

REPORT OF THE OAS – CARICOM JOINT ELECTORAL OBSERVATION MISSION ON THE SECOND ROUND OF THE PRESIDENTIAL AND LEGISLATIVE ELECTIONS OF 20 MARCH 2011

Introduction

The second round of the presidential elections was seen as unprecedented and even historic for several reasons. It was the first time since the 1987 Constitution, and some say in the history of the country, that a second round of the presidential election was taking place. In addition, one of the two candidates in the runoff was a woman. However, what was most striking was that the second round took place in a totally different and enabling environment compared to the first round. Even though questions were raised about the procedural propriety of the publication of the final results of the first round without a majority of the eight commissioners, and about their format as no statistics were provided, these issues did not become an obstacle to the advancement of the electoral process and quickly faded away. Though the CEP had indicated to the JEOM that the statistics would be provided, this did not take place.

The Pre-Election Environment

The long period between the publication of the preliminary results of the first round on 7 December 2010 and the delayed proclamation of the final results on 3 February, delayed by the post-results crisis and the tabulation verification exercise of the OAS Expert Mission, was used fruitfully by the Provisional Electoral Council (CEP) technical staff. Not only did they carry out an in-house analysis of what went wrong during the first round, but they also took on board the wide-ranging recommendations made by the JEOM, the OAS Expert Vote Tabulation Verification Mission and by other international and national observation missions. The CEP and the Office for National Identification (ONI) coordinated their efforts to address the accuracy of the electoral register. Strategy sessions were held with the technical assistants of the MINUSTAH and the UNDP to determine the feasibility as well as the potential cost of implementing the array of recommendations put forward.

The “Where to Vote” campaign was launched early and the capacity of the call centres to respond to voters’ enquiries enhanced. Access to the required information through texting and the internet was also provided. The public response, in particular to the facilitation made available by the call centre, was noteworthy. Other forms of voter sensitization and education were also initiated in good time using radio and television spots, posters and flyers as well as megaphone-carrying civic agents. There was however a sense that these civic education measures did not have the same impact on the electorate and in the view of the Mission’s observers they were not widely conducted in the provinces. Measures were put in place to help voters find their polling stations on Election Day; training for poll workers and supervisors was upgraded though unevenly implemented. The procedures of the Vote Tabulation Centre were revamped and the verification criteria harmonized and given statutory authority. The Centre’s verification capacity was also increased. In a commendable break with the laissez-faire tradition,

impunity for electoral infractions was challenged by the expulsion of delinquent supervisors, poll workers and electoral security agents. Criminal charges were also pressed against a number of persons by the CEP though it is left to be seen whether the justice system will undertake the necessary action.

The environment of security and peacefulness which had prevailed since mid-December was in general maintained after the proclamation of the final results of the first round, despite the exclusion of the presidential candidate of the ruling platform from the runoff. The short election campaign was marked by huge rallies in different parts of the country in support of the two presidential candidates. Though initially peaceful, the last days of the presidential campaign were marred by a more strident tone, rising friction and disruptive incidents. Though the media paid far less attention to the legislative campaigns, these generated far more tension and acrimony which on occasion led to acts of violence. However, the more moderate atmosphere despite its intemperate moments was a vast improvement on that of the first round. Recourse to polling, social forms of communication as well as electronic messaging by the Martelly campaign in particular again underlined the modernization of campaigning.

The most remarkable aspect of the pre-election environment was the disappearance of the toxic atmosphere of the first round spawned by the unrelenting criticism of the lack of credibility and of impartiality of the long-decried CEP accused of being a vassal of the government and by the allegations of impending intimidation and massive fraud. Though greatly diminished, the suspicions and the mistrust of the CEP did not vanish completely.

Election Day

For the second round of the on March 20, there was a runoff for the presidency. There were also seventy six seats for the Lower House out of ninety nine, and seven out of eleven for the Senate at stake.

The second round of the presidential and legislative elections was a vast improvement on the first round in a number of ways. The political climate was far more peaceful. The lessons learned from the first round failings, the recommendations implemented and the measures initiated by the CEP led to appreciable substantive and organizational improvements and, consequently, to a more orderly voting process. The reports of the observers also reflected a positive change in ensuring security on Election Day. The action of the security forces was better coordinated and targeted and they were much more proactive in preventing or responding to disruption of the voting process and addressing incidents of violence.

There were still however several shortcomings. Though the facilitators were useful in the Voting Centers where they were deployed in helping voters identify their polling stations, their presence was patchy at best. Polling station identification difficulties were far less prevalent than during the first round, but more work is required to enhance the accuracy of the electoral lists. The major failing arose from logistical errors concerning the delivery of electoral kits and voting material (ballots, ballot boxes and indelible ink) in West Department in particular where

the capital is situated. The rapid response of the UN peacekeeping mission, MINUSTAH, in rectifying the error prevented the situation from degenerating. The period of voting in the affected Department was consequently extended an extra hour to offset the late start. There were also isolated incidents of violence, voter intimidation and ransacked polling stations as well as the reappearance of multiple voting and ballot stuffing.

Voter turnout appeared to be slightly higher compared to the first round but did not fully live up to the expectations raised by the surge of “Where to Vote” requests.

The JEOM almost doubled the number of observers it fielded on 20 March, Election Day. The 201 observers were deployed throughout the country in a variety of settings, urban, provincial and rural. The Mission also put in place coordination mechanisms with several of the larger national observation groups and participated in information exchange sessions with the MINUSTAH. It also assisted the CEP in establishing a more effective Emergency Centre. The Mission also deployed its observers to not only observe the vote count process but also to carry out a Quick Count as a control mechanism to assess the reliability of the results provided by the CEP.

The Mission’s observers were requested to pay attention to the role of women in the electoral process as part of their monitoring. In 30% of the polling stations observed, a woman presided; in 39%, the Vice-President was female; and in 34%, the Secretary was a woman. Among the Presidents of the eleven Departmental Electoral Offices (BEDs), only one was headed by a woman. Another BED had a woman Vice-President. The United Nations Development Programme (UNDP) provided technical assistance for the women candidates in the areas of party agent management and the disputes and challenge phase of the electoral process. Among the elected candidates, there was one woman for the Lower House but none for the Senate. The presidential runoff did include a woman. Women’s groups have been advocating for greater feminine representation among candidates for elected positions but clearly a lot more ground needs to be covered in this area. As concerns the JEOM itself, eleven of its twenty-one coordinators were women and so were ninety nine of the two hundred and one observers on Election Day. Two of the four members of the Core Group nucleus were women including the Deputy Chief of Mission. It should be noted that the one of the two women Counselors of the CEP, the representative of women’s groups, resigned after disavowing the manner in which the second round electoral tribunals were conducted.

In the assessments made of Election Day, it is widely accepted that the generally peaceful and orderly nature of the second round of elections together with the organizational improvements reinforced the credibility and legitimacy of the electoral process and, to some extent, of the CEP. The large measure of agreement among national and international observation, the international technical assistance (MINUSTAH, UNDP and CIDA) and the CEP technical staff on the recommendations and measure that were required to improve the organization of the second round no doubt contributed to the improvements recorded.

Monitoring the Vote Tabulation Centre (CTV)

The Mission deployed a team of specially trained observers who worked in shifts to monitor the operations of the Vote Tabulation Centre (CTV) which functioned 24 hours a day. Each observer was armed with a form on which to note his/her observations with regard to the various phases of the tabulation process observed but with particular attention being paid to the verification process carried out by the Legal Control Unit to determine the validity of the results sheets sent for examination. The observers were urged to be proactive and to bring shortcomings in the verification process to the attention of the supervisors or the CTV directors so that the necessary rectification could be made immediately. Not surprisingly, such intercession was viewed as intrusive by some of the lawyers whose work was being called into question. This however found favour with the CTV directors who realized that it added to the trustworthiness and integrity of the CTV's verification.

As mentioned earlier, the procedures of the CTV were revamped, control quality measures put in place for all the major phases of the process including the verification of the validity of the results-sheets. The recommendations of the JEOM and of the OAS Expert Verification Mission were for the most part implemented. The capacity of the Legal Control Unit was increased from six to sixteen lawyers and the verification criteria settled and given statutory authority. The Mission had proposed an observation protocol for the CTV to the CEP. The CTV itself drafted observation guidelines setting out the observer/CTV relationship which in reality was testy initially but mellowed gradually with the passing of the days as both sides came to better understand each other. Among the welcome innovations was the instituting of information sessions conducted by the CTV directors and at which the observers could ask questions as well as make observations and recommendations. Though these sessions did not commence as early in the process as promised, they did prove to be quite useful. The second innovation was the invitation to the presidential candidates to deploy their own observers. This was a welcome gesture of transparency by the CEP.

As a consequence of the parameters adopted to select results-sheets for inspection, the CTV ended up verifying some 60% of the results-sheets compared to 10% for the first round. This huge increase in the volume of work led to the need to further strengthen the Legal Control Unit but also resulted in a four day delay in tabulating the results which were finally made public on 4 April. Greater attention and time was devoted to the presidential results-sheets. A commendable effort was undertaken to make the verification exercise far more rigorous than during the first round, but it was blemished by the inconsistent quality of the work of some of the lawyers of the Legal Control Unit.

The Disputes and Challenges Phase

The efforts to improve the second round of the presidential and legislative elections also involved the claims and challenges phase of the electoral process. Recommendations to improve

the procedural aspects of this phase and to guarantee a minimum of procedural impartiality were proposed to the CEP by a UNDP judicial expert.

These recommendations were the basis of training for the presidents of the Departmental Electoral Bureaux (BEDs) and for the CEP Commissioners who sit as judges in the two distinct instances of the electoral tribunals that adjudicate the complaints and challenges submitted by the candidates following the second round.

The lower level instance, the Departmental Complaints and Challenges Bureaux (BCEDs), deals with the legislative complaints. However, the BCED of West Department provides the first level of adjudication for the presidential elections. However no complaints were submitted following the second round.

The JEOM observed the adjudication of the legislative complaints by the BCEDs in the ten Departments. Taking into account the number of decisions that referred complaints to the National Bureau for Electoral Complaints and Challenges (BCEN), it would appear that a large proportion of the BCEDs acted as registration offices for the complaints submitted instead of seeking to establish the veracity of the allegations made by the complainants and taking a decision which, if true, could be overturned by the higher instance. Some BCEDs did throw out complaints on procedural grounds while others did in fact adjudicate the affairs submitted. However 98% of the decisions of the BCED claimed incompetence with the complaint being transmitted to the BCEN. There were 67 cases of candidates for the Lower House submitted to the BCEDs and four for the Senate. Of these, 64 for the Lower House were submitted to the BCEN and four for the Senate.

The procedural guidelines and the training appeared to bear some fruit as the management of the cases by the BCED was viewed as being somewhat improved compared to the first round. The hearings respected the rights of the defense and the drafting of the decisions at this level was improved.

The recommendation of the JEOM and the OAS Expert Verification Mission to have the scanned copies of the results sheets placed on the CEP web site was of the greatest usefulness. They provided the lawyers with a wealth of information, including the reasons for the exclusion of results sheets, which they could exploit to the advantage of their candidate-clients.

The functioning of the higher level electoral tribunal left a lot to be desired despite the quality of the lawyers involved. The time imparted was not always sufficient for the lawyers to develop their arguments properly. Neither did the Presiding judges conduct the hearings in a way that would have obliged the lawyers and the candidates to show the proof of their allegations or to support their requests for the incorporation or the exclusion of results. This approach would have a harmful impact on the quality of the decisions of the BCEN which for the most part were rendered without any supporting evidence or reasoning and based on the exclusion or incorporation of results sheets without any prior verification.

Proclamation of the Final Results of the Elections

The final results of the presidential and legislative elections were made public on 20 April. The victory of Mr. Martelly was a formality as no complaint had been submitted to the electoral tribunal concerning the presidential elections. However, the announcement of the legislative results was instantly destabilizing. The BCEN, whose decisions are final, reversed the positions of nineteen candidates, seventeen from the Lower House and two from the Senate, the majority of which benefitted the governing platform, Inite. This sparked outrage, rejection and violent protests and led to a new crisis. These controversial results also led to the resignation of one of the CEP Counselors who rejected the reversals in position. Following consultations between the Government and the CEP, the latter submitted a truncated list of candidates to be published in the journal of record, *Le Moniteur*. This permitted the validation of the elected legislative representatives (28 Senators and 79 Deputies), minus the controversial ones, and the commencement of the sittings of the Lower House and the Senate.

JEOM Review of the Controversial Legislative Results

Following discussions between the Haitian executive and the CEP, the JEOM was called upon by the Haitian authorities to undertake a review of these controversial results. It accepted to do so within the limits of its mandate and followed the procedures put in place for the deployment of the two OAS expert missions following the disputed first round results.

The Mission found in its review that the BCEN did not display the necessary serenity and patience to draft its decisions with the thoroughness required. In general, the BCEN merely proclaimed the winner without setting out the arguments or the reasoning that led to the decision and without assessing the evidence. This rendered its decisions opaque. Ignoring the criteria established by the CEP itself, the judges of the BCEN decided improperly to either annul or validate PVs as requested by the plaintiffs and the defendants without prior verification as the Electoral Law requires. This profoundly affected the correctness and the validity of the decisions of the BCEN.

The JEOM concluded that in the absence of reasons underpinning the decisions and in the absence of prior verification to determine which PVs should have been set aside or counted in order to change the number of votes and therefore the position of the candidates, the CEP should return to the preliminary results in each of the eighteen cases examined.

Under national and international pressure, the CEP took the decision to establish a Special BCEN to re-judge the eighteen controversial cases. This time around, the critical step of verification of the results sheets at the Vote Tabulation Centre which had been totally omitted previously was carried out. This was done in the presence of the JEOM and other national and international observers. After reviewing the files and completing the work at the CTV, the judges deliberated, though without allowing the observers to be present. However, the CEP informed

the observers of the results of the decisions of the Special BCEN shortly before announcing the results late last night.

At this meeting, the Mission and other observers expressed reservations about the treatment of three cases in particular. For these cases, the JEOM recommended that the Special BCEN apply the same verification procedures it had used for all the other cases examined and which had helped to determine the accuracy of the results. However, these recommendations were not taken on board. As a consequence, the proclamation of the additional results did not fully resolve the problem as the three cases which were not properly treated led to renewed criticism of the arbitrary nature of the CEP's approach. Though the results were transmitted to the President of the Republic for publication in the official journal of record, *Le Moniteur*, this was not done up to the time of writing.

Communication, Public Information and Outreach

The Mission continued to place emphasis on its public information strategy through the release of press statements, twelve during the second round, a press conference, and numerous press interviews given by the Chief of Mission with the local and international media. The local interviews included several in-depth ones as Invitee of the Day on the major radio stations.

Coordination with the technical personnel of the CEP as well as with the electoral technical assistance component of the international community continued to be a priority through the JEOM's active and regular participation in their respective coordination meetings. Working relations with national observation were reinforced through participation in meetings as well as regular information exchange and sharing with their leadership. Several letters setting out the concerns of the Mission and proposing recommendations were also sent to the attention of the CEP. On the ground, the observers continued to be proactive, meeting with the legislative candidates and working closely with the Departmental and Communal electoral officials, the civil and electoral affairs representatives of the MINUSTAH and the Haitian National Police in efforts to promote dialogue, reduce tensions and address problems.

The Haitian electronic and print media gave widespread coverage to developments and issues related to the second round of the elections. Once again polling was carried out, one of two presidential debates took place, and there was increased recourse to electronic messaging, especially "robo-calls", by one of the presidential candidates.

The tensions and protests that stemmed from disputed aspects of the electoral process did have a negative impact on the media. Threats were made against a private radio station in the capital perceived as having taken political sides with regard to the presidential elections. Political divisions over reporting policy at the state television station led to internal turmoil and to the dismissal of several staff members. Following the controversial legislative final results, several radio journalists in the provinces have been forced into hiding because of their reporting and at

least two community radio stations have been attacked and damaged or destroyed. These incidents of intimidation or violence against the media were completely at odds with the liberty of the press enjoyed over the past few years.

Conclusion

The second round of the elections was indeed far superior to the first round from a technical, organizational and security point of view. Unfortunately, the success that accrued to the credibility and legitimacy of the electoral process, and of the CEP, from these improvements was quickly dissipated by what was widely viewed as the CEP's inequitable handling of the complaints process and the proclamation of highly controversial final legislative results.

The JEOM sought from the outset to be proactive in its observation work. In this approach efforts were made to help the CEP and its electoral agents identify problems, address shortcomings and resolve disputes. This approach also involved working closely with all the electoral stakeholders. The Mission also strongly and continuously advocated the importance of being guided by the procedural guidelines and the rule of law principles within the framework of the Electoral Law in addressing the problems that emerged during the several disputes and crises that erupted.

During the second round, the Mission gave priority to monitoring the implementation of recommendations made by the OAS Expert Mission for the verification of the tabulation, by the JEOM itself, by the EU Electoral Experts Mission, the Francophonie Electoral Information and Contact Mission, and by the CEP itself. The recommendations provided all the actors involved, including the CEP, with a common agenda for going forward, thereby allowing for better coordination and resource allocation in the organization of the second round of the elections. As a result, considerable technical and organizational improvements were registered in a short period of time. A less polarized political climate certainly provided the necessary space for the technical improvements to bear fruit. The effectiveness of coordinated work based on a common agenda should be considered a lesson learned from this second round experience.

Secondly, the Mission identified key issues that can profoundly impact the quality of Election Day and the accuracy of the results. The recruitment and training of electoral agents were viewed as critical contributing factors in ensuring the neutrality of their conduct and the reliability of their work. The JEOM noted that experienced electoral agents whose training was reinforced performed far better than arbitrarily appointed electoral agents. As the main actors responsible for the unfolding of Election Day, their knowledge of the electoral procedures and their civic sense play a significant role in preventing fraud and ensuring that the will of the people is respected. The change for the better in their work was also visible at the Tabulation Center in the improved filling out of the results sheets. Reinforcing the training of electoral agents and instilling a sense of civic service towards the wider community are important barriers to electoral fraud and should be viewed as another lesson learned.

The work of the Vote Tabulation Center has now become central in verifying and filtering out irregular and fraudulent results. This was facilitated by the improved procedures and the increase in its verification capacity. There is still however scope for improvement through enhanced training for the staff of the Legal Control Unit.

Finally, the problems encountered during the claims and challenges phase of the second round point to the need to create a stronger link between the verification work of the CTV and the decision-making of the Electoral Tribunals in accordance with the relevant articles of the Electoral Law. The electoral judges need to display greater transparency and fairness as well as greater familiarity with the CTV procedures in order for the Electoral Tribunal to fulfill its role in keeping with the Electoral Law.

Notwithstanding, or perhaps because of, the crises, protests and criticisms, and the resulting emphasis on verification, process and rule of law procedure and not political fixes, the Haitian electoral process has emerged technically and institutionally stronger from this challenging and protracted experience. The verification work and recommendations made by the OAS Expert Mission and the analytical review of the final legislative results have reinforced the critical importance of the role played by the Vote Tabulation Centre (CTV) in expunging fraud and irregularities. This has now been recognized by all the stakeholders. In like manner, the link between the verification workings of the CTV and the deliberations and decision-making of the electoral tribunals in determining the final results of the elections has been reinforced. These are critical steps forward in making the Haitian electoral process of the future more robust, transparent and equitable, and thereby enhancing its credibility and legitimacy.

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