



Republic of Paraguay

FINAL REPORT

GENERAL ELECTIONS
22 April 2018

EUROPEAN UNION **ELECTION OBSERVATION MISSION**

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Annex I: Table of Recommendations

I. Executive Summary

- On 22 April Paraguayans voted in six elections to elect the president and vice-president, the Congress (Senate and Chamber of Deputies), governors, members of departmental assemblies and representatives to Parlasur. A total of 61 political groupings contested the general elections. Despite the considerable number of participants, the electoral process was dominated by *Partido Colorado - Asociación Nacional Republicana* (ANR), *Partido Liberal Radical Auténtico* (PLRA) and *Frente Guasú*.
- Voting took place in an organised and calm atmosphere with polling stations following procedures that ensured the integrity and transparency of the process. Exit poll results were announced throughout the day by traditional and social media, in violation of the law, which establishes that exit poll results should only be disseminated one hour after closing of voting. EU observers were present constantly during the aggregation at all electoral tribunals. The integrity of results forms was assessed as good or very good in 98 per cent of cases and with high levels of transparency.
- The Superior Tribunal of Electoral Justice (TSJE) announced official election results on 25 May 2018. The official presidential results were similar to the ones captured by TREP. The difference between the two main presidential candidates remained 3.7 per cent. Mario Abdo Benítez of ANR obtained 46.4 per cent of the vote and Efraín Alegre on behalf of *Alianza Ganar* obtained 42.7 per cent. For the Senate, ANR secured 17 seats followed by PLRA with 13 seats and *Frente Guasú* with six seats. Smaller parties obtained a total of nine seats. For the Chamber of Deputies, ANR obtained 42 seats followed by PLRA with 17 seats and *Alianza Ganar* with 13 seats. Smaller parties obtained a total of eight seats. The official results for governors were also similar to the provisional results obtained via TREP. The ANR was the most voted party with 13 governors followed by PLRA with three governors and *Alianza Ganar* with one governor.
- There was confidence in the technical performance of the TSJE and its ability to administer elections, despite the fact that it is seen as politicised. The TSJE showed a substantial level of preparedness for the administration of the electoral process and competence in conducting key electoral operations. The TSJE made efforts to administer an inclusive and transparent process. Political party representatives were able to follow up and be informed about electoral operations.
- The TSJE faced several challenges in administering elections, including the lack of an effective mechanism to ensure that its decisions were implemented by the lower levels of the electoral administration and limited control over the last phases of the electoral process, namely during election day. The EU EOM considered that the TSJE made balanced decisions on crucial issues involving different political groups. In contrast, some electoral tribunals and electoral courts took decisions based on their political preference and at times overstepped their mandate.
- The last phases of the process (distribution of election materials, voting, counting and retrieval of election materials and results forms) are handled by the civic boards and by polling station staff who are representatives of political parties. The lack of confidence in the civic boards, seen as a battleground for political groups and of dubious accountability, raised doubts regarding their positive contribution to the electoral process. The TSJE has limited control over the preparedness and competence of polling station members and over their understanding and consistent application of election procedures. There is no obligation on the TSJE to train polling station members, unless political parties request it. Polling stations are the only instance dealing with complaints on election day whose decisions cannot be appealed under the current legislation.

- The 2018 elections took place in a political environment characterised by institutional weakness, distrust in political structures and judicial inertia. Distrust in political party structures and state institutions was further deepened by the fact that candidates indicted for corruption and influence peddling remained in the party lists, and that Congress attempted to pass the draft law 6039/18, commonly known as *autoblindaje*, perceived by the public as a shield to protect legislators from losing their seats. The judicial system was publicly acknowledged, namely by the two main presidential candidates, to be malleable to pacts brokered between political parties and the judiciary and to be subject to political pressure.
- The electoral legal framework is in places ambiguous and contradictory, in many cases superseding constitutional provisions, and in some cases there are gaps in the law, resulting in legal uncertainty as to its application and in different interpretations. The root cause for this seemed to be the dismissive attitude of political groupings towards the rule of law and the judiciary. The approval, interpretation and application of legal provisions are dependent on the political forces with the highest representation in Congress and it was publicly acknowledged that this is subject to personal and political interests. Supreme Court decisions, the only body responsible for interpreting constitutional provisions, are not always implemented by Congress, which upsets the balance and the separation of the three powers of a state. Furthermore, there is no procedure established in the law for the impeachment of a number of offices. This results in legal uncertainty regarding due process and makes the holders of these positions vulnerable to the will of Congress.
- The general lack of response by the Supreme Court, given the delays in dealing with election appeals, brought legal uncertainty regarding important issues, such as the eligibility of former presidents to stand as candidates for Senate and the composition of civic boards (*juntas cívicas*). On the other hand, if the Supreme Court decides that a provision is unconstitutional, this does not invalidate the provision, but rather means that it is not applicable to the person or entity that made the challenge. This created inequality before the law, legal uncertainty and inconsistencies. This was the case regarding the authorisation granted only to some media outlets to publish opinion polls within 15 days before the elections after they challenged the provision prohibiting publication during this period.
- The EU EOM media monitoring revealed that the two main candidates monopolised the media coverage of the presidential campaign. The remaining eight presidential candidates had almost no coverage. While private media covered the political campaign through interviews, talk shows and paid advertising, public media only offered free airtime as stipulated in the law. TV channels *SNT* and *RPC* and the newspaper *La Nación* were visibly critical of the opposition candidate, whereas the remaining media monitored showed a more balanced approach towards the main presidential contenders. Online media contributed to enable voters to make a more informed choice.
- Scant support for women's empowerment hindered gender equality in the political sphere. Declarations made by candidates discouraging demands for women's equality do not contribute to the promotion of equal opportunities in the right to stand for elections. No woman ran for presidency and only one did for the vice-presidency. Of the 15,597 candidacies, 6,031 were women, an equivalent to 38.6 per cent. The low positions on candidates' lists that many women occupied meant that their representation in the newly elected bodies was lower. Eight out of the 45 newly elected senators are women, one less than in the previous Senate. In the Chamber of Deputies, only 12 out of 80 seats were won by women and there is no woman as governor. A

draft law on Democratic Parity is pending approval in Congress aiming at increasing the participation of women to 50 per cent on lists of candidates and in public institutions.

The following priority recommendations are offered for consideration and action to the Government of Paraguay, the Congress, the Superior Tribunal of Electoral Justice, political groupings, civil society and the international community. Discussions on implementation of the following priority recommendations should be considered as early as possible in order to address in a timely manner the shortcomings identified in the 2018 electoral process. A comprehensive list of recommendations can be found in chapter XVI as well as a detailed table of recommendations in Annex I to this report.

1. Consideration should be given to the draft law amending the electoral laws submitted by the TSJE to Congress in 2014 thus overcoming the ambiguity and inconsistency of some election related legal provisions.
2. Review constitutional provisions that undermine the independence of the judiciary. This includes revisiting the ability of Congress to impeach Supreme Court judges, Public Prosecutor, and TSJE ministers.
3. Conditions and procedures for impeachment of the Supreme Court judges, Public Prosecutor, and TSJE ministers should be clearly regulated so as to allow for security of tenure based on grounds that ensure their independence and respect for due process.
4. Ensure that effects of rulings declaring the unconstitutionality of legal provisions are applicable to all citizens and legal persons (*erga omnes*) and not only to the parties submitting the case (*inter partes*), thereby guaranteeing equality before the law and the invalidity of the provision ruled to be unconstitutional.
5. To promote the equal participation of women in political and public life, it is important to approve the current draft law on Democratic Parity establishing 50 per cent representation for women on candidates' lists and in public institutions.
6. An independent election administration structure under the responsibility of the TSJE would increase the level of control of the TSJE during the last phases of the electoral process, as well as its accountability. This includes the replacement of the civic boards, whose tasks could be carried out by electoral registry offices and by the election coordinators at polling centres, as well as the recruitment of independent polling station staff.
7. The financing of primary elections should be included in the Law on Political Finance in order to increase the level of transparency and accountability of political groupings, including the source of financing, and establish expenditure limits in line with the provisions for campaign expenditure.
8. The system of complaints and appeals needs to be redesigned in order to provide an effective and timely remedy for aggrieved parties. Procedures to deal with complaints at the polling stations have to be established with the possibility of an appeal to higher levels.
9. Appeals against decisions of the TSJE should be dealt with through judicial review by an electoral bench within the Supreme Court with expedited procedures, and not through an unconstitutionality action which limits the subject matter of appeals and requires that the nine judges of the Supreme Court have to decide on the matter in plenary session.

II. Introduction

The European Union deployed an Election Observation Mission (EU EOM) to Paraguay to observe the 2018 general elections following an invitation from the Government and the Superior Tribunal of Electoral Justice (TSJE). The EU EOM was present in Paraguay from 13 March until 22 May. The Mission was led by Chief Observer, Renate Weber, Member of the European Parliament. The EU EOM deployed 96 observers from the 28 EU Member States, Canada and Norway across the country to assess the whole electoral process against international obligations and commitments for democratic elections as well as the laws of Paraguay. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005.

This report presents a detailed assessment of the findings of the mission on the various stages of the electoral process, and includes a series of recommendations aiming at contributing to the improvement of the process in future elections.

III. Implementation of Previous Recommendations

The 2013 EU EOM issued 49 recommendations, including 30 points to further improve the electoral processes in Paraguay. More than half of the recommendations implied undertaking legal reforms requiring a two-thirds majority vote of Congress or a constitutional amendment. Recommendations made by the 2013 EU EOM were partially taken into consideration by the competent authorities. Several of the recommendations requiring administrative decisions were implemented, while none of those requiring legal reform were adopted. Except for the introduction of Law No. 5282/14 on Free Citizen Access to Public Information and Government Transparency, the legislation related to elections remained the same since 2013. The 2013 EU EOM recommendations remain therefore relevant and important for consolidating Paraguay's democratic institutions.

Most of the recommendations requiring legal reform were taken into consideration by the Superior Tribunal of Electoral Justice (TSJE) and were included in the 2014 draft Law on Amendments of the Electoral Laws. This draft Law incorporated a new range of crimes and it reclassified acts from crimes to offenses seeking greater proportionality of the sanctions. It also included a specific procedure for the management of electoral offences and a more detailed role of the prosecution in criminal matters. Nevertheless, the draft Law remains in Congress.

The area where there was most progress was in administrative reforms. This was because the TSJE could undertake administrative reforms on its own initiative and without the need of legal reforms. Among these actions were the registration campaigns of persons with disabilities, the vote at home for electors who could demonstrate they had a severe dysfunction, the improvement of accessibility conditions of polling centres for the voters with motor disabilities, the re-design of the TSJE website to make it accessible to voters with hearing impairments, the provision of magnifying glasses and Braille ballots at all polling centres, the training of election administration public servants to register and aid disabled voters to cast their vote. Furthermore, the TSJE modified the electoral calendar to adjust procedural deadlines for candidates registration, thereby partially implementing one of the EU EOM recommendations. The TSJE also developed regulations for political finance facilitating the application of the Political Finance Law.

Recommendations aimed at strengthening the independence of the electoral administration, the

control of political party financing, harmonisation of the legal framework governing elections, the mechanisms for complaints and appeals as well as at increasing the participation and representation of women in public life still require attention.

IV. Political Background

On 22 April Paraguayans voted in six elections to elect the president and vice-president, the Congress (Senate and Chamber of Deputies), governors, members of departmental assemblies and representatives to Parlasur. A total of 61 political groupings contested the general elections. Despite the considerable number of participants, the electoral process was dominated by *Partido Colorado - Asociación Nacional Republicana* (ANR), *Partido Liberal Radical Auténtico* (PLRA) and *Frente Guasú*. After highly contested primary elections in December 2017, the *Partido Colorado* put forward the presidential candidacy of Mario Abdo Benítez and Hugo Velázquez for vice-president. PLRA, *Frente Guasú* and other political groupings submitted a joint presidential bid, on behalf of *Alianza Ganar*, with Efraín Alegre and Leo Rubín as candidates.

The 2018 elections took place in a political environment characterised by institutional weakness, distrust in political structures and judicial inertia. The one-year anniversary of the burning of the Congress and of the death of a PLRA militant, as a result of protests triggered by an attempt to amend the constitution to allow for a second presidential mandate, dominated the political discussions in the weeks preceding elections. The perceived lack of independence of state institutions and the alleged impunity of perpetrators emerged again as public concerns. Distrust in political party structures and state institutions was further deepened by the fact that candidates indicted for corruption and influence peddling¹ remained in the party lists, and that Congress attempted to pass the draft law 6039/18, commonly known as *autoblindaje*.² The *autoblindaje* draft law significantly increased the requirements for a member of Congress to be removed from office to a two-thirds majority vote of the Congress, while constitutional provisions require only a simple majority. During the election period, the judicial system was publicly acknowledged, namely by the two main presidential candidates, to be malleable to pacts brokered between political parties and the judiciary and to be subject to political pressure.

This political context led to generalised apathy not only amongst the public but also the candidates, who undertook few campaign activities. This was unlike the December 2017 primaries, which were highly contested and involved a massive mobilisation and participation of voters in a very costly campaign.

Five opinion polls were published throughout the electoral period. These were conducted by *Grau y Asociados*, *Instituto de Comunicación y Arte*, *First Analysis (Capli)*, *Eco-Dat* and *Ati Snead*. Four of these polls projected the ANR presidential candidate as the winner with a difference of 24, 30, 31 and 24 per cent, respectively. The fifth poll, *Ati Snead* estimated that the *Alianza Ganar* candidate Efraín Alegre would win the presidential elections with a two per cent margin over Mario Abdo Benítez. The organisations conducting the polls were widely criticised after the elections, given

¹ A series of audio recordings were leaked to the press exposing a network of influence peddling and corruption involving politicians. This resulted in the removal of the first senator from office after a vote in the Senate in December 2017. Nevertheless, that same senator remained in the list of candidates for the 2018 election to the Senate and he was re-elected.

² *Autoblindaje* is the term used to refer to self-protection.

their lack of accuracy and the absence of clear rules for the conduct of polls. Criticism came from the public, the TSJE and the political parties, who demanded more transparent rules for the conduct of future polls.

V. Legal Framework

A. Universal and Regional Principles and Commitments

Paraguay is a party to the main international and regional treaties containing the principles for the conduct of democratic elections. These include the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention on the Rights of People with Disabilities, the Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights and the International Labour Organisation Convention 169 on Indigenous and Tribal Peoples. Paraguay is a member of the Organisation of American States (OAS) and is, therefore, committed to the American Convention on Human Rights, the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities and the Inter-American Democratic Charter of 2001. Paraguay is also a party to the Ushuaia Protocol on Democratic Commitment in Mercosur. International treaties ratified by Paraguay are automatically incorporated into national legislation.

B. National Electoral Legislation

The legislative framework governing the 22 April general elections is set out in the 1992 Constitution, the 1996 Electoral Code last amended in 2014, the Law on Electoral Justice, the Law on Coalitions, the two Laws on Voter Registration and the Law on Political Finance. Since the 2013 general elections, other laws were adopted, namely the Law on Simultaneity of Political Parties Primary Elections and the Law on Free Citizen Access to Public Information and Government Transparency. In addition, a number of binding resolutions were issued by the TSJE.

The electoral legal framework is in places ambiguous and contradictory, in many cases superseding constitutional provisions, and in some cases there are gaps in the law, resulting in legal uncertainty as to its application and in different interpretations. This is the case for the failure to refer to coalitions (*concertaciones*) in the Law on Political Finance, which had to be dealt with by a TSJE resolution in order to apply the law to coalitions; a considerable increase of the ineligibilities related to voting rights not foreseen in the Constitution but imposed by the Electoral Code; and the failure to include in the Electoral Code the right to vote of Paraguayans living abroad contained in a constitutional amendment of 2011. There are also legal loopholes concerning the possibility for the president and/or vice-president to resign given that it is not established. Further, although the Constitution stipulates incompatibility of the presidency or vice presidency with proselyting activities, it is silent on any penalty or procedure to tackle it.

The root cause for this seemed to be the dismissive attitude of political groups towards the rule of law and the judiciary. The approval, interpretation and application of legal provisions are dependent on the will of political forces with the highest representation in Congress and it was publicly acknowledged that this is subject to personal and political interests. Supreme Court decisions, the only body responsible for interpreting constitutional provisions, are not always implemented by Congress, which upsets the balance and the separation of the three powers of a state. The judiciary was widely perceived as politicised and subject to political pressure and control.

The TSJE published a compendium of the electoral laws. An exhaustive review of the compendium made by the EU EOM revealed a considerable number of imprecisions and material errors, the alteration or omission of paragraphs and subparagraphs of some articles and the introduction of legal terms not included in the original legal texts. This undermined accurate knowledge and application of the electoral laws.

The absence of an effective sanctioning mechanism rendered the existence of some legal provisions irrelevant, as was the case with electoral offences. Furthermore, the Supreme Court failed to address in a timely manner the challenges posed to the electoral process within the 15-day legal deadline. The cases challenging the candidacies of former presidents were resolved late in the process, whilst the case related to the composition of civic boards (*juntas cívicas*) was not addressed at all. If the Supreme Court decides that a provision is unconstitutional, this does not invalidate the provision, but rather means that it is not applicable to the person or entity that made the challenge. This creates inequality before the law, legal uncertainty and inconsistencies. This was the case, for instance, with regard to the authorisation granted to some media outlets to publish opinion polls within 15 days before elections after they challenged the provision prohibiting publication during this period.

In 2014, the TSJE submitted a draft law amending the electoral laws with a number of proposals that would have benefitted the electoral process. However, the draft law received no attention from Congress.

The Constitution provides the general rule that the president, vice-president, ministers, Supreme Court judges, Public Prosecutor, Ombudsman, Comptroller of the Republic, the Sub-Comptroller and the members of the TSJE may be impeached for offences committed in the course of their duties or for common offences, resulting in their removal from office. Impeachment proceedings are initiated in the Chamber of Deputies and ruled upon by the Senate, requiring a two thirds majority. There is no law or regulation providing for a specific procedure to be followed. This results once again in legal uncertainty regarding due process and makes the holders of these positions vulnerable to the will of Congress. Furthermore, this is likely to undermine the independence of the judiciary responsible for administer the electoral process – the Supreme Court and the Superior Tribunal of Electoral Justice - contrary to international principles upholding that *“the requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure (...), the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.”*³

C. The Electoral System

The president and vice-president are elected by simple majority for a five-year term with no possibility of re-election. Two chambers make up the Congress - the Senate and the Chamber of

³ International Covenant of Civil and Political Rights (ICCPR), General Comment 32, p. 19.

Deputies. Senators are elected through a proportional representation system in a single national constituency. Members of the Chambers of Deputies are also elected through proportional representation but in 18 electoral constituencies (one for each of the 17 departments plus the capital). The 17 governors are elected by simple majority of votes for each department. Members of *Parlasur* (the parliament of the Mercosur trade bloc) are elected by the same electoral system as applies to senators: by proportional representation in a single national constituency.

VI. Election Administration

A. Structure and Composition

The administration of elections in Paraguay is the responsibility of the TSJE. The Magistrates' Council proposes the three members of the TSJE who are approved first by the Senate and then by the executive. These three members enjoy the status of ministers. The TSJE takes its decisions on a majority basis, as set out in the Civil Procedure Code. The lower tiers of the electoral administration include 10 Electoral Tribunals (*Tribunal Electoral*), and below them 17 Electoral Courts (*Juzgado Electoral*); members of both bodies are selected by the Magistrates' Council and sworn in before the Supreme Court. Civic boards (*junta cívica*) are formed at district level and deal with the delivery and retrieval of election material, including the election results forms. Civic boards and polling station staff are made up of representatives of political parties, following the proportional representation of political parties in Congress.

B. The Administration of Elections

There was confidence in the technical performance of the Superior Tribunal of Electoral Justice (TSJE) and its ability to administer elections, despite the fact that it is seen as politicised. The TSJE showed a substantial level of preparedness for the administration of the electoral process and competence in conducting key electoral operations, such as the planning for the transmission of results, printing of ballot papers and the distribution of electoral material.

The TSJE made efforts to administer an inclusive and transparent process. Political party representatives were able to follow up and be informed about electoral operations. The EU EOM had permanent access to information requested and to TSJE facilities and departments. At lower levels, EU observers experienced the same level of cooperation with the electoral tribunals and electoral courts.

The TSJE faced several challenges in administering elections, including the lack of an effective mechanism to ensure that its decisions were implemented by the lower levels of the electoral administration and limited control over the last phases of the electoral process, namely during election day.

The EU EOM considered that the TSJE made balanced decisions on crucial issues involving different political groups. While it accepted the candidacies for the Senate of former presidents mainly from the Colorado Party, the TSJE also included *Frente Guasú* in the civic boards, taking one of the seats previously allocated to the Colorado Party. In contrast, some electoral tribunals and electoral courts took decisions based on their political preference and at times overstepped their mandate. After a complaint submitted by *Frente Guasú* arguing for its right to be represented on civic boards, which are appointed according to the representation of political groups in Congress, the TSJE instructed civic boards to include a member of *Frente Guasú*. Although most civic boards

were established following this TSJE instruction, some electoral tribunals and civic boards were constantly reluctant to comply with it. This was the case in Itapúa, in Central department where some civic boards were operating only with members of ANR and in Paraguari and Cordillera where ANR members refused to operate if members of *Frente Guasú* were included. The failure to establish civic boards 60 days before elections does not seem to have affected the process in terms of electoral preparations. Instead, the controversy surrounding their composition had an impact on the confidence in and the stability of the process.

The TSJE has limited control over the preparedness and competence of polling station members and over their understanding and consistent application of election procedures. There is no obligation on the TSJE to train polling station members, unless political parties request it. In practice, the only training of polling station members was that carried out by their respective political groups. Polling stations are the only instance dealing with complaints on the issues arising on election day whose decisions may not be appealed.

The TSJE conducted an audit of the electoral materials from 10 to 20 April in the presence of representatives of the political parties. An electoral package from each polling centre was randomly chosen by party agents and its content reviewed. Distribution of electoral materials started on 17 April. Although the election materials were delivered to the members of the civic boards, material was stored at the Electoral Registry Offices, the only TSJE permanent office in every district, since civic boards do not have designated offices.

Election results were transmitted using a system known as TREP – transmission of preliminary election results. TREP was an informal, non-binding information system aimed at increasing the level of transparency of the election results and decreasing the time needed for aggregation of preliminary results. Election results forms were directly transmitted from polling centres on election night via scan (Digital System), or via landline (Voice) in polling centres where there was no internet signal. Despite the use of TREP, the official final aggregation and declaration of election results is carried out by the TSJE after the compilation of all election results forms from polling stations, a process that normally takes a number of weeks after elections days. Three simulations to test the TREP system took place before the elections.

Lack of confidence in the civic boards, responsible for the retrieval of election results forms, increased the importance of the TREP system. The results for presidential, senators and governors' elections were transmitted and aggregated using TREP. Election results for the Chamber of Deputies were introduced and registered in the TREP system by scanning the elections results forms, but were not aggregated. The reason given by the TSJE was that to apply the D'Hondt formula (used in Paraguay's proportional representation system), the TSJE would need almost 100 per cent of the results accounted for, otherwise the results for the last seats could be misleading and create false expectations among candidates. The TREP results forms were made publicly available. This provided more safeguards to the TSJE in terms of obtaining an advance copy of the results sent directly from polling stations. The TREP system was generally perceived to have worked well. This helped to increase public confidence in the process, and to mitigate the lack of confidence in the civic boards. This lack of confidence in the civic boards, seen as a battleground for political groups and of dubious accountability, raised doubts regarding their positive contribution to the electoral process.

VII. Voter Register

A. The Right to Vote

The Constitution grants the right to vote to all Paraguayan citizens who are 18 years or older. However, the Electoral Code imposes a number of restrictions on the right to vote that are not in line with international principles on the right to political participation. These include the disqualification of deaf-mutes who cannot make themselves understood, all persons in custody, conscripted soldiers and lastly students at the military and police academy.⁴

B. Voter Registration

The voter register is generated in two ways: active and passive. Active voter registration consists of a person going personally to register. Citizens that cumulatively i) reached 18 before 2012 and ii) had never voted before and iii) were in possession of an ID card, had to actively register with the TSJE electoral registry. Since 2012, passive voter registration consists that citizens are automatically registered to vote by extraction of data from the national civil registry when reaching 18. The list of voters resulting from passive registration is automatically extracted from the national civil registry.

The last update to the active voter register ended in June 2017. A total of 4,241,507 voters registered, an increase of 725,234 new voters since the 2013 elections. Paraguayans residing in Argentina, Brazil, USA and Spain could register online, which resulted in an additional 38,170 voters. There were no official complaints regarding the voter register.

The main challenge of the voter registration process is assigning suitable polling stations to automatically registered citizens. For automatic voter registration, the electoral registry uses the police database, which does not necessarily have voters' updated addresses. This means that when allocating polling stations, voters may be assigned polling stations that do not correspond to their actual residency location.

VIII. Registration of Political Parties and Candidates

A. Registration of Political Parties

The registration of political parties is governed by the Constitution and the Electoral Code and is under the jurisdiction of the Capital Electoral Tribunal (*Tribunal Electoral de la Capital*). The Constitution guarantees the political rights of citizens including the right to form, join and participate in the activities of a political party.⁵

Political parties are required to adhere to certain principles and guarantee internal democracy and have a national reach and character. Political parties must present a list of members equivalent to

⁴ Article 25 ICCPR, United Nations Human Rights Commission, General Comment No. 25, paragraph 10: “The right to vote at elections and referendums must be established by law and may be subject only to reasonable restrictions (...). It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements.”

⁵ Article 22 and 25 ICCPR, United Nations Human Rights Commission, General Comment No. 25, paragraph 26: “The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25.”

0.50 per cent of the valid votes in the previous election for the Senate,⁶ and a party structure in the capital and at least four other departments.

The Capital Electoral Tribunal is responsible for deciding on applications to register a political party. In case registration is refused, the decision may be appealed to the TSJE. Registration may be cancelled if the political party receives finance from illegal sources, does not hold internal elections for two consecutive electoral periods, does not participate in two consecutive elections or does not reach one per cent of the total valid votes cast in two consecutive elections.

Political parties represented in Congress are entitled to two different state subsidies: one allocated annually to parties that obtained at least two per cent of the total votes cast for Congress in the previous elections; and, a second amount for campaign purposes given 40 days after elections in proportion to the votes obtained in the elections. The parties have to submit annual reports on their accounts to the TSJE, detailing their spending of the funds received from the state.

Apart from political parties, the law also extends the right to participate in elections to an alliance, a coalition or a political movement. The Electoral Code regulates the creation and functioning of political parties, political movements and alliances. In general, the requirements for the registration of political groups are inclusive and in line with international principles related to freedom of association.⁷

The Constitution provides that the dissolution of political parties and movements may only produce effects by a judicial ruling. However, the Electoral Code states that political movements will cease to exist if they do not compete in the elections which they were created to participate in. While political parties are only allowed to operate at the national level, political movements may also operate at regional level. The alliances formed for elections cease to exist after the declaration of official election results. A coalition is a political-electoral organisation formed between two or more political parties or movements. Alliances only receive the state campaign subsidy, while political parties, political movements and coalitions also receive the annual state subsidy.

B. Registration of Candidates

Primary elections were held by political groupings simultaneously on 17 December 2017 in order to choose candidates for the 2018 general elections. Thereafter, political groupings were able to submit their candidates' lists up until 31 January 2018. Independent candidates are not allowed to stand for office for the uninominal elected positions for the presidency and governors, which is contrary to international principles on the right to stand.⁸

Ten political organisations contested the presidential elections.⁹ For the Senate, a total of 29

⁶ For the creation of new political parties or movements that wished to compete for the 2018 general elections, the number of required members was 11,650.

⁷ Article 22 and 25 ICCPR, United National Human Rights Commission, General Comment No 25, paragraph 26.

⁸ ICCPR, United Nations Human Rights Commission, General Comment no. 25, para. 15: "Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation" and para. 17 "The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties."

⁹ Political groupings included *Partido Colorado-ANR*, *Gran Alianza Nacional Renovada* (Alianza Ganar), *Partido Socialista Democrático Herederos*, *Partido Frente Amplio*, *Partido Verde Paraguay*, *Partido del Movimiento Patriótico Popular*, *Movimiento Reserva Patriótica*, *Movimiento Nacional Artistas del Paraguay*, *Movimiento Político Soberanía Nacional*, *Movimiento Político Cívico Nacional Unámonos*.

political groupings submitted lists of candidates, whereas 50 lists were presented for the Chamber of Deputies. A total of 29 political organisations competed for Parlasur.

The electoral process took place in an environment of legal uncertainty as to the eligibility of former presidents to stand as candidates for Senate, given the late response of the Supreme Court. Appeals from different parties were submitted to the Supreme Court against the decision of the TSJE to accept these candidacies. As late as 11 April, the Supreme Court upheld the TSJE's decision to accept these candidacies. Uncertainty remained as to whether the newly elected Congress would respect the Supreme Court's decision or refuse to swear-in former presidents, thus ignoring a Supreme Court decision. Independently of the subject matter, the fact that the Congress does not always follow decisions of the judiciary results in institutional weakness whereby the rule of law and the balance of powers between the three branches of government are jeopardised.

Within the jurisdiction of the TSJE and the tribunals below it, eight actions were presented against lists of candidates for Senate, Chamber of Deputies, governors and departmental assemblies.¹⁰ All were rejected by the respective electoral tribunals. These decisions were appealed to the TSJE, which upheld the decisions of the tribunals below.

Divergences within political parties were apparent regarding the presence of candidates indicted for corruption in their candidate lists for Congress. Political parties expected these candidates would willingly agree to resign from the lists and did not make use of the available internal mechanisms to remove them. The EU EOM considers that there was insufficient political will to remove these candidates and that the alleged difficulties in implementing the internal mechanisms provided for in the party statutes were used as an excuse. This revealed weaknesses in the political structures of the parties.

IX. Election Campaign and Pre-Election Environment

A. Election Campaign

There were no reports of restrictions imposed on freedoms of speech, movement and assembly during the campaign period. The campaign period lasted for two months, from 19 February to 19 April. The political campaign was historically low-key compared to previous elections, including the primaries of December 2017.¹¹ Apart from ANR, PLRA and *Frente Guasú*, smaller political groups had little to no presence. A few large rallies were observed but campaign events were mainly conducted through door-to-door canvassing and small meetings at local level. This was unlike the December primaries, which were highly contested and involved a massive mobilisation and participation of voters in highly costly campaigns. Contestants were reluctant to spend all their financial resources on campaigning, but rather focused on saving sufficient funds for election day, including for the payment of polling station staff and party representatives. Also, it is common practice that political parties facilitate the transportation of voters to polling stations and provide

¹⁰ List of deputies for the department of Amambay by PLRA, *Partido del Movimiento al Socialismo (P-MAS)*; List of deputies and departmental assembly in Caaguazú, deputies in Paraguari, deputies in Alto Paraná, deputies of the *Partido de la Juventud*, Senators of *Partido del Movimiento Patriótico Popular*.

¹¹ The EU EOM attended 47 campaign events in 12 out of the 17 departments of the country organised by ANR, *Alianza GANAR*, PLRA, *Frente Guasú*, *Partido Encuentro Nacional (PEN)*, *Partido Demócrata Cristiano (PDC)*, *Hagamos and Movimiento Reserva Patriótica* in Amambay, Caaguazú, Canindeyú, Central, Concepción, Cordillera, Capital, Guairá, Itapúa, Misiones, Paraguari and San Pedro.

them with “financial incentives” before voting. Campaigning in social media replaced, to a significant extent, traditional methods of campaigning. This was particularly beneficial for smaller political groups, who could disseminate their proposals at lower costs and to a wider audience.

President Cartes campaigned as a candidate for the Senate while in office¹² and accompanied the ANR presidential candidate Mario Abdo Benítez to campaign events in state vehicles. On 17 April, just a few days before the elections, President Cartes inaugurated an important public project in Itapúa. While such activity is not regulated by the law, it was likely to benefit the campaign of the ruling party. The EU EOM observed instances of public resources being used for campaign purposes. These include the use of state social programmes, the distribution of medicines, and undue influence on public employees to financially contribute to and attend campaign events of the ruling party during working hours.¹³

Apart from the many allegations of vote buying as well as the retention of identity cards received by the EU EOM in all departments, representatives of the two main political parties at local level openly acknowledged that it is a common practice and that voters expect to receive money, distribution of basic products and political favours. EU observers directly observed vote buying in Cordillera and Caaguazú departments. In Boquerón and Presidente Hayes both *ANR* and *PLRA* distributed products and money to indigenous communities.

Corralones were observed by the EU EOM in the departments of Boquerón and Presidente Hayes. This practice involves indigenous people being locked up in open-air fenced areas with food and alcoholic drinks for several days before and during the elections to avoid them voting.

B. Campaign Finance

This was the first general election regulated by Law 4743/12 on Political Finance. Aiming at a more effective implementation of the law, the TSJE issued a regulation whereby political groups were required to open a bank account, appoint a financial administrator and declare their expenditures to the TSJE through the online platform SINAFIP (National System of Political Financing).

Political groups finance their campaigns through private and public sources. Fundraising events such as dinners, bond issuance and raffles are common among parties with a large number of supporters. Political parties were also entitled to a public subsidy for campaigning, which is only paid 40 days after the elections, based on the number of votes obtained in Congress. This resulted in parties with limited economic power needing to seek bank loans to finance their campaign activities. For the 2018 general elections, a limit on campaign spending was set at approximately USD 6 million. Individual contributions should be limited to USD 98,000.

Although the law on campaign financing is a welcome step towards transparency, it is not applicable to the political parties' primary elections and furthermore the absence of an effective monitoring and sanctioning mechanism remain unaddressed. Although the TSJE is responsible for verifying compliance with the campaign finance rules, the law does not provide sufficient

¹² Two events in the Central department, one in Caaguazú, one in Concepción and one in Cordillera.

¹³ In the department of Boquerón, public officials promoted social programmes such as *Tekoporã* and *FONACIDE* and distributed emergency kits a couple of days before elections as an ANR campaign activity. The EU EOM directly observed medicines from the Social Prevention Public Institute - *Instituto de Prevención Social* (IPS) being distributed by the ANR party office in Canindeyú. Political pressure on public employees to support the ruling party and attend the party's campaign activities was reported by the EOM in Itapúa, Misiones, Paraguari, Guairá, Central, Asunción and Caaguazú.

monitoring and investigative powers for it to fulfil this mandate. Its role remains limited to verification and accounting of reported expenditure. The TSJE requires more cooperation from other institutions, such as the Public Prosecutors Office, the Comptroller's office, the Tax Office, the Ministry of Finance and the Anti-Money Laundering Secretariat to carry out effective investigations into the origin of the funds in a coordinated manner. Additionally, the sanction for failure to submit accurate accounts is limited to suspension of the campaign subsidy or fines, which does not constitute an effective deterrent for the bigger parties. Finally, apart from political parties and coalitions, the political movements formed for elections may not be held accountable on campaign expenditure, as their legal existence extinguishes after election day.

X. National and International Election Observation

A. National Election Observers

There is no coordinated nationwide domestic election observation group. A few organisations participated as observers focusing on specific areas of the process. The *Saraki Foundation* deployed 300 people to observe accessibility to voting centres by persons with special needs. *Semillas para la Democracia* deployed 120 people in four departments with a special focus on the inclusion of women and indigenous groups. An inter-institutional agreement between the TSJE and *Fundación Promoción Ciudadana* (FUPROCI), headed by a former Director of the Electoral Registry, provided for the deployment of 100 students from the *Universidad Politécnica y Artística del Paraguay* (UPAP) as observers in six departments as a pilot project.

Since national observation is not regulated, there is uncertainty regarding which groups can observe elections and what are the rights and obligations of national observers. The absence of an organised civil society movement that could not only monitor the electoral process but also advocate for the civil and political rights of citizens and the accountability of elected representatives was one of the shortcomings of these elections.

B. International Election Observers

Besides the EU EOM, several other international observation missions were deployed in Paraguay. These included the Organisation of American States (OAS), *Transparencia Electoral*, the *Union of Electoral Organisations* (UNIORE), the Permanent Conference of Political Parties of Latin America and the Caribbean (COPPAL), the Institute of Democracy and Elections (IDEMOE), PARLASUR's Observatory for Democracy, the Inter-American Bar Association (FIA), IDEA International, the Ombudsman (*Defensor del Pueblo*) of Buenos Aires City and the Uruguayan Consulate.

The OAS Election Observation Mission, led by the former President of Costa Rica Laura Chinchilla, comprised 40 observers. An initial operational team arrived on 11 April and a small team stayed until 4 May. The UNIORE Election Observation Mission, headed by the president of Chile's Electoral Administration (SERVEL), Patricio Santamaria, began its activities on 1 April and included 48 observers deployed in Asunción only. *Transparencia Electoral* was led by Rubén Perina and deployed 52 observers also in Asunción.

International observation missions announced their preliminary findings on 23 April. The OAS and *Transparencia Electoral* mentioned various shortcomings in the pre-election period such as the lack of consistent criteria regarding the composition of civic boards and polling station staff. In addition,

both missions considered that exit polls were disseminated on election day contrary to the electoral law.

The OAS mentioned that a considerable number of polling station members did not arrive on time during the opening of polling stations, resulting in delays in the opening process. OAS recommended that voter registration should improve the mechanisms through which it collects voters addresses; equal conditions for political parties during the campaign should be ensured particularly in the media; more equitable gender quotas should be established; appropriate monitoring mechanisms should be developed regarding political finance.

Transparencia Electoral considered that election day unfolded normally, with standard difficulties such as delays or lack of suitable infrastructure in some polling centres. *Transparencia Electoral* recommended an improvement to the political finance law by including primary election expenditure and implementing the auditing of expenses. It also highlighted that while the political finance law provides that political parties should have bank accounts, some political parties reported that they had difficulties in opening an account.

XI. Media and Elections

A. Media Environment

There are a significant number of media outlets operating in Paraguay. However, ownership is concentrated in the hands of a few individuals, thus undermining pluralism and possibly limiting journalists' editorial independence. Despite the existence of a constitutional prohibition on candidates being media owners, numerous candidates exercise influence on media owned by close relatives.

Television remains the primary source of information, with private channels leading in terms of audience rates. Radio also plays a key role, especially in the rural areas where community stations operate in parallel with nationwide public and private radio broadcasters. Most print media is also available online, namely *ABC Color*, *Última Hora*, *La Nación*. With some 90 per cent of the population having access to the internet, the use of social media has significantly increased.¹⁴

B. Media Legal Framework

The Constitution protects freedoms of expression and of the press and as well as pluralism. Defamation remains a criminal offence, which is contrary to international principles on freedom of opinion and expression. The adoption of the Law on Free Citizen Access to Public Information was a positive step, as it expanded freedom of information and provided an additional tool for journalists to obtain information from public institutions. Citizens may now submit a request for information through a centralized portal to which public institutions have a 15-day period to respond. Nevertheless, there are no sanctions for lack of response by public institutions.

The Electoral Code regulates media coverage during the election campaign. Contestants are entitled to both free and paid access to campaign in print and broadcast media. The TSJE resolution no. 33/2018 provided further details on free airtime. Each political group was entitled to one minute of free airtime in any broadcasting media, preferably between 6:00 PM and 22:00 PM, from 10 to 19

¹⁴ <http://www.internetworldstats.com/south.htm>

April 2018. In the same period, newspapers were required to devote one page per issue to the electoral campaign to be distributed among interested contestants. A 48-hour silence period prior to elections is stipulated in the law. Many violations of the campaign silence period were observed, including on voting day. Exit polls were also published throughout election day by online and broadcast media, contrary to the electoral law that only permits the dissemination of exit poll results one hour after the closing of polling stations.

According to the electoral law, opinion polls cannot be published 15 days prior to election day. The constitutionality of this provision was previously challenged at the Supreme Court, which confirmed its unconstitutionality. However, Supreme Court decisions regarding the unconstitutionality of legal provisions only have effect on the parties that challenged them in court and not on all citizens (*inter partes* effects and not *erga omnes*). This creates situations of inequality before the law. Therefore, while the newspapers *Última Hora*, *La Nación* and *Radio Montecarlo*, *Acción TV*, SA including the TV channel *Telefuturo* were exempt from this provision because they brought a successful challenge in court, all other media that did not file for the unconstitutionality of this provision had to abide by the period stipulated in the law. Opinion polls and exit polls were criticised by most interlocutors, leading to a debate regarding their credibility and possible regulation.

C. Monitoring of Media Coverage of Elections

The EU EOM started its media monitoring activities on 21 March, the first day of the official campaign period in the media. The sample included four TV channels (state-owned *Paraguay TV* and the private *Telefuturo*, *SNT (Sistema Nacional de Televisión)* and *RPC (Red Paraguaya de Comunicación)*); three radio channels (state owned *Radio Nacional* and the private *Radio Monumental* and *Radio Abc Cardinal*); and three newspapers with nationwide coverage (*Última Hora*, *Abc Color* and *La Nación*).

The EU EOM media monitoring revealed that the two main candidates monopolised the media coverage of the presidential campaign. Print media devoted 57 per cent of coverage to Mario Abdo Benítez and 43 per cent to Efraín Alegre. Broadcast media also allotted 57 per cent to the Colorado-ANR candidate and 43 per cent to the *Alianza Ganar* candidate. Private media covered the political campaign in several types of programmes - interviews, talk shows and paid advertising - whereas public media only offered free airtime campaign content as required by the law. Public media also stepped up the dissemination of content focusing on the government's achievements as the elections approached. Both public and private media extensively broadcast an advertisement of the Grupo Cartes' civil society organisation *Ñande Paraguay*.

While TV channels *SNT* and *RPC* and the newspaper *La Nación* were visibly critical of the opposition candidate, the remaining media that were monitored showed a more balanced approach towards the two main contenders. The tone of the editorial coverage of state-owned *Paraguay TV* and privately-owned television channel *Telefuturo* and the newspaper *Última Hora* were the most balanced. Online media provided an important source of political and election information, including through social networks, contributing to enable voters to make a more informed choice.

A few candidates took advantage of the free airtime granted by law, but most preferred to convey their campaign messages on social media. The EU EOM noted a blurred distinction between free and paid political advertising on the broadcast media monitored. Only the public *Paraguay TV* and *RPC* guaranteed free airtime according to the TSJE's instruction. Some media did not comply with the obligation to charge equal fees for political advertising to all political contenders. The EU EOM

is unaware of official complaints regarding media. Nevertheless, there is no sanctioning mechanism to address media-related offences.

A presidential debate between the two main candidates took place one week before elections and was widely broadcast by TV and radio channels as well as by online media. The debate was organised by the civil society group *Desarrollo en Democracia* (DENDE).

XII. Participation of Women

In Paraguay, women represent 49 per cent of the voter population. However, the number of female candidates is far from this percentage. Despite advances in women's participation, scant support for women's empowerment hindered gender equality in the political sphere. The TSJE is composed of three members, of whom one is female. The Supreme Court had nine ministers of whom three were women. Article 32 of the electoral code establishes that the statutes of political parties must contain appropriate mechanisms for the promotion of women, who should make up at least 20 per cent of the candidates and the same percentage for their appointment to decision-making positions. For candidates, the law further provides a ratio of one woman per five male candidates without specifying the position in the lists. As a result, women are often positioned at the bottom of the candidates' lists.

Declarations made by candidates discouraging demands for women's equality do not contribute to the promotion of equal opportunities in the right to stand for elections. Furthermore, movements and groups of women advocating for equality are frequently stigmatised and often subject to insults and degrading comments. Equality of political rights and participation in public life between men and women is one of the principles for credible elections to which Paraguay has committed by ratifying the International Covenant on Civil and Political Rights in 1992 and the Convention on the Elimination of All Forms of Discrimination Against Women in 1987. A draft law on Democratic Parity pending approval in Congress aims at increasing the participation of women to 50 per cent on lists of candidates and in public institutions.

No woman ran for presidency and only one did for the vice-presidency. Of the 15,597 candidacies, 6,031 were women, an equivalent to 38.6 per cent. For the Senate only five of the 29 lists were headed by women and for the Chamber of Deputies only 46 out of the 760 lists. Further, out of the 133 candidates for governor seats, only 11 were women.

The low positions on candidates' lists that many women occupied meant that their representation in the newly elected bodies was lower. Eight out of the 45 newly elected senators are women, one less than in the previous Senate - two of ANR, three of PLRA, one of *Frente Guasú*, one of PPQ and one of PDP. For the 80-seat Chamber of Deputies, there was also a reduction of the number of women elected from 14 to 12 - five of ANR, two of PLRA, two of *Alianza Ganar*, two of PEN and one of PPQ. There were no women elected as governors.

XIII. Participation of Indigenous People

There is no official number for the registered population of indigenous peoples, which hampers the ability to conduct an analysis of their inclusion in public life. Nevertheless, as a consequence of civil registration campaigns conducted by the Civil Registry and the National Institute for Indigenous Peoples (INDI), the number of indigenous voters has increased. There has never been an

elected political representative who identifies as indigenous. For the 2018 elections, the Indigenous Plurinational Political Movement of Paraguay (MPIP) submitted lists of candidates. Indigenous people are particularly affected by *corralones* to prevent them from voting.

Following recommendations from the EU EOM 2013, the European Union has supported the inclusion of women, youth and indigenous peoples in the electoral process through a number of projects. These include the "Reka Democracy" implemented by *Semillas para la Democracia*, the "Participation of citizens in democratic and electoral processes and promotion of transparency", implemented by *Tierraviva* in partnership with the Human Rights Coordinator of Paraguay (CODEHUPY), the "Promotion of democracy through the strengthening of the capacities of the National Electoral Administration", implemented by IDEA International, supporting the Superior Tribunal of Electoral Justice (TSJE), mainly on the issues of inclusiveness and political finance, and "Improving the electoral political participation of indigenous peoples and women in Paraguay", implemented by *Diakonia* and *Tierraviva*. This latter project in the Department of Presidente Hayes also provided indigenous people with 21,500 personal documents and added 350 new people to the electoral register.

XIV. Participation of Persons with Special Needs

According to the Government's National Plan for People with Disabilities, 10.7 per cent of the population live with some kind of disability. The state guarantees the participation of persons with special needs in the public sector. In this regard, the data from the Secretariat of the Public Service in December 2015 included 1,292 persons with special needs as officials.

In line with a recommendation of the EU EOM 2013, the TSJE made efforts towards the inclusion of persons with special needs. For the 2018 general elections, there were a few candidates belonging to this group of persons. Eligible voters with limited mobility could register online to vote in accessible polling stations or at home. In total, 5319 people registered to vote in an accessible polling station and 409 registered to vote from home. The TSJE also made available braille templates and sign language materials in every voting centre.

Saraki Foundation with the support of the National Endowment for Democracy conducted an observation exercise on election day to assess the accessibility of polling stations. Their findings were that 55 per cent of the polling centres observed were accessible to persons with disabilities. Additionally, 86 per cent of the observed polling centres did not have a help desk (*mesa de consulta*), where people could get information and materials (braille ballots, magnifying glass, sign language material) to enable and facilitate voting by this group of voters. In 69 per cent of the cases observed by *Saraki*, polling station members applied the procedures for assisted voting.

XV. Electoral Justice

A. Electoral Offences

Electoral offences are set out in articles 275 to 280 of the Penal Code and in articles 315 to 330 of the Electoral Code. Due to their criminal nature, electoral offences are dealt with by ordinary criminal courts. Electoral misdemeanours are regulated in articles 331 to 337 of the Electoral Code, and the sanction is payment of a fine. Offences include voting more than once, retention of identity documents, destruction of campaign materials, causing disturbance in polling stations, and voting

without proper documents, among others. Penalties for electoral crimes include fines, disqualification from voting and being a candidate and prison sentences. Prison sentences, namely for destroying election materials, or putting up posters in unauthorised places, and for bribery or unlawful voting, which carry a five-year prison sentence, are excessive and against international commitments.

There were 32 cases under investigation in the Office of the Public Prosecutor. Most of them related to electoral campaigning before the official period, tearing down posters and providing misleading information on candidates. Two of the complaints referred to the falsification of electoral documents and one for bribery in exchange for an identity card. It is likely that these cases will be dropped given the lack of reliable evidence and of a sanctioning system to enforce penalties.

For election day, the Office of the Public Prosecutor set up a centre for monitoring of offences. A total of 73 complaints were submitted, fewer than in past elections. The main incidents reported related to physical aggression, the selling of identity cards, allegations of vote buying and coercion. The departments with the highest number of complaints were Capital, Central and Alto Paraná. The Public Prosecutor's Office did not open an investigation into the illegal publication of exit polls results during the voting process, as it considered this was done anonymously.

B. Complaints and Appeals

Electoral disputes are handled within the election administration structure, which has judicial powers, as well as administrative and jurisdictional independence. This comprises the TSJE, the Electoral Tribunals (*Tribunales Electorales*), the Electoral Courts (*Juzgados Electorales*) and Public Prosecutor's offices (*Fiscalías*) and the polling stations.

Decisions of the Electoral Courts can be appealed to the Electoral Tribunals, whose verdicts may be appealed to the TSJE. The decisions of the TSJE may be appealed to the Supreme Court through an action of unconstitutionality (*acción de inconstitucionalidad*). The law provides a 15-day period for the Supreme Court to deal with appeals, however, an appeal is rarely resolved within this timeframe. This resulted in an accumulation of actions at the Supreme Court, some of which submitted in 2017, related to the 2018 electoral process. The mechanism established for the resolution of complaints and appeals does not provide for a timely and effective legal remedy.

The two most controversial among these judicial actions concerned the appeal against former presidents running as candidates for the Senate and the appeal related to the composition of the civic boards (*juntas cívicas*).

Six appeals from different parties were submitted to the Supreme Court against the decision of the TSJE to accept the Senate candidacies of current and former presidents and vice-president. Only on 11 April, the Supreme Court decided on the appeals. The plenary of the Supreme Court decided in favour of these candidacies, considering that there was no constitutional impediment for them to stand as candidates. Despite the decision of the Supreme Court, the Congress may refuse their swearing-in and vote them out, similar to what happened to former president Nicanor Duarte Frutos in 2008, when Congress overrode the Supreme Court decision.

ANR submitted an appeal to the Supreme Court against a decision of the TSJE to change the composition of the five-member civic boards (*juntas cívicas*) by re-assigning one ANR seat to *Frente Guasú*. Initially, civic boards were made up of three ANR members and two PLRA members, based on the proportional political representation in Congress with the application of the D'Hondt formula. *Frente Guasú*, the third party represented in Congress, submitted a complaint to

the TSJE, arguing that the composition of the civic boards should respect the proportional representation system, without the application of the D'Hondt formula, which would result in one of the five seats in all civic boards going to *Frente Guasú*. Given the Supreme Court's failure to hear the case, civic boards were formed in accordance with the TSJE decision: two seats for ANR, two seats for PLRA and one seat for *Frente Guasú*.

XVI. Election Day and Post-Election Period

A. Voting and Counting

The EU EOM observed election day in 440 polling stations throughout the country. Most of the observed polling stations opened on time or with a 30-minute delay. Polling station staff were made up of three members, one each representing ANR and PLRA, and the third member was from UNACE or *Frente Guasú*. There were significant numbers of women represented among them.

Voting took place in an organised and calm atmosphere. The assessment of the conduct of voting was 98 per cent positive. Campaign activities and political party stands were observed in a few cases in the vicinity of polling stations. Political party representatives, mostly from ANR and PLRA and to a lesser extent *Frente Guasú*, were present in the polling stations. The EU observers reported a low presence of domestic observers. Polling stations followed the procedures that ensure the integrity and transparency of the voting process. It was noted that in some polling stations there was inadequate protection of the secrecy of vote due to inappropriate polling station layout. The performance of polling staff was mostly assessed as good or very good. Despite long queues, voters waiting at the time the polling stations closed were allowed to vote. Most polling stations were accessible to voters with special needs. Exit poll results were announced throughout the day, in violation of the law, which establishes that exit poll results should only be disseminated one hour after closing of voting.

Although there was a significant increase in the number of polling stations from last elections, these were not placed geographically closer to the voters since they were established in the same polling centres existing in 2013. Therefore, the existing polling centres remained numerically and geographically the same, but polling stations within each polling centre increased. As a result, transportation of voters by the main political parties remained an issue, similarly to previous elections, and was observed throughout the day. The transportation of voters organised by the main political parties impacts the level playing field between contestants and is considered a factor influencing voters when choosing their representatives.

Counting started immediately after closing in the polling stations observed. The integrity of the counting process was sufficiently assured and the procedures were followed. Representatives of political groups were provided with copies of the results forms. The overall assessment of the closing and counting process was good or very good in 88 per cent and the assessment of the transparency of the process was good or very good in 89 per cent of the polling stations observed.

B. Aggregation of Results

EU observers were present constantly during the aggregation at all electoral tribunals and submitted 154 observation forms. The integrity of results forms was assessed as good or very good in 98 per cent of cases and with high levels of transparency. Only in the Second Room (*Sala*) in Asunción and in Ciudad del Este aggregations were assessed as acceptable. Copies of results forms were provided to representatives of political parties that requested them in 87 per cent of cases.

Observers and political representatives were able to observe the provisional aggregation without undue restrictions. The comparison between TREP results and 27 polling station results forms received from EU observers showed discrepancies in three forms with mistakes in the votes attributed to UNACE, National Civic Movement and ANR.

After the counting, election results forms were scanned and transmitted from polling stations to the TSJE via TREP. These results were not considered official but preliminary. The official aggregation of results, called provisional aggregation (*cómputo provisorio*), started on 23 April at the electoral tribunals based on the results paper forms (*actas*) received from polling stations. Each electoral tribunal was divided into three rooms, one assigned to each of its three judges, which conducted aggregation simultaneously. The results of provisional aggregation were transmitted to the TSJE for final and official aggregation. Electoral tribunals are not competent to resolve challenged election results forms (*actas impugnadas*). Results forms that are challenged should be sent to the TSJE for resolution.

The deadline for the completion of provisional aggregation by the electoral tribunals was 3 May, but most electoral tribunals completed the process before the end of April. In Itapúa, the process was slower due to two challenges against the judges conducting the aggregation. According to the procedures, once a judge is challenged, the process must stop until the TSJE decides on the matter. *Alianza Ganar* presented a challenge claiming one of the judges was favouring ANR. A second challenge was submitted by the Movement *Somos Paraguay* arguing that one of the judges was not allowing representatives of political groups to cross-check results with the original certificates. The TSJE appointed an interim judge so that the aggregation could continue. The reason that some departments took longer to finish provisional aggregation was that some electoral tribunals covered more than one department. Therefore, the aggregation of one department's results had to conclude before the aggregation of the other department started.

The TSJE initiated the final aggregation (*cómputo final*) on 4 May, dealing with the challenged election results forms. The challenged results forms during the provisional aggregation amounted to almost 4,061 for all six elections.¹⁵ These included result forms with missing figures, signatures or discrepancies between the three results forms of the same polling station received by the electoral court, electoral tribunal and the TSJE. After counting, there is no possibility to recount ballot papers in case of results discrepancies. The TSJE relies solely in the results forms provided by the civic boards. The departments with the largest number of challenges were Alto Paraná, Central and Capital. PLRA and the National Crusade Party submitted two requests for the exclusion of the three TSJE ministers from the process, alleging their lack of impartiality and the fact that the TSJE had declared Mario Abdo Benítez as the president-elect based solely on the preliminary results of TREP. In Paraguay, requests for the exclusion of TSJE ministers are resolved by the same ministers, since they are the highest electoral judicial instance. Therefore, the TSJE ministers dealt with the request for their exclusion themselves and both requests were rejected. The final aggregation ended on 17 May.

Party representatives were present throughout the aggregation process. Small parties and movements played an active role during the process as they followed the procedures closely and

¹⁵ According to the documents provided by the TSJE, *Cruzada Nacional* 1470, PLRA submitted 774, *Patria Querida* 448 ANR 440, *Frente Guasú* 145, *Alianza Ganar* 144, *Hagamos* 121, PDC 89, UNACE 86, *Somos Paraguay* 43, PDP 39, *Avancemos País* 36, *Partido Encuentro Nacional* 22, *Partido Verde* 17, *Frente Amplio* 6, *Alianza Progresista Canindeyú* 3, *Unidos Todos por Paraguay* 1.

submitted several of the challenges presented to TSJE. Many of them argued that votes obtained by them were not reflected in the election results forms.

C. Announcement of Official Election Results

The TSJE announced preliminary presidential results in the evening of election day, based on 97.7 per cent of results forms received via TREP. The difference between the two main presidential candidates was only 3.7 per cent. Mario Abdo Benítez of the *Partido Colorado - Asociación Nacional Republicana* (ANR) obtained 46.4 per cent of the vote whereas Efraín Alegre on behalf of *Alianza Ganar* obtained 42.7 per cent. Voter turnout in the presidential elections reached 61.4 per cent.

The initial calm reaction of the opposition presidential *Alianza Ganar* bid with Efraín Alegre and Leo Rubin quickly changed to claims of widespread fraud, mostly made on social media during the three days after elections. Both *Partido Liberal Radical Auténtico* (PLRA) and *Frente Guasú* provided examples of discrepancies between the data contained in the certificates given to their agents at the polling stations and the results sent via TREP and called for a demonstration at the TSJE premises. Security forces presence was increased at the TSJE building but only a few dozen people responded to the opposition call. A few small demonstrations were also observed in other cities during the days after the elections. The TSJE and electoral tribunals (*tribunales electorales*) addressed the claims of fraud by conducting a transparent verification and aggregation of results forms. The media, party representatives and EU observers had full access to follow all stages of the process throughout the country. The TSJE also addressed specific cases of challenged results forms that were publicly disseminated, which helped diffuse tensions.

The TSJE announced official election results on 25 May 2018. Voter participation reached 61 per cent in the elections for president, senators and deputies. For governors and department assemblies, the voter turnout was 54 per cent. The official presidential results announced were similar to the ones captured by TREP. The difference between the two main presidential candidates remained 3.7 per cent (96,593 votes). Mario Abdo Benítez of ANR obtained 46.4 per cent of the vote and Efraín Alegre on behalf of *Alianza Ganar* obtained 42.7 per cent.

For the 45-seat Senate, ANR secured 17 seats followed by PLRA with 13 seats and *Frente Guasú* with six seats. Smaller parties obtained a total of nine seats – *Patria Querida* Party (PPQ) with three seats, *Hagamos* Party (PPH) and Progressive Democratic Party (PDP) with two seats each, and National Union of Ethical Citizens Party (UNACE) and National Crusade with one seat each.

For the 80-seat Chamber of Deputies, ANR obtained 42 seats followed by PLRA with 17 seats and *Alianza Ganar* with 13 seats. PPQ secured three seats, PPH and PEN (*Encuentro Nacional* Party) obtained two seats each and National Crusade one seat.

The official results for governors were also similar to the provisional results obtained via TREP. The ANR was the most voted party with 13 governors. PLRA obtained three governors' positions and *Alianza Ganar* secured one governor.

D. Analysis of Election Results

Eight political groups will be represented in the new Senate. These include ANR, PLRA, *Frente Guasú*, Progressive Democratic Party (PDP), National Union of Ethical Citizens Party (UNACE)

and three new political groupings not represented in the 2013-2018 Senate - *Patria Querida* Party,¹⁶ *Hagamos* Party and National Crusade Movement.

The ANR was the most voted party in all elections and maintained its dominance in the elected institutions, despite losing two senator seats and two seats in the Chamber of Deputies. Although in the Senate, the number of seats of PLRA and *Frente Guasú* combined are higher than those obtained by ANR, in the Chamber of Deputies ANR secured an absolute majority with 42 seats. PLRA maintained the same representation in the Senate with 13 seats but its previous 29 seats in the Chamber of Deputies were reduced to 17 after elections. Nevertheless, *Alianza Ganar*, which included PLRA and *Frente Guasú*, obtained 13 of the seats in the Chamber of Deputies. *Frente Guasú* gained one more seat in the Senate and its current representation amounts to six senators. As for smaller parties, PDP and UNACE each lost one senator remaining with two and one senators, respectively. *Patria Querida* Party, *Hagamos* Party and National Crusade Movement are now represented with three, two and one senators, respectively. For the Chamber of Deputies, PPQ also obtained three seats, while *Hagamos* Party and PEN secured two seats each and finally National Crusade with one deputy.

ANR obtained 13 out of the 17 governor positions, one more than before. Among these 13 governors was included the governor for Central department, considered a liberal stronghold for the past 29 years. PLRA decreased its representation from four to three governors. *Alianza Ganar*, which also includes PLRA, is represented by one governor.

XVII. RECOMMENDATIONS

The following recommendations are offered for consideration and action to the Government of Paraguay, the Congress, the Superior Tribunal of Electoral Justice, political groupings, civil society and the international community. Discussions on implementation of the following priority recommendations should be considered as early as possible in order to address in a timely manner the shortcomings identified in the 2018 electoral process. A detailed table of recommendations can be found in Annex I to this report.

Legal framework

1. Consideration should be given to the draft law amending the electoral laws submitted by the TSJE to Congress in 2014 thus overcoming the ambiguity and inconsistency of some election related legal provisions.
2. Review constitutional provisions that undermine the independence of the judiciary. This includes revisiting the ability of Congress to impeach Supreme Court judges, Public Prosecutor and TSJE ministers.
3. Conditions and procedures for impeachment of Supreme Court judges, Public Prosecutor, and TSJE ministers should be clearly regulated so as to allow for security of tenure based on grounds that ensure their independence and respect for due process.

¹⁶ *Patria Querida* Party had four seats in the 2008-2013 Senate.

4. Ensure that effects of rulings declaring the unconstitutionality of legal provisions are applicable to all citizens and legal persons (*erga omnes*) and not only to the parties submitting the case (*inter partes*), thereby guaranteeing equality before the law and the invalidity of the provision ruled to be unconstitutional.
5. In line with international principles agreed to by Paraguay on democratic elections, the right to participate in elections should not be taken away from deaf-mutes, persons in custody, conscripted soldiers and students from police and military academies.
6. To promote the equal participation of women in political and public life, it is important to approve the current draft law on Democratic Parity establishing 50 per cent representation for women on candidates' lists and in public institutions.
7. The candidacy of independent candidates for the office of president and governors should not be limited unreasonably by requiring candidates to be members of political parties, in line with international commitments that provide the right of persons to stand for election.

Electoral Administration

8. An independent election administration structure under the responsibility of the TSJE would increase the level of control of the TSJE during the last phases of the electoral process, as well as its accountability. This includes the replacement of the civic boards, whose tasks could be carried out by electoral registry offices and by the election coordinators at polling centres, as well as the recruitment of independent polling station staff.
9. Establishment of effective mechanisms for the implementation of TSJE decisions, namely through an internal disciplinary procedure in case of failure to comply with TSJE instructions by the lower levels of the electoral administration.
10. Establishing the possibility of recounting ballot papers in case of discrepancies in election results forms would enhance the transparency and credibility of election results.

Campaign Finance

11. The financing of primary elections should be included in the Law on Political Finance in order to increase the level of transparency and accountability of political groupings, including the source of financing, and establish expenditure limits in line with the provisions for campaign expenditure.
12. Inter-institutional mechanisms should be established in order to allow the TSJE to conduct an effective supervision and audit of campaign financing.

Complaints and Appeals

13. The system of complaints and appeals needs to be redesigned in order to provide an effective and timely remedy for aggrieved parties. Procedures to deal with complaints at the polling stations have to be established with the possibility of an appeal to higher levels.
14. Appeals against decisions of the TSJE should be dealt with through judicial review by an electoral bench within the Supreme Court with expedited procedures, and not through an unconstitutionality action which limits the subject matter of appeals and means that the nine judges of the Supreme Court have to decide on the matter in plenary session.
15. Effective mechanisms and procedures for sanctioning electoral offences need to be established to ensure accountability for violations of the laws.

16. Electoral offences and their penalties should be reviewed to ensure proportionality of sentences to the crimes committed.

Media

17. Decriminalise defamation in favour of civil laws, in line with international standards on freedom of expression and media.

Election Observation

18. Consideration could be given to the approval of a law on national election observation containing rights and obligations of observers and promoting their participation in the electoral process.

Election Day

19. Transportation of voters during election day by political parties should be forbidden. Public transport should be provided by the state.

Indigenous People

20. A civil registration of indigenous people would allow for an assessment of the level of participation in public life of this group and ensure that protection of rights are granted to each indigenous person.

ANNEX