



REPORT TO THE PERMANENT COUNCIL<sup>1/</sup>  
Electoral Observation Mission<sup>2/</sup> – Colombia  
Plebiscite  
October 2, 2016

Ambassador Patrick Andrews, Chair of the Permanent Council  
Ambassador Andrés González, Permanent Representative of Colombia to the OAS  
Luis Almagro, Secretary General  
Nestor Méndez, Assistant Secretary General  
Alexander Vega, President of the National Electoral Council of Colombia  
Juan Carlos Galindo, National Civil Registrar of Colombia  
Representatives of OAS Member States and Permanent Observers:

## **BACKGROUND**

On August 24, 2016, the Government of Colombia and the Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP) concluded negotiations to end the armed conflict that began more than 50 years ago. By signing the “Final Agreement to End the Conflict and Build a Stable and Lasting Peace,” both parties established the conditions for ending the conflict. This was the culmination of four years of negotiations set into motion with a dialogue on August 26, 2012.

The president of Colombia, Juan Manuel Santos, announced on August 24, 2016 a plebiscite to be held October 2, 2016, through which the Colombian people could vote in favor of or against the agreement reached. Against this backdrop, the General Secretariat of the Organization of American States (GS/OAS) received an invitation from the Government of Colombia to deploy an Electoral Observation Mission (OAS/EOM) to observe the plebiscite. The OAS Secretary General, Luis Almagro, accepted the invitation and instructed the Secretariat for Strengthening Democracy, Department for Electoral Cooperation and Observation, to initiate the necessary preparations and fundraising to carry out this task. Secretary General Almagro designated former President of Guatemala Álvaro Colom as Chief of Mission.

## **PLEBISCITE**

The Colombian constitution establishes the vote, plebiscites, referendums, popular consultations, open council meetings, legislative initiatives, and recall elections as mechanisms for the people to participate. Colombia is among the Latin American countries with the greatest variety of direct democracy mechanisms. In the specific case of the October 2 plebiscite, the Colombian president called the plebiscite in exercise of his constitutional powers; Article 104 allows for the president – with the

- 
1. A summary of this report was presented by the Chief of Mission, Álvaro Colom, on March 9, 2017, to the Permanent Council of the Organization of American States.
  2. In Colombia, the OAS Electoral Observation Mission uses a different name in Spanish (*Misión de Veeduría Electoral, MVE*) than observation missions in other countries (*Misión de Observación Electoral, MOE*), given that the name MOE Colombia refers to a platform of civil society organizations that promotes the right of citizens to participate in the establishment, exercise, and control of political power.

signature of all ministers and prior Senate approval – “to consult with the people on decisions of national transcendence.”

Direct democracy mechanisms in Colombia are governed by diverse laws and legislative regulations. Specifically, Statutory Law 134 of 1994 provides for regulations on citizen participation mechanisms and establishes that plebiscites “are the vote of the people and are called by the President of the Republic, through which the people support or reject a specific decision of the executive branch.” The same body of law stipulates that this vote applies to policies that do not require congressional approval, with some exceptions.<sup>3/</sup> Lastly, the law states that a majority of the registered electorate shall decide the plebiscite.

Statutory Law 1757 of 2015 sets forth provisions to promote and protect the right to participation; it also provides for several, more detailed complementary aspects to the provisions governing direct democracy mechanisms, including plebiscites and referendums. Notably, these include aspects related to campaigns, particularly to guarantee equal access to state-owned media to disseminate the arguments in favor or against the matter subject to the vote. Furthermore, the law states that the “questions posed to the people shall be worded clearly, such that the questions may be answered with a yes or no.” In the specific case of the plebiscite, the law upholds the previous legislation, which dictates that the decision of the people shall be binding when more than 50% of the registered electorate has participated.

While previous laws established the general rules for plebiscites and other citizen participation mechanisms, Statutory Law 1806 was enacted August 24, 2016 to regulate the Plebiscite for the Referendum on the Final Agreement to End the Conflict and Build a Stable and Lasting Peace. This law was designed specifically for the October 2, 2016 plebiscite; it repeats several aspects of current law, but also introduces certain new features. One of the most noteworthy aspects refers to the effects of the vote: instead of using a voter turnout threshold of half of registered voters (as called for in the general provisions on plebiscites), an approval threshold of 13% was established to grant validity to the process. This figure was calculated based on the 25% voter turnout threshold required by the constitution and legislation for the referendum category for a vote to be declared valid. An approval threshold of at least half, i.e. a 12.5% minimum, led to a 13% threshold being set for this plebiscite. The law authorized civil servants to campaign; however, the use of state assets and resources, beyond those offered equally to all civil servants, was expressly forbidden. The Statutory Law also defined the government’s duty to publish and disseminate the content of the agreement, based on a communications strategy ensuring transparency and a thorough understanding of the accords.

The Colombian Constitutional Court weighed in on the constitutionality of Statutory Law 1806 to address several aspects that had been criticized or about which there were divergent opinions. The court ruled that the plebiscite was binding in nature for the president, but not for other branches of the government. Furthermore, approval would not require creating regulation through legislation; rather it would require authorities like Congress to implement the accords. The court also addressed the 13% approval threshold. It indicated that, since this aspect was not specified in the constitution, the decision would fall under legislative purview to decide, but that it must be proportional, reasonable, and compatible with democratic principles.

After having defined the statutory framework for the plebiscite and having reached an agreement in both chambers of Congress on August 29 to hold the vote, the president issued Decree No. 1391 on August 30 to call the plebiscite. President Juan Manuel Santos defined in the decree the question that would be put to vote: “Do you support the Final Agreement to End the Conflict and Build a Stable and Lasting Peace?”

---

3. Executive branch policies relating to states of emergency and the exercise of related powers are excepted.

Once the vote had been called, the National Electoral Council issued resolution 1733 on August 31, which set forth regulations on certain aspects of the plebiscite, chiefly the campaigns, financing, access to media, and polling disclosure.

### **Pre-Election Stage**

The OAS Electoral Observation Mission arrived in country on September 21, 2016. The Mission Core Group consisted of, among others, specialists in direct democracy mechanisms, campaign financing and media, electoral justice, electoral organization and technology, and statistics. During the mission's deployment, the Chief of Mission held meetings with President Juan Manuel Santos; former Presidents César Gaviria and Andrés Pastrana; members of the Secretariat of the FARC-EP, Iván Márquex and Pastor Alape; the National Civil Registrar, Juan Carlos Galindo; the National Electoral Council, headed by its president, Alexander Vega; Minister of Foreign Relations María Ángela Holguín; Minister of Interior Juan Fernando Cristo; advocates for the 'Yes' option and 'No' option; the national electoral observation network *MOE Colombia*; and the United Nations. Additionally, the specialists and regional coordinators met with Colombian and foreign members of academia, officials of electoral bodies, other state agency authorities, other members of civil society, law enforcement, political party representatives, and representatives of the action committees for the 'Yes' and 'No' campaigns.

The Chief of Mission was invited to participate in the Electoral Oversight and Monitoring Commission conducted five days prior to the election. This body typically operates under the direction of the Ministry of the Interior, but was overseen by the National Electoral Council in this case to guarantee the impartiality of a process called directly by the executive branch. The various state institutions assessed the myriad operations underway in the process to ensure that election day was successful and that diverse actors could voice their concerns surrounding the process.

From the beginning, the mission's initial concern was the institutional capacity of the electoral system to organize a nation-wide election in the mere thirty-three days between when the election was called and election day itself. The mission observed how electoral bodies invested increased effort; from the beginning, they explained to the mission that, despite the time constraints, they would be able to complete the work necessary. OAS coordinators and observers reported that during election week, despite these constraints, the logistics of the process were well organized. Electoral materials were distributed in a timely fashion. A total of 81,928 election kits were handed out, including abroad. The primary organizational hurdle was the delay in accrediting election witnesses, which was reported by our observers. In some cases, this was not resolved until a few hours before election day began.

It bears noting that the National Civil Registry, with a view to promoting turnout for the plebiscite, facilitated several information dissemination mechanisms for people to verify the location of their polling station and to obtain information on whether they had been selected as election board members. These mechanisms consisted of a toll-free number, a mobile phone application, and the institution's webpage. On the Wednesday before the election, the webpage was attacked, leading to a situation in which many users, upon checking their ID number, appeared in the system as "cancelled due to death – not issued." This led to some mistrust, especially because it was spread around social media. However, within a few hours, the institution issued a release reporting that immediately upon being attacked, the system automatically disabled the voter information search tool. The National Registry directly reported to the OAS/EOM that the situation was under control and our computer specialist also observed the ongoing monitoring of the situation.

The OAS/EOM observed that the time allowed for and rush to hold the plebiscite prevented including or carrying out some stages that are usually part of the electoral cycle, such as opening the voter registration lists to new registrations or accepting changes of residence. Given that there was no

established period for registering identity cards, the voter lists were those used for the October 2015 local elections, plus the identity cards registered through June 2, 2016. For this same reason, no new registrations for persons residing abroad were accepted. The voter registration list authorized 34,899,945 Colombians to vote in the October 2 plebiscite.

Security was one of the factors the mission studied during this plebiscite. Unlike past processes, the mission observed greater calm in the pre-election stage—an aspect extremely relevant to the very purpose of the plebiscite. This was bolstered from the outset by the bilateral ceasefire agreed to by the government and the FARC prior to the vote, as well as by the willingness of the actors to not disrupt the conduct of this historic event. For example, it bears noting the call of the National Liberation Army (*Ejército de Liberación Nacional*, ELN) to not take any offensive actions, so as to promote citizen participation.

The mission observed that there was no direct public financing in this electoral process for the campaign committees for both options. The campaigns, therefore, depended almost exclusively on private funding. As a general rule, this shifts electoral competition in favor of the side possessing or obtaining greater financial capacity. In the same vein, it bears noting that the executive branch, which promoted this initiative, is charged with lending visibility in general to its policies and agencies and enjoys greater coverage of its activities. This occasion was no exception. This imbalance was exacerbated for this plebiscite as there were spending caps set for campaign committees, but not for each option as a whole. As a result, given the ten-to-one ratio of committees registered for the ‘Yes’ option as compared to the ‘No’ option, the spending allowed for the former greatly exceeded that for the latter.

As regards free radio and public television airtime, Colombian legislation allows for equal access to state-owned media. During this campaign, 12 daily spots on five television channels were granted, divided into three time slots, in addition to four daily spots on two radio outlets. This notwithstanding, the lottery for accessing these spots was not held until September 23, due to the short timeframe available for organizing the vote, among other things, which limited the time available for exercising this right to a mere nine days.

The mission also observed that there was a macro understanding of the accords and their overall content, but a high degree of misinformation on the details, particularly regarding the specific effects that a ‘Yes’ or ‘No’ victory would entail. This was aggravated by a campaign that often became aggressive; a matter as transcendental as peace often turned personal, leading to heightened tensions and polarization throughout the process.

Some of these issues were brought up by sectors supporting the ‘No’ option; they alleged unequal access to media, undue pressure, and use of public resources in favor of the ‘Yes’ option. They also claimed that the outreach ordered by the Constitutional Court was absent. Some also criticized the wording of the question, in that it did not meet objectivity standards and the guidelines set in the Constitutional Court ruling.

## **Election Day**

The OAS/EOM deployed a team of 75 experts and observers of 20 nationalities to 25 departments in Colombia, as well as the capital district. On election day, they covered 420 polling centers from the opening of the polls through the vote tally. The observers reported that the stations observed opened on time, had the materials necessary to conduct the vote, and that 59% of the sites were presided over by women. Polling station officials were highly professional and knowledgeable about the process and their duties. Observers noted the presence of law enforcement at polling stations.

The mission observed that there were few witnesses from the ‘Yes’ and ‘No’ committees at the polling sites, as well as low turnout. The latter was especially evident in the departments along the Atlantic coast, which more directly bore the brunt of Hurricane Matthew. The observers deployed in the area reported that some polling stations were unable to open due to heavy rains.

OAS observers indicated that the day was calm and described the process as “very good” or “good” for 97% of the sites observed. They noted how quickly the vote tallying process was carried out. The process for reporting preliminary election results was streamlined and expeditious. The National Civil Registry began issuing the first press releases just minutes after the polls closed with results coming in from polling sites across the country. At five o’clock in the afternoon, one hour after the polls closed, 97% of the results had already been tabulated. Despite the tight margins in the results, it was already clear that the ‘No’ option had won the plebiscite. Within a few hours, President Juan Manuel Santos addressed the country to recognize the outcome; he also convened all political forces to hear from them and to open a platform for dialogue to define the path forward.

### **Post-Election Stage**

A total of 13,062,917 Colombians cast their votes in the October 2, 2016 plebiscite, for a 37.42% turnout of registered voters. The National Electoral Council, upon concluding the general vote count, issued resolution No. 14 of October 19 decreeing the definitive results. The ‘Yes’ option received 6,382,901 and the ‘No’ option received 6,438,552. A total of 12,821,453 valid votes were cast, with 168,589 being declared null and 72,875 ballots that were not filled out. Of the validly cast votes, the ‘Yes’ option received 49.78% and the ‘No’ option 50.22%, with the latter winning the majority.

### **CONCLUSIONS AND RECOMMENDATIONS**

The Colombian electoral system responded satisfactorily to a unique electoral event. The limited time available to organize the plebiscite, coordinate the logistics, set the necessary administrative regulations, and involve the relevant institutions did not prevent the Colombian people from going to the polls and freely casting their vote in a framework of respect for fundamental freedoms and rule of law. Against this backdrop, the effort undertaken is an example of institutional work and coordination, in which the National Civil Registry and the National Electoral Council worked arduously towards a successful day. In addition to these entities, other state institutions joined the cause by adding their expertise and performing the responsibilities assigned to them by the constitution and legislation.

The aforementioned notwithstanding, it does bear noting that the time allowed for carrying out an electoral event of this magnitude was not optimal. This should serve as a guide to better facilitate the work of electoral bodies in the future. However, the OAS/EOM understands that the peace process, in which the plebiscite was only one element in a long, complex road, challenged the capabilities of the Colombian electoral system.

The outcome of the plebiscite reflected the importance of greater political dialogue to multiply efforts to reach and strengthen a lasting peace. It should be noted that, despite the political polarization and tension that this plebiscite process created in Colombia, the members of the mission deployed throughout the country observed a peaceful atmosphere undergirded by respect; it was one of the most peaceful electoral processes Colombia has seen.

Below, the Organization of American States Electoral Observation Mission submits several recommendations to the Colombian authorities to strengthen future electoral processes, specifically direct democracy mechanisms.

## **Regulation of future elections**

The special regulation enacted to hold the plebiscite may be viewed as an *ad-hoc* legal structure, given the exceptional context of the peace process in Colombia. It should not, therefore, be considered a precedent for regulating future citizen participation mechanisms. To this end, we recommend a more comprehensive and specific regulation to avoid uncertainty in the legal framework surrounding the calling for and holding of these electoral mechanisms. This should include extending the time allowed for each stage in the process, thereby granting the electoral authority more time to organize and plan the procedures required for conducting the electoral event.

## **Campaign deadlines and voter education**

Given the limited time between when the plebiscite was called and held, the OAS/EOM noted constraints on the dissemination of information related to and understanding of the regulatory framework, as well as a broader dissemination of the content of the accords and a stronger understanding of the implications and effects entailed by each option. Based on the foregoing, and in keeping with the previous recommendation, we suggest extending the time allowed for campaigning for votes on executive branch policies. This will enable greater citizen deliberation and the information to have a more extensive geographic reach. This should be accompanied by a stronger outreach component to explain the positions in favor of and against the proposal. Extending the campaign will allow voters sufficient time to understand what they are voting on, to deliberate the proposal, and understand the specific effects of their vote, i.e. what the triumph of one option over the other would mean.

## **Equity in the process**

The number of committees registered and the limited time available overwhelmed the electoral authority's capacity to verify and oversee income and expenditures. Furthermore, permitting civil servants to campaign—contrary to Colombian tradition—required additional oversight effort to ensure that public resources were not used for campaign efforts, except those offered equally to all civil servants. Given this context, the mission observed an imbalance in access to media, as well as political and electoral financing in favor of the 'Yes' option. In the future, we recommend strengthening the electoral authority's monitoring and oversight capabilities, having more efficient accountability mechanisms, providing direct public financing to the opposing options, and limiting private contributions. It would also be useful to have a regulation or more precise definition on how public resources may or may not be used in campaigns.

## **Question**

The law grants the president of Colombia the power to call a plebiscite and, thus, to define the question being put to voters. However, for future electoral processes, specifically those in which the executive branch has a direct interest, we recommend establishing a procedure for consulting with an independent, specialized body. To this end, the law should set out more precise guidelines on the text, to ensure that the question is clear and concise, subject to a single interpretation, and neutral, so as to avoid either negative or positive wording. Lastly, it is important for the law to stipulate whether the text of the question may be challenged and which body would have the authority to settle the dispute.

## **Election oversight and monitoring committee**

This plebiscite was the first time the president of the National Electoral Council was charged with heading the National Commission for Election Coordination and Monitoring. This responsibility typically falls to the Minister of the Interior, who chose to assign the duty to the Electoral Council, as the executive

branch was the direct promotor of the electoral process in question. Given the council's scope and that this responsibility fits the purview of the council's authority as the highest body charged with the inspection, monitoring, and oversight of election organization, we recommend that the president of the National Electoral Council be permanently henceforth designated as the leading authority, in collaboration with the executive branch.

### **Citizen participation**

In recent decades, Colombia has been among the countries of the region with the lowest voter turnout. The October 2 plebiscite was no exception. Only 37% of the electorate cast a vote, even though they were voting to define the conditions to end such a painful conflict that has spanned several generations. As noted in past missions, we recommend developing initiatives to strengthen the role of the people in the democratic system, to include a broad debate to identify and attack the root causes of societal apathy in election processes. It also bears recalling that the hurricane that impacted the departments along the Caribbean coast and the timeline for this plebiscite could have influenced the high abstention rate. To this latter point, it should be again stressed that, for direct democracy mechanisms to be inclusive, proper time must be allowed to encourage the political and electoral participation of voters.

### **Voter registration lists**

In that same vein, for future direct democracy mechanisms a prudent deadline should be set to allow citizens who have not done so to register to vote, as well as change their place of residence if they have moved since the last election, and enable participation for those wishing to vote from abroad.

### **ACKNOWLEDGEMENTS**

The Organization of American States Electoral Observation Mission to the October 2 plebiscite in Colombia wishes to thank the electoral, political, and social authorities and the various state bodies for their cooperation in successfully carrying out our work. We specifically recognize the work and effort put forth by the National Civil Registry and the National Electoral Council to enable Colombians to vote in the best possible conditions. We acknowledge their authorities and all the civil servants who worked so hard to this end.

In light of what occurred following the October 2 plebiscite, and notwithstanding the legitimate differences or approaches that may be adopted within Colombian society, the OAS/EOM sincerely hopes that there will be no turning back from the road to peace.

The Secretariat for Strengthening Democracy Department of Electoral Cooperation and Observation (DECO) recognizes that the observation of direct democracy processes is different from observing electoral processes to elect authorities. DECO is working to specialize in this area as this type of process is becoming more prevalent throughout the region. A methodology must be developed to observe these processes with specific standards, indicators, and guidelines that may be applied to all electoral observations of this sort.

Lastly, the Mission would like to thank Argentina, Bolivia, Canada, China, the Dominican Republic, Germany, Italy, Mexico, the Netherlands, Peru, Spain, Sweden, Switzerland, and the United States, whose contributions enabled the deployment of this mission at such a transcendental time in Colombia's history.