



Organisation des
États Américains



**REPORT OF THE OAS-CARICOM
JOINT ELECTORAL OBSERVATION
MISSION ON THE FIRST ROUND OF
THE PRESIDENTIAL AND
LEGISLATIVE ELECTIONS OF 28
NOVEMBER 2010 IN HAITI**

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Introduction

The elections of 28 November took place in the least propitious and enabling circumstances. Many commentators were of the view that it was “impossible and unwise” to hold elections in a country whose capital had been devastated and its people decimated by the earthquake of 12 January 2010 though the OAS and UN experts had concluded that they could take place. The country’s already weak institutional capacity had been further eviscerated. The catastrophe’s social and material effects were still very visible and had been exacerbated by a deadly outbreak of cholera in October.

The Pre-Electoral Environment

As the day of the elections approached, there was a clear sense of a positive dynamic underway for elections. The political environment had become more enabling and reassuring with the increasing participation of candidates, parties and political platforms which had initially intended to boycott the elections. There were however a number of disturbing signs:

- allegations of the distribution of weapons;
- a significant increase in pre-election violence;
- the recruitment and training of supervisors and poll workers had not gone smoothly;
- reports by a leading presidential candidate of alleged plans to undertake massive fraud and of intimidation to prevent voter turnout;
- the late commencement of the public information campaign, in particular with regard to informing voters where to vote
- civil society groups had expressed concerns with regard to the accuracy of the electoral lists.

The Joint Mission itself in its press releases and in its discussions with stakeholders before Election Day on 28 November 2010 had itself either flagged or deplored publicly a number of the above concerns:

- the reminder that by signing the Code of Conduct, the candidates and political parties had committed themselves “to promote tolerance and to renounce the use of weapons, physical or verbal aggression, and to respect the right of rival parties and their supporters to meet and to campaign without disruption throughout the country”.
- the call to all political leaders to demonstrate “responsible leadership by calling on their supporters to remain calm and to display restraint and tolerance”;
- the changes made by the CEP to the names of the supervisors and the non-inclusion of persons designated as poll workers by the political parties without adequate explanation by the CEP;

- the critical role played by supervisors in the smooth functioning of the polling stations on the day of elections;
- a plea for voters to carry out their civic duty and to participate massively in the elections;
- an appeal for calm on Election Day and for patience while awaiting the preliminary results; and
- an appeal to the Haitian police and the justices of peace to live up to their responsibilities on the day of elections.

In a letter dated 26 November to the President of the CEP, the JEOM had made strong representation with regard to its concerns over the changing of the names of supervisors and of poll workers, pointing out that the modifications had raised suspicions about the CEP and had also led to criticisms of what was viewed as partisan CEP conduct in favor of Init . The letter recommended that the CEP explain publicly the reasons for the modifying of the lists as its credibility was in question and the integrity of the elections at stake. The letter also addressed the concerns expressed by some national election observation groups over the reliability of the electoral list. It indicated that the JEOM was unable to assess its accuracy as the CEP had never provided the Mission, despite its letter of 26 October and subsequent oral and telephone representation, with access to its data base and pertinent information to enable such an evaluation. The issue of helping the voters to identify their polling stations in the various Voting Centers was also raised as well as making available the Manual of Operating Procedures of the Tabulation Centre, a commitment to the candidates and political parties which the CEP had not yet fulfilled.

In addition to the above concerns, the JEOM had made the point repeatedly in its press releases and public comments that the greatest obstacle to good elections was the lack of credibility of the CEP and the high level of distrust in its impartiality. It had also made the point that, as a consequence of this lack of trust, any shortcomings and flaws would be amplified and be viewed through that particular lens. Though the CEP, aware of this negative perception, had taken steps to improve its image through a greater effort at communication, transparency and relations with the candidates and political parties, it dissipated whatever little trustworthiness it had managed to garner by its inability to address the concerns of the political parties over the modification of the lists of supervisors and poll workers. The disorganization of 28 November would simply reconfirm all the earlier doubts, concerns and suspicions.

Election Day

Having gradually increased its field presence from a small Core Group of 5 persons in August to 28 observers in the first day of October to 118 on the day of the elections, the JEOM deployed over 50 two person teams of observers on the day of elections throughout the country, each armed with a detailed questionnaire. The OAS field presence paled in comparison to the 6,000 odd observers deployed by the Haitian civil society election observation organizations. On arrival, all the groups underwent training on the OAS observation procedures as well as a briefing on the electoral and political environment in which they would be operating. They were also provided with reports and press releases of the Mission.

The work and presence of the Mission were viewed as contributing to:

- reinforcing the integrity of the elections by dissuading and denouncing, when necessary, electoral irregularities and fraud;
- reducing the risk of violence on the day of elections;
- reinforcing public trust and confidence in the electoral process; and
- providing recommendations to improve the electoral process.

In general, the day of elections was marred by disorganization, dysfunction, various types of irregularities, ballot stuffing and incidents of intimidation, vandalism of polling stations and violence. From the information the JEOM was receiving from its teams throughout the country in the course of the morning, the problems seemed to be concentrated in a few regions, including Port-au-Prince. For the most part the voting in the provinces appeared to have been unfolding relatively smoothly though similar irregularities had been observed (late opening of polling stations, voters having difficulty in finding their polling stations or finding their names on the partial electoral list inside the polling station). There had however been one reported incident of serious violence early in the morning at Desdunes in the Artibonite.

The repeated allegations that massive fraud would take place seemed to have led to a mindset where any failing or problem was amplified, taken out of context, and perceived as a manifestation of the expected fraud. For example, party agents who were told that no more than five could be present in the polling stations at the same time were quick to call their operation centers and complain that they were being deliberately barred. The Mission followed up a number of these complaints made by various political parties. Voters who could not find their polling stations, or their names on the partial electoral list at the polling stations, reacted in the same way, claiming that fraud was taking place. A large number of voters in Port-au-Prince and elsewhere were affected by that problem. The saturated call centers and the unwillingness or ignorance of the polling station workers to allow voters to cast their ballots on the basis of an affidavit drawn up by the poll workers only aggravated voter frustration. There were also allegations of ballot stuffing in the capital which the Core Group members followed up but which turned out to be false.

By late morning, the disorganization, the frustration of voters and increasing incidents of ransacking of polling stations had led to an alarming rise in tension. This all came culminated with information that the overwhelming majority of presidential candidates were going to call for the suspension or the cancellation of the elections. The Core Group of Ambassadors met on two occasions, at midday and a bit later at 2.00pm, to discuss the situation and to strategize on how best to assist the Haitian authorities in responding to this new crisis. In the course of the second meeting to which the JEOM Chief of Mission and the OAS ASG had been invited, news was received at regular intervals by the Head of MINUSTAH of the deterioration of the security situation in the capital. Taking into account this downward spiral as well as earlier signs of impending trouble and the real possibility of widespread violence in Port-au-Prince, the Chief of Mission took the decision to call back from the field the observers in West Department where the capital is located. The recommendation was also made to do likewise in other Departments where violence was taking place. Consequently, a bit later, the decision was taken to also call in the observers in North Department for reasons of personal safety.

Despite the cancellation call made by the majority of the presidential candidates, the electoral process continued to its conclusion with the vote count and the posting of the results taking place in the overwhelming majority of polling stations. That evening, following consultations between the international community and two of the leading candidates who had called for cancellation, and the contacts made by the Private Sector Economic Forum with these candidates, Mrs. Manigat and Mr. Martelly changed their position, no doubt helping to salvage the electoral process.

In view of the controversial nature of the events of the day of elections, the JEOM realized that it would need to make public quickly its position with regard to the validity of the elections. It requested the coordinators of the eleven electoral departments to provide urgently reports on their observations. This information was used to produce a detailed report on the JEOM's observations on the conduct of the presidential and legislative elections and on the environment in which they took place. The report was made public on 29 November in the course of a press conference. The Mission considered "whether the irregularities it observed were of the magnitude and consistency that would invalidate the legitimacy of the process. Based on its observations in the eleven electoral departments" the JEOM concluded that "it did not believe that these irregularities, serious as they were, necessarily invalidated the process." The Mission also held the view that the decision of almost all the presidential candidates to call for the cancellation was "precipitate and regrettable" and pointed out that the process had continued to its very end. It also highlighted that the Electoral Law contained provisions for a candidate to challenge the election of another candidate when irregularities and fraud had taken place.

Among the more positive features of the electoral process were a number of elements illustrating modernization and greater openness of the politics: the recourse to polling as a campaign tool; and the use of electronic messaging and other forms of social networking during the campaign by some candidates. The increased involvement of the private sector as a stakeholder in the electoral process, not only in helping to finance candidates, needs to be highlighted. Many of the Mission's observers commented on the large number of young persons and women involved in the process as poll workers. The observers were particularly impressed by the diligence and impartiality displayed by the women.

The Post-Election Day Environment

The Mission continued its observation of the electoral process following the day of elections by deploying a team of observers to monitor the start of the compilation and tabulation of the votes at the Tabulation Centre as of 29 November. It also took steps to organize the debriefing of the short-term observers who would be leaving the country on 2 December.

Monitoring the Vote Tabulation Centre (CTV)

The observers of the JEOM experienced some difficulty in having immediate access to the information on the procedures, quality control measures and criteria used by the CTV officials in the verification of

the results sheets as well as to the draft Manual of Operations. The officials were not immediately forthcoming and the information had to be ferreted out. Recourse had to be made to the Director General of the CEP in order to obtain the full facilitation and access required for the Mission as well as the other international observers to carry out their monitoring functions.

The reasons for their reluctance in being transparent soon became clear. The control guidelines at the system level and the quality and legal controls were not defined in great detail. The procedural manual itself was a draft document which had not been endorsed with the statutory authority of the CEP.

One of the Mission's first observations was related to the initial control measure being implemented to identify results sheets for visual verification. This control threshold was set at 225 votes for any individual candidate. The Mission pointed out that in view of the low rate of participation, using 50% of the number of voters in a polling station was far too high. This control measure was subsequently reduced to 150 votes as a final control measure.

The greatest difficulty was experienced in monitoring the verification work being carried out by the lawyers of the Unit of Legal Control. The office in which they were located was cramped with little space to facilitate the circulation of observers among the tables at which the lawyers worked. The latter were for the most part unhelpful and not very forthcoming in response to the questions put to them. The review of their work undertaken by the Director of the CTV and technical assistants as part of the final quality control took place in a more enabling work space which lent itself to closer monitoring.

Debriefing of the Short-Term Observers and Coordinators

During the debriefings, the observers and coordinators were allowed to speak freely of their own experiences, views and observations. This permitted an open dialogue between the Core Group and the field operatives. These debriefings were also of vital importance for the Joint Mission for several reasons. They allowed the Core Group to ascertain if the Mission's reports, communiqués and public comments on the electoral process in fact reflected fully the views and observations of the observers. This was true particularly with regard to the detailed report that the Joint Mission made public on 29 November assessing the day of the elections and on which the Mission had concluded that the irregularities and fraud observed did not "necessarily invalidate" the process. The debriefings also provided a number of practical recommendations which have been included in the list transmitted to the attention of the CEP. Last but not least, they provided practical recommendations to improve the work and functioning of the Mission.

Other Debriefings

The JEOM also held a debriefing with the international organization missions involved in Election Day monitoring – the European Union Electoral Experts Mission, the Francophonie Organization Election Observation Mission, and representatives of the Embassies that had deployed observers (US, Canada and Japan). This debriefing underlined that the international organization observation missions shared the same appreciation of the day of elections – disorganization, irregularities, instances of violence and fraud, but opposition to the invalidation of the elections.

The JEOM also met with the head of one of the major local observation groups, the RNDDH, for an exchange of views on the day of elections. It should also be noted that the reports of civil society groups (Private Sector Economic Forum) and of the Haitian election observation groups (RNDDH, JuriMedia) which were shared with the Mission, despite their scathing indictment of the shortcomings, irregularities and fraud that tarnished the day of elections, did not call for cancellation of the elections.

Publication of the Preliminary Results

The publication of the preliminary results of the elections on the evening of 7 December was followed immediately by violent demonstrations in favor of Mr. Martelly who was placed third and not second as he and his supporters had expected. The turbulence paralyzed Port-au-Prince and Les Cayes as well as other parts of the country for almost three days. In addition to Mr. Martelly, the results were rejected by several of the major international actors as being inconsistent with vote counts made by Haitian civil society organizations.

In an effort to address this new problem, the CEP proposed the establishment of a special verification commission comprising representatives of the CEP itself, of national and international observation groups and of the private sector and donor community. This proposal was rejected by the civil society groups on the grounds of being outside the framework of the Electoral Law. Following this setback, on 13 December President Préval requested OAS assistance in sending two expert missions - one to verify the tabulation of the preliminary results of the presidential elections, and the second to accompany the dispute phase of the presidential elections.

The resulting delays in the continuation of the electoral process created logistical and operational problems for the Joint Mission. Its coordinators having left the country from 17-21 December, the Joint Mission has been operating with a greatly reduced presence for the past two months.

The JEOM used the intervening period following the disputed preliminary results and the continuation of the electoral process to undertake an analysis of these results and to raise a number of concerns and questions, some of which were also raised by candidates, requiring clarification from the CEP. Among the questions raised was the concern with regard to the accuracy of the voting lists and the difficulties experienced by voters in finding their polling stations and the dispersal of voters from the same address over several Voting Centers. The CEP technical response informed that the dispositions of the Electoral Law in 2010 required an increase in the number of Voting Centers from 785 to 1500 and that this had led to a different distribution of voters in the Voting Centers. The difficulties experienced by voters in

the largest camp for internally displaced persons were also raised and an explanation received that the inhabitants had not taken advantage of the facility extended to them to register to vote in that location. The JEOM also raised the concern in a letter to the CEP dated 26 January 2011 over the large number of polling stations where the vote was not completed and recommended that the vote should be done over in those locations where more than 10% of the results sheets were not received and so many voters were disenfranchised.

JEOM also followed up the criticisms of fraud made by the US advocacy group Haiti Democracy Project and responded on its findings to the organization after drawing their concerns to the attention of the CEP.

OAS Expert Verification Mission

Delayed by Government of Haiti concerns over the intrusive nature of the initial terms of reference and its composition, the Expert Mission arrived on 30 December and left the country on 9 January 2011. Its report was officially submitted to President Préval on 13 January by the Chief of the OAS-CARICOM Joint Election Observation Mission. The immediate leaking of the report by one of the experts diminished the integrity of the Expert Mission and of its work. Though unhappy with the leaking of the report, aspects of the methodology and the view that it had usurped the role of the CEP and given results, the President officially transmitted the report to the CEP for implementation on 18 January. The CEP immediately informed that it would implement the technical recommendations to improve the second round of the elections. It also indicated that it would take into consideration the recommendation concerning the placing of the second and third candidate during the dispute and challenge phase of the electoral process which had been suspended while awaiting the verification and report of the OAS Expert Mission.

The OAS Legal Experts Mission and the Disputes and Challenges Phase

The second OAS expert mission arrived in the country on 24 January in order to accompany the resumed dispute and challenge phase of the electoral process and the adjudication of the complaints on the preliminary results of the presidential elections by the electoral tribunal (BCEN). Its report was transmitted to the Government of Haiti on 4 February 2011.

The Joint Mission observed the disputes and challenges phase with regard to the legislative elections at the BCEN level. Because of the delays in the electoral process and the departure of its observers and coordinators in mid-December, the Mission's monitoring of the process at the local level (BCED) was severely hampered. At the BCEN level, the mission observed with satisfaction that a large number of complaints were submitted by the legislative candidates. They availed themselves of the legal recourses provided by the Electoral Law to try to obtain redress for their complaints with regard to irregularities or fraud which they claimed prejudiced their results. This recourse to the due process dimension of the elections was of critical importance in demonstrating that grievances can be effectively addressed by rule of the law procedures.

Proclamation of the final results of the first round

At the conclusion of the disputes and challenges phase, the final results of the first round of the presidential and legislative elections were proclaimed in the morning of 3 February 2011 after a lengthy overnight wait for their publication. This brought an end to the political crisis resulting from the disputed preliminary election results of the presidential elections.

According to the revised electoral calendar, the second round of the presidential and legislative elections will take place on 20 March 2011.

Communication and Public Information

Since its arrival in August 2010, the JEOM has placed emphasis on its communications strategy. It has issued 18 press releases to date and its Chief of Mission has undertaken a large number of interviews as well as four well attended press conferences with the local and international media. The Mission has also provided background information briefings on the electoral process at the request of newly arrived international media representatives. In addition to making public information on its activities, its observations and concerns, it has also made a number of recommendations for both the CEP and the political parties and candidates. One point which has been a *leitmotiv* and recurrent theme in the Joint Mission's public information has been the importance of respecting the Electoral Law and its due process procedures.

Conclusions

The Joint Mission has had to function in a particularly difficult political environment. As mentioned earlier, the lack of trust in the CEP and the widespread view that it was partisan and tilted towards the ruling platform and its leaders constituted a major obstacle to the integrity and credibility of the CEP that the institution was unable to overcome. The mishandling of critical stages of the process further eroded whatever little credibility it had retained.

The fact that the OAS was involved institutionally in the preparation of the elections through the technical assistance it provided to the National Office for Identification (ONI) responsible for providing the identity cards that permitted voting led to criticisms of the mission being judge and party in the electoral process. Additional negative political factors arose from the boycotting of the elections by a number of traditional and other political parties, the toxic atmosphere created by the allegations of intimidation and of massive fraud that preceded the day of elections, and the absence of Fanmi Lavalas party in particular from the elections. The political crisis that resulted from the disputed elections, and the role the OAS was called to play in helping to resolve its outcome, added another layer of complexity to the political environment.

The adverse conditions in which the Mission operated were also very challenging. The JEOM had to make do with far less resources than requested. One of the critical consequences was the inability of the

Mission to retain the services of the observers and coordinators until the delayed dispute and challenges phase of the electoral process finally took place. In addition to security and logistical concerns, the Mission also needed to address the threat posed by the outbreak of cholera in late October by recommending precautionary and preventive measures to the observers.

The Joint Mission enjoyed excellent working relations with the various Haitian stakeholders – political parties and candidates, government and electoral authorities, civil society, media - and international actors involved in the electoral process. The wide range of recommendations made by the JEOM as well as those made by the OAS Expert Verification Mission can contribute to an improvement in the organization and procedures of the second round of the elections and thereby help restore credibility and legitimacy to a contested process. The CEP has already taken steps to implement a number of these recommendations.

The calmness with which the country greeted the final results of the first round illustrated the acceptance of the fact that in elections, a vital aspect of the democratic process, there are winners and losers. This peaceful acceptance of the elections results was also a demonstration of democracy at work at the wider level of the society, and for which the Haitian people, their political leaders and the government must be commended.