escrutinio*). Then the VMs were connected to a transmission means<sup>70</sup> and the results transmitted to the Results Aggregation Center in Caracas. There were no observed cases of results being transmitted before the printing and display of the result sheets, which was one of the main allegations raised during the Recall Referendum. In some instances, due to the lack of electricity or because of bad weather the results had to be transferred manually, but in the main all results were delivered in time and no complaints recorded. At the central level all communications systems appeared sufficiently protected: all transmitted data was encrypted by the software application used and additionally sent over Secure Socket Layer (SSL) protected connections. The whole transmission exercise was done over a private network. VMs transferred both their local tallies (as printed on the protocols used in the polling station) and also all single votes (needed for vote transfer of resigned candidates) to the results aggregation center. However, the complicated layout of the Results Aggregation Center, did facilitate the observation of all activities being carried out in the Center.

<sup>68</sup> Not observed in Táchira, Guárico and Yaracuy.

<sup>69</sup> The CNE considered that 10 polling hours had to be guaranteed to the electorate. Given that in normal circumstances a polling station would be opened from 6.00 a.m. (considering 30 min for the opening) to 16.00 p.m., in case of delays in the opening, the polling committee had to guarantee at least the 10-hour operability period.

<sup>70</sup> Depending on the transmission facilities available, landline lines, mobile lines or satellite lines could be used, but in most of the cases landlines were used. See Chapter 7 for more details.

### **11.5 The audit paper trail**

The closing procedures were generally followed and the paper trail audit took place in all voting centres where EU observers were present for the closing. The lottery procedures for determining which polling stations to audit were not always followed<sup>71</sup>. 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 VMs and between the paper receipts and the votes recorded in the VMs. In 28% of the cases observed, a discrepancy was found between the number of ballot papers cast through the VMs and the paper receipts counted by the polling staff in the urn. These differences were always comprised between 1 and 5 and were attributed to human error in the manual count<sup>72</sup>.

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<sup>71</sup> Carabobo, Nueva Esparta, Zulia, Barinas, Lara and Miranda.

<sup>72</sup> The audit activities conducted by the CNE in the days prior of the elections demonstrated that every time there was a discrepancy between the VM counting and the manual audit of the receipts, the discrepancy was always due to a human error in the audit. See Annex II.



## Chapter 12

### Challenges and Complaints

#### 12.1 The Complaints Procedure

Complaints procedures are regulated by the LOSPP. In addition the Constitution establishes in its Article 297 that the Electoral Board (*Sala Electoral*) of the High Court (*Tribunal Supremo de Justicia*) is the institution entitled to rule on complaints of electoral jurisdiction (*Jurisdicción Contencioso Electoral*). The CNE has the obligation to provide the High Court with the report and documentation prepared on the case by its Legal Department (*Consultoría Jurídica*) and any eventual decision issued by its Steering Board.

There are three main instruments to submit a challenge: a) Administrative Complaints before the CNE at regional or central level, so called hierarchical challenge (*Recurso Jerárquico*) before the CNE; b) the interpretative challenge before the High Court; c) the electoral disputes (*Contencioso Electoral*) before the Electoral Board of the High Court. The plaintiff must however exhaust the administrative means via (CNE) before lodging a challenge before the High Court. The law of procedures is based on the LOSPP provisions and on the Basic Law on Administrative Procedures (*Ley Orgánica de Procedimientos Administrativos*). Any political party, group of voters, physical and juridical persons are entitled to file an electoral challenge.

According to Article 45 of the LOSPP, the Electoral Board of the High Court hears on challenges submitted against acts, actions and omissions related to constitution, appointment, functioning or cancellation of the political parties and appointment of member of electoral bodies, voters' register, candidates' application and their potential election to the Presidency and to the AN. In addition, the Electoral Board of the High Court has competence on eventual rulings or decisions of other courts that might have an impact on electoral matters or are in contradiction with the previous jurisprudence in electoral matters of the same High Court.

#### 12.2 Challenges and Complaints related to the Parliamentary Elections

The Legal Department of the CNE informed the EU EOM that only seven hierarchical challenges (*Recurso Jerárquico*) had been submitted as of 20 December on 6 AN deputies and 1 on Latin-American and Andean Parliament. From the information collected before departure, none of them appear to bear any impact on the results: no additional detailed information was received on the cases after the EU EOM departure, despite the requests. After that date, the 20 working days deadline to submit complaints was suspended due to the Christmas holidays until 9 January 2006 (for the disputes before the TSJ the deadline is of 15 working days). As far as candidates' challenges received, the CNE informed the EU EOM to have received and resolved 62 cases.

Throughout the post-election period, the EU EOM received several letters and visits from interested stakeholders denouncing various aspects of the electoral process. However, the great majority of those claims were just a repetition of the same set of complaints already presented to the Mission in various forms (general criticisms of the CNE, reiteration of the demands of some opposition parties and NGO's, request for the EU EOM to act as mediator or at least to transmit messages to the authorities) but were not submitted as official complaints to the relevant institutions.

## **Section V**

### **Chapter 13**

#### **Recommendations**

##### **13.1 General**

The appointment of a CNE Steering Board composed of independent professionals of various extractions that enjoy the trust of all the sectors of society is a fundamental step in the reconciliation process. The EU EOM welcomes the recent initiative in this sense from the new AN and recommend to all actors faced with the issue of appointing the CNE Steering Board, to make all possible efforts to include in the debate and ensuing selection process all the political forces currently not represented in the AN.

A similar open discussion involving all political forces, including the ones not represented in the AN, should take place on the electoral system and the selection of adequate mechanisms to guarantee both proportionality and personal representation and avoid undesired side effect as *Las Morochas*.

We suggest the AN should adopt of a Data Protection Law that could guarantee a uniform protection of the citizens' sensitive data and guarantee the privacy of the political decisions made by the electorate. We also believe that the political forces should agree not to use the current information available through the *Programa Maisanta* as a tool of pressure on and intimidation of the electorate.

Domestic observation is a crucial confidence-building measure and an important instrument to enhance the checks and balances necessary of a healthy democracy. For this reason, an ampler participation from the civil society to the electoral process through election observation is strongly encouraged.

##### **13.2 Legal Framework**

The EU EOM considers that it would be convenient to harmonize with the principles enshrined in the 1999 Constitution. One way to achieve maximum clarity and consistency between the various legal provisions may be to centralize all the crucial election-related legislation in one comprehensive code, through the adoption of a new Basic Law that replaces the LOSPP. The new Basic Law should also take stock of the recent technical development in electronic voting.

The prohibition of public funding to parties during the electoral campaign should be reconsidered along the lines of the constitutional provisions that allow already the possibility to provide funding to specific parties' activities such as programs and projects.

##### **13.3 Election Administration**

Once a new Basic Law on Elections brings into harmony the constitutional principles with the electoral process, all the procedural aspects of the electoral process should be compiled and consolidate in a single Rules and Regulations Book.

The CNE should consider the undertaking of an independent audit of the REP, possibly in conjunction with the ID Card Program of the ONIDEX and the Civil Registry. Consideration should be given to a complete overhaul of the Civil Registry and make the voter registration an automatic derivation of the Civil Registry.

Adequate consideration should be given by the CNE to guarantee the protection of the sensitive data of voters and candidates stored for electoral purposes. The IT security applications used

by the CNE to guarantee the security of the electronic voting system could be extended to all other sort of citizens' sensitive information handled by the CNE.

The CNE should be stricter in enforcing polling procedures, especially related to the prohibition to campaign. Clearer regulations on polling station opening and closing procedures should also be passed. In addition, stronger focus should be placed by the CNE on improving the training of polling station officials, as well as clarity should be brought in defining the role of the electoral coordinators at all levels (regional, local and polling centers).

The CNE should change its very restrictive regulation that does not allow a proper implementation of the gender provisions enshrined in the LOSPP.

#### **13.4 Electronic voting system**

The CNE should invest more financial and technical resources in the organization of its audit activities. Audit session should start considerably earlier in the process, with procedures elaborated and published well in advance to the commencement of such activities.

Consideration should be given by the CNE to the establishment of two types of audits: public audits, starting two months before the elections, to be opened to all stakeholders, and full system audits, of the duration of various months, to be conducted by institutions with appropriate expertise and established reputation. The full system audits should accompany the entire system development process (e.g. VM software or results aggregation software). The institutions mandated with such task should be granted full access to all source codes, documentation and hardware without time or location restrictions.

The CNE should initiate adequate training programs for various levels of electoral officials on the functioning of the VMs, overall polling procedure and provision of assistance to voters without being intrusive.

The CNE should give immediate priority to the development of in-depth civic education programs targeting the entire voting population on the general functioning of the VMs. These programs should be integrated with specific voter information campaigns in the pre-electoral periods.

The user-friendliness of the VMs should be improved, especially when the complication of the electoral system and the number of electoral races is of a degree similar to the one of the Parliamentary Elections. The voters' option to cast a blank vote should be made easier to use.

The use of the fingerprint capturing machines as a mechanism to identify the voters at the polling station level and to prevent double voting should be postponed until a proper and secure identification program to provide all citizens of new ID card is in place.

The technological investments and related developments introduced by the CNE in the electoral process should be made more immediately perceivable and exploitable as a quality service for all stakeholders. For example, the level of IT applications used in the Parliamentary Elections would allow for an immediate amelioration of the results aggregation process and their faster publication, even online.

#### **13.5 Media**

In order to mitigate the scarcity of information about the parties' platforms observed during the Parliamentary Elections, and to guarantee its accuracy, impartiality and balance, all media outlets should agree on a self-imposed code of conduct for the electoral period.

Specific mechanisms to distribute free time and space on the media in an equitable manner among the main electoral contenders, which is not excessively onerous for the media companies, should be put in place.

During the last electoral campaign, the CNE expressed to media representatives its willingness to make arrangements with the Ministry of Communication and Information for limiting the resort to *cadenas* during the electoral period. The CNE should promote a similar initiative for the next elections, possibly through the form of a governmental decree or a CNE Resolution.

## Annex I - Applicable Legislation

	Carta Magna	LOSPP	LOPE	EEPP	Resoluciones emanadas por el CNE par normar las elecciones Parlamentarias 2005.	Ley de Partidos Políticos, Reuniones Públicas y Manifestaciones
<b>Disposiciones Fundamentales</b>	Art. 162, 165	L.O.S.P.P, Art. 3 y 4.	Art. 33 Num 3.Competencia CNE	Art. 6,8, 10.		
<b>Sistema Electoral</b>	Art. 63	L.O.S.P.P., Art. 7,8,9,12, 14 Num 2,15,17,20 y 21		Art. 15,16,17,19 y 20.		
<b>Administración Electoral</b>		L.O.S.P.P, Art. 24,25,26,29.	Art.46,54,55.		Resolución Nº 050223-075 Normas para regular los Organismos Electorales Subalternos de la Junta Nacional Electoral	
<b>Del Servicio Electoral de los Miembros de Mesa</b>		L.O.S.P.P, Art. 42, 44,46-48.	Art. 48 Num 6.		Resolución Nº 051014-1185 Procedimiento para extender credenciales a los miembros y secretarías de las mesas electorales.	
<b>De los Testigos</b>		L.O.S.P.P, Art. 75-80,81,84.			Resolución Nº 051004-1172 Procedimiento para extender credenciales a los testigos ante la Junta Nacional Electoral y sus Organismos Subalternos para las elecciones Parlamentarias.	
<b>De los Electores</b>	Art. 64	L.O.S.P.P, Art. 85 y 86		Art. 25		
<b>Registro Electoral Permanente</b>		L.O.S.P.P, Art.87,88,93,94, 95,97,102,109, 110,111,116,118-122.	Art. 57-59 Num 5	Art. 24.		
<b>De los Elegibles</b>	Art. 64, 65,67, 188,189	L.O.S.P.P, Art.125, 145, 132,133 134, 138,142-151 y 231	Art. 33 Num 42, 66 Num. 1 y 2.		Resolución Nº 050722-471 Para la Constitución de las agrupaciones de ciudadanos que participan en las elecciones, Resolución Nº 050722-472 Para la Constitución de los grupos de electores que participaran en las elecciones, Resolución Nº 050831-503 Normas de Postulaciones de Candidatos a la Asamblea Nacional, Resolución Nº 050831-505 Separación de los cargos públicos de los funcionarios electos Diputados.	Ley de Partidos Políticos, Reuniones Públicas y Manifestaciones, Art. 10-24.
<b>De la Campaña Electoral</b>		L.O.S.P.P, Art. 196-200,204-211,212-215	Art. 66 Num. 6.		Resolución Nº 051019-1175 Normas de Publicidad y Propaganda de la Campaña Electoral de las elecciones Parlamentarias.	Ley de Partidos Políticos, Reuniones Públicas Manifestaciones, Art. 30-35.

	<b>Carta Magna</b>	<b>LOSPP</b>	<b>LOPE</b>	<b>EEPP</b>	<b>Resoluciones emanadas por el CNE par normar las elecciones Parlamentarias 2005.</b>	<b>Ley de Partidos Políticos, Reuniones Públicas y Manifestaciones</b>
<b>Financiamiento de las Campañas electorales</b>	Art. 293 Num. 2	Art. 201-203	Art. 66 Num. 4,69	Art. 26	Resolución Nº 050831-1053 Reglamento para el Control del Financiamiento Ordinario de las organizaciones con fines políticos y del Financiamiento de las Campañas Políticas.	
<b>De las Elecciones</b>	Art. 293 Num. 5	Art.152	Art. 33 Num. 1,3 y 42	Art. 29	Resolución Nº 051011-1170 Cronograma Electoral	
<b>De las Votaciones</b>	Art. 63	Art. 153			Resolución Nº 051011-1170 Cronograma Electoral, Resolución Nº 051108-1189 Normas sobre el Voto de los venezolanos en el exterior	
<b>Del acto de Votación</b>		Art.158-167			Resolución Nº 051019-1180 Normas para la Instalación y Constitución de las Mesas electorales y del acto de votación, Resolución Nº 051019-1176 Normas de Captación de Huellas y garantías del principio un elector un voto en las elecciones. Resolución Nº Normas reguladoras del Plan de contingencias del sistema automatizado de votación en las elecciones	
<b>Del Escrutinio</b>		Art. 168-174			Resolución Nº 051019-1177 Instructivo sobre procedimiento de auditoría a realizarse al cierre del acto de votación y escrutinio de la mesas electorales de la mesa automatizada ubicada en los Centros de Votación.	
<b>De la Totalización, Adjudicación y Proclamación.</b>		Art. 60 Num. 6º y 7º, 64 Num. 7 y 8, 175-180	Art. 33 Num 42, 48 Num 1º		Resolución Nº 051108-1191 Instructivo sobre procedimiento de auditoría previa para la verificación y control de calidad del sistema automatizado. Resolución Nº 051111-1193 Normas para la Totalización, Adjudicación y Proclamación de las elecciones.	
<b>Régimen de Observación Nacional e Internacional</b>					Resolución Nº 051108-1188 Normas sobre régimen de observación Nacional. Resolución Nº 051108-1190 Normas sobre el régimen de observación Internacional.	
<b>De las nulidades</b>		Art. 216-224.				
<b>Revisión de actos en Sede Administrativa</b>		Art.227-234				
<b>Revisión de los actos en Sede Judicial</b>		Art. 235-250.				

## Annex II - List of Auditing session organized by the CNE

28th October 2005	Source code assessment and development of electronic signature (EU observers not in attendance)
14th November 2005	Public election trial, deploying 4200 machines to voting centres around the country.(EU observers not in attendance)
19th November 2005	Source code review/de-bugging session (EU observer in attendance)
21st November 2005 & 22nd November 2005	Presentation and review of central results tabulation system and source code (EU observers in attendance): High level explanation/presentation (Powerpoint) giving general overview of structure and workflows of the audit system.
23rd November 2005	Source code review/debugging session of source code of voting machine (EU observers inattendance): This meeting took the form of a line by line review of the source code by Smartmatic and specifically a review of the process of randomising and storing the Vote Files.
25th November 2005	Presentation of the fingerprint capturing systems organized by the CNE for EOM members.
27th November 2005	Audit of full e-voting procedure using random sample of machines (140, 0.5%) selected during the assembly and distribution process: This audit was planned as a mixture of functionality, software and hardware texts in the presence of party representatives and observers. The sample voting machines had been randomly selected during the distribution process. For the audit 50 votes were entered into each machine by pairs of operators. The voting reports were then printed and transmitted to simulated central servers. The manual voting receipts were then tallied by the operators. These manual tallies were then compared to the transmitted voting reports to ascertain if the voting machine was accurately recording the votes that had been input. In addition to this, two machines were random chosen by the political parties/national observers and completely dismantled. An integrity check was also performed on several machines, checking the digital signatures and the applications installed on the voting machine. Initial results of the audit demonstrated a discrepancy between the manual tallies and the electronic tallies in around 20% of the electoral contests. However, subsequent recounts resulted in no discrepancies between the manual counts and the VM reports.

29th November 2005	Presentation of the method and security of the transmission of voting data. (EU observers in attendance)
2nd December 2005	<p>Installation of VM in voting centers</p> <p>In most places the voting machine equipment was set up. The installation was mainly handled by the operators employed by the CNE and trained by Smartmatic. It could be observed that the polling station members had to rely on the trained staff to check the proper functionality of the voting machines. According to the CNE all 27.330 (100%) were properly installed by Saturday and all problems that occurred (mostly related to improper power connectivity or problems with the printers) were sorted out by then.</p>
4th December 2005	<p>Election Day Audit</p> <p>On Election Day the CNE had allowed technical trained people to observe the results aggregation process in the server room at the CNE main building. At this audit it could be observed how the voting machines were connecting to the main server, how many lines of the remote access server for the dial up of the voting machines were in use at one point in time, how the data transfer at the firewalls was behaving and which voting machines had not transmitted their tally. Special interest was given to the relationship of the data sent and received. As alleged in previous reports we could see that there was a bidirectional communication during the time of the transmission of the votes but this related to receiving the tally and forms (actas) and sending a confirmation to the voting machines. We could also see that the relationship of the sent and received data was asymmetric meaning more data was received than sent. The server room provided for separate working stations where observers could see on mirror screens the actions of the administrators. Although the staff was very willing to give explanations and to give details about what could be observed, the results (voter turnout and tallied votes) were not able to be accessed. This was only supposed to be released after the first bulletin by the head of the CNE, which was given shortly after 21.00. Together with the fact that the server room was cleared of access as everybody (including staff and observers) had to leave the server room for 40 minutes, this led to allegations from the opposition that some manipulations had occurred. This seems very unlikely as paper receipts in the polling stations would then have had to been</p>



	<p>changed as well. To build trust the CNE agreed to give all logfiles (~14 GB) to the parties and observers in the course of the week.</p>
4 <sup>th</sup> December	<p>Paper Trail Audit at Polling Station observed by LTOs and STOs</p>
5th December 2005	<p>Post-Election Audits</p> <p>On Monday, the day after the elections, the post audit process started. In the CNE the actas of the 12000 audited voting machines were about to be entered into a database by CNE employees. In a warehouse in Guaicapuro the notebooks, the printouts, and the pen drives of the voting machines were handed over from the military to the CNE. After a check of the material the pen-drives were backed up and wiped so no votes would stay on the machines. The process for this procedure was just developed days before and lacked therefore proper documentation. This wiping of the pen-drives and the harddrives was decided upon by the CNE in the aftermath of the detection of the EVM's flaw.</p>

## ANNEX 1: MEDIA MONITORING STATISTICS

### 1. Print Media

	POLITICAL ACTORS ON NEWSPAPERS (PUBLICITY AND EDITORIAL CONTENT), BY MEDIUM, NOVEMBER 21 TO DECEMBER 8			
	Últimas Noticias	EI Nacional	EI Universal	VEA EI Nuevo País
President	7,5%	10,2%	12,9%	17,1%
Executive power	27,1%	19,6%	20,1%	20,2%
Legislative power	7,0%	5,1%	5,9%	4,3%
Regional or local govts	11,3%	4,0%	9,3%	9,0%
Electoral authority	14,7%	24,6%	13,9%	8,0%
Parties	23,3%	27,2%	25,2%	30,8%
Observers	9,1%	9,4%	12,7%	10,6%
	100%	100%	100%	100%

### PERCENTAGE OF SPACE DEVOTED TO PARTIES AND CANDIDATES OVER TOTAL SPACE DEVOTED TO POLITICS

	Parties	Candidates
Últimas Noticias	19,6%	4,3%
EI Nacional	27,3%	9,2%
EI Universal	24,5%	4,7%
VEA	24,7%	2,9%
EI Nuevo País	31,6%	7,3%

### THE CANDIDATES ON THE NEWSPAPERS BY TYPE OF CONTENT

	Últimas Noticias	EI Nacional	EI Universal	VEA EI Nuevo País
Advertising	14,9%	6,3%	0,0%	33,1%
Information	82,5%	73,2%	85,4%	53,5%
Opinion	2,6%	20,5%	14,6%	13,5%
	100%	100%	100%	100%

**EDITORIAL COVERAGE OF CANDIDATES BY COALITION AND NEWSPAPER**

	Últimas Noticias	EI Nacional	EI Universal	VEA	EI Nuevo País
UVE	43,8%	46,8%	61,3%	63,0%	7,5%
Unidad	36,8%	53,0%	35,3%	21,1%	92,5%
Others	19,4%	0,2%	3,4%	15,9%	0,0%
	100%	100%	100%	100%	100%

**TONE OF EDITORIAL COVERAGE OF CANDIDATES BY COALITION AND NEWSPAPER**

	UVE			Unidad			Others		
	Negative	Neutral	Positive	Negative	Neutral	Positive	Negative	Neutral	Positive
Últimas Noticias	0,0%	53,4%	46,6%	100%	71,3%	21,0%	0,0%	13,1%	86,9%
EI Nacional	48,8%	43,8%	7,4%	100%	59,2%	2,5%	0,0%	100,0%	0,0%
EI Universal	22,0%	77,0%	1,0%	100%	80,0%	10,9%	16,2%	0,0%	83,8%
VEA	0,0%	82,1%	17,9%	100%	60,2%	0,0%	57,1%	42,9%	0,0%
EI Nuevo País	0,0%	100,0%	0,0%	100%	93,8%	6,2%	0,0%	0,0%	0,0%

## 2. Radio

TIME DEVOTED TO POLITICAL ACTORS AND CANDIDATES ON PRIME TIME TV, NOVEMBER 19- DECEMBER 8		Candidates	% of candidates over politics
	Politics		
Radio Nacional	56:36:44	4:43:15	8,34%
Unión Radio	41:30:49	2:48:44	6,77%
<b>TOTAL</b>	98:07:33	7:31:59	7,68%

### TIME SHARE OF POLITICAL ACTORS BY RADIO STATION

	Radio Nacional	Unión Radio
President	30,6%	21,7%
Executive power	26,0%	16,4%
Legislative power	5,2%	7,5%
Regional or local govs	3,6%	5,9%
Electoral authority	7,6%	17,0%
Parties	24,3%	27,9%
Observers	2,8%	3,6%
	100%	100%

### COVERAGE OF CANDIDATES BY TYPE OF CONTENT AND RADIO STATION

	Radio Nacional	Unión Radio
Advertising	5,7%	2,4%
Information	27,4%	33,6%
Opinion	66,9%	64,1%
	100%	100%

### EDITORIAL COVERAGE OF CANDIDATES BY COALITION AND RADIO STATION

	Radio Nacional	Unión Radio
UVE	58,0%	10,4%
Unidad	41,8%	88,9%
Others	0,1%	0,8%
	100%	100%

**TONE OF EDITORIAL COVERAGE OF CANDIDATES BY COALITION**

	Radio Nacional			Unión Radio		
	Negative	Neutral	Positive	Negative	Neutral	Positive
<b>UVE</b>	1,3%	38,4%	60,3%	4,1%	92,8%	3,1%
<b>Unidad</b>	63,4%	35,9%	0,7%	0,3%	86,8%	12,8%
<b>Others</b>	0,0%	100,0%	0,0%	0,8%	0,0%	100,0%

### 3. Television

#### TIME DEVOTED TO POLITICAL INFORMATION AND CANDIDATES ON PRIME TIME TV, NOVEMBER 19-DECEMBER 8 % of candidates over total politics

	Politics	Candidates	% of candidates over total politics
Televén	36:25:27	3:10:35	8,7%
Globovisión	82:42:35	4:07:20	5,0%
RCTV	36:56:53	3:12:01	8,7%
VTV	102:53:21	6:31:17	6,3%
TOTAL	258:58:16	17:01:13	6,6%

#### TIME SHARE OF POLITICAL ACTORS BY TV STATION

	Televén	Globovisión	RCTV	VTV
President	20,6%	17,3%	22,3%	19,5%
Executive power	25,2%	21,4%	22,3%	23,2%
Legislative power	7,2%	8,7%	6,8%	8,9%
Regional or local govs	2,2%	8,0%	4,8%	5,8%
Electoral authority	13,9%	16,5%	18,3%	14,6%
Parties	28,4%	21,8%	21,9%	24,9%
Observers	2,4%	6,3%	3,7%	3,1%
	100%	100%	100%	100%

#### COVERAGE OF CANDIDATES BY TYPE OF CONTENT AND TV STATION

	Televén	Globovisión	RCTV	VTV
Publicity	7,3%	1,2%	2,3%	7,7%
Information	12,6%	53,2%	14,2%	46,5%
Opinion	80,1%	45,6%	83,4%	45,8%
	100,0%	100,0%	100,0%	100,0%

**EDITORIAL COVERAGE OF CANDIDATES BY COALITION AND TV STATION**

	Televén	Globovisión	RCTV	VTV
UVE	25,9%	36,7%	29,9%	67,1%
Unidad	66,7%	61,9%	69,9%	31,0%
Others	7,3%	1,4%	0,2%	1,9%
	100,0%	100,0%	100,0%	100,0%

**TOPE OF EDITORIAL COVERAGE OF CANDIDATES BY MAIN PARTY COALITIONS ON TV**

	UVE			Unidad			Others		
	Negative	Neutral	Positive	Negative	Neutral	Positive	Negative	Neutral	Positive
Televén	2,4%	75,6%	22,0%	8,4%	79,1%	12,5%	2,3%	30,2%	67,5%
Globovisión	0,0%	88,4%	11,6%	9,3%	87,1%	3,6%	0,0%	100,0%	0,0%
RCTV	6,9%	93,1%	0,0%	0,7%	86,0%	13,3%	0,0%	100,0%	0,0%
VTV	7,8%	62,6%	29,6%	42,5%	51,7%	5,9%	0,0%	88,2%	11,8%