



PRELIMINARY STATEMENT

A return to the electoral arena by most political forces with improved electoral conditions though structural shortcomings remain

Caracas, 23 November 2021

This preliminary statement of the EU election observation mission (EU EOM) is delivered before the completion of the entire electoral process. Critical stages remain, including adjudication of petitions and nomination of elected officials. The EU EOM is now only in a position to comment on observation undertaken to date, and will later publish a final report, including full analysis and recommendations for electoral reform.

Summary

- The 21 November regional and municipal elections were a first, crucial test for the return of most opposition parties to the electoral arena in Venezuela. The electoral process demonstrated the prevalence of structural shortcomings while improved electoral conditions compared with the three previous national elections.
- Shortcomings include widely criticised judicial decisions that have affected the level playing field by replacing the executive committees of some parties and handing over their tickets to internal factions which used them to run in the elections. Moreover, arbitrary political disqualification (*inhabilitación*) of opposition candidates, the extensive use of state resources in the campaign and the unequal access to the media remain.
- Yet, a more balanced election administration, with representation of opposition parties and civil society in the oversight of the elections, the conduct of numerous audits at different stages of the election process, and a broader update of the voter register showed improved conditions. Also, opposition parties could run with the previously suspended *Mesa de la Unidad Democrática* (MUD) ticket.
- The Venezuelan legal electoral framework complies with most basic international election standards. However, some laws, notably the 2002 law enabling the Comptroller General to suspend candidates' fundamental right to participate in elections through an administrative procedure, the lack of judicial independence and non-adherence to the rule of law unfavourably affected the level playing field and the fairness and transparency of the elections. In these elections, the suspension of candidates' right to stand affected mainly the *Partido Comunista de Venezuela* (PCV) and dissident parties of the ruling coalition. Moreover, media laws, including the Law on Social Responsibility in Radio and Television, and broad legal provisions on hate speech hindered freedom of expression and the right to information.

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- The current National Election Council (CNE) is widely seen as the most balanced of the last 20 years and most of its decisions have been taken by consensus. The five councillors achieved improvements in technical components of the elections through internal dialogue. The three councillors considered close to the government were in control of the CNE executive bodies, while the remaining two councillors did not hide from the public their dissenting views on issues on which no consensus could be found.
 - The CNE conducted most election preparations efficiently and as initially scheduled. Participation in the voter registration update campaign was high compared with past elections, although critics pointed to a biased behaviour of the CNE registration agents. Academic auditors assessed the electronic voting system as providing enough guarantees of the integrity and secrecy of the vote. Civic and voter education efforts were insufficient and could have been more focused on the secrecy of the vote and on how to choose candidates from different parties across the ballot.
 - Although prohibited by the Venezuelan electoral law, most candidates started campaign activities before the official start on 28 October. EU EOM observers reported a campaign in a calm and peaceful atmosphere except for isolated incidents. However, privileged access to fuel, as well as the extensive use of state resources, the delivery of goods, such as food packages, gas cylinders or water pumps, affected the level playing field. The ruling party's campaign was predominant around the country, counting on a mobilised base and in some cases public officials.
 - The EU EOM media monitoring shows that coverage of the ruling party was dominant and disproportionately favourable on the state TV, and very significant on the monitored private TV and radio stations. Beyond imbalanced coverage, the constant presence of the PSUV vice president on state media, who addressed heated attacks against political opponents and even a CNE councillor, goes against international standards of impartial state media coverage during election periods. Public institutions and officials posted their support to PSUV candidates and displayed the delivery of goods to voters or the inauguration of public services through their institutional social media accounts.
 - While the CNE instruction on candidature parity ensured the required proportion of 40 to 50 per cent women for state and municipal councils, parties did not take measures to attain parity in elections for governors and mayors across the country. Limitations also remained for voters and candidates with disabilities, mainly due to reduced accessibility and social prejudice. Assisted voting was used as a solution to facilitate participation of voters with disabilities.
 - Election day was overshadowed by significant delays in the opening and closing of polling stations, and reports on voter coercion. EU observers witnessed the set-up of points to control voters, by PSUV (*puntos rojos*) in all 23 states and the capital district, despite the CNE's explicit prohibition. Abuse of assisted voting was observed across the country, except for the state of Amazonas. In the municipality of San Francisco (Zulia), one voter was killed and two others injured in a shooting incident outside a polling centre.

- On 26 November 4,334 delegates will choose indigenous representatives to state and municipal councils in eight states. Although the CNE defended this proxy election as a provisional way to guarantee that only indigenous people elect indigenous representatives, this voting procedure contradicts the constitutional principle of direct vote.

The European Union Election Observation Mission has been present in Venezuela since 14 October following an invitation from the National Election Council. The Mission is led by Chief Observer Isabel Santos, Member of the European Parliament (Portugal). In total, the EU EOM deployed 136 observers from 22 EU Member States, Norway and Switzerland across the country to assess the whole electoral process against international obligations and commitments for democratic elections as well as the laws of Venezuela. A delegation of the European Parliament, headed by Jordi Cañas, MEP, also joined the mission and fully endorses this Statement.

This preliminary statement is delivered prior to the completion of the election process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process, in particular, the handling of possible post-election day complaints and appeals. The EU EOM remains in country to observe post-election developments and will publish a final report, containing detailed recommendations, within two months of the conclusion of the electoral process.

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.

Preliminary Findings

Background

On 21 November, Venezuelans went to the polls to elect 23 governors, 335 mayors, and the members of state legislative and municipal councils in a single election. It was the first time since 2015 that the majority of opposition forces fielded candidates in an election. They had refused to run in the three previous, uncontested national polls, due to the deterioration of electoral conditions in a context of repression against dissenters and human rights violations. The opening of negotiations between the government and some representatives of the opposition in early 2021 preceded the call for this regional and municipal mega-election. These elections were widely viewed as a possible first step towards a broad political agreement on the necessary conditions to conduct elections accepted by all parties in Venezuela.

The EU previously observed the 2005 legislative and the 2006 presidential elections in Venezuela. Important recommendations such as a comprehensive audit of the electronic voting system or the approval of a general election law were addressed, while others remain on hold, including an in-depth audit of the voter register.

Legal Framework and Electoral System

The legal framework for elections, including the 1999 Constitution of the Bolivarian Republic of Venezuela, the 2002 Electoral Power Law (LOPE), the 2009 Electoral Processes Law (LOPRE), and the 2013 General Regulation on the Electoral Processes Law (RGLOPRE), fulfils most basic requirements for democratic elections. Moreover, Venezuela has signed and ratified all relevant

international treaties on civil and political rights. However, some laws, and especially the lack of judicial independence and non-adherence to the rule of law, unfavourably affected the level playing field and the fairness and transparency of the elections.

Article 105 of the Organic Law of the Comptroller General (CG) authorises the CG to strip citizens of their right to stand for elections through an administrative procedure. The suspension of political rights by such means, and the fact that appeals have no suspensive effect, contradict international principles¹ and article 42 of the Constitution, which guarantees that only a final judgement can suspend the exercise of political rights. The legal mechanism for electoral disputes does not guarantee a timely remedy, as appeals to the higher administrative authority (*recurso jerárquico*) can be resolved in up to two months (articles 203 to 212 of the RGLOPRE). Furthermore, the regulation on election observation restricts observers' rights. Broad legal provisions on hate speech and the media's social responsibility hinder freedom of expression and the right to information (see below *Media and Civil Society and Election Observation*).

Independent legal reviews and EU EOM interlocutors have criticised decisions by the Supreme Court of Justice (TSJ) as politically motivated. Widely controversial TSJ decisions include the intervention of major opposition parties by replacing their executive committees and handing over their electoral tickets to internal rival factions.

For the 2021 elections, voters choose governors and mayors by a simple majority in uninominal constituencies. As for the state legislative and municipal councils, voters elect 40 per cent of the seats by simple majority in nominal lists and 60 per cent by proportional representation (D'Hondt formula) in party lists. This system generally favours large parties, especially in the smallest state and municipal constituencies.

Electoral Administration

The 1999 Constitution establishes five independent state branches: legislative, executive, judicial, civil, and electoral. The electoral branch belongs to the National Election Council (CNE), a permanent institution with budgetary autonomy. The CNE's wide-ranging competences include the organisation and conduct of all elections, the regulation of election laws, the administration of the voter register, and the register of political parties.

A board of five councillors and ten deputies, appointed for a seven-year term by the National Assembly, governs the CNE. According to article 9 of the LOPE, councillors cannot have links to any political party. Three members of the current board, selected in May 2021, are considered close to the ruling party PSUV. Of the two remaining ones, one is linked to the opposition, and the other was nominated by civil society organisations. The councillors not linked to the government did not hold executive powers, playing instead the role of advisors or auditors within the CNE. They often joined the majority to take unanimous decisions, but also voiced their dissenting views on crucial issues such as the disqualification or withdrawal of candidates. Interlocutors described this board as the most balanced in the last 20 years. Many see its appointment as the most crucial measure to re-establish confidence in the CNE after opposition parties did not participate in the three previous elections.

¹ ICCPR, articles 2 and 25

The CNE has three subordinate bodies: the National Election Board (JNE), in charge of most voting operations, the Civil and Electoral Register Commission (CRCE), responsible for the administration of the civil and electoral registers, and the Political Participation and Financing Commission (COPAFI), responsible for the registration of parties and monitoring of their finances.

In addition to the permanent bodies, the CNE creates temporary boards subordinate to the JNE during electoral processes. In July, the CNE selected the members of regional and municipal boards and polling station members through a public draw. Even though the law establishes fines for citizens who do not fulfil their duty, such fines have never been implemented. In practice, the CNE had to replace many members who did not show up. In the past, these positions were filled by affiliates or sympathisers of the PSUV. This time around, CNE councillors agreed to replace missing members in a more balanced way, allowing both the ruling party and the opposition to nominate substitutes. The CNE reported the replacement of 45 per cent of members of regional boards and 46 per cent of members of municipal boards. In the assessment of EU EOM observers, regional and municipal boards in 23 out of 24 state entities lacked autonomy and depended on CNE staff in their daily operations. Due to the digitalisation and centralisation of many aspects of the electoral process, the responsibilities of boards were reduced.

The CNE published the electoral calendar in June, together with the call for elections, and implemented most of its activities accordingly and in an efficient manner. While many actors welcomed this timely publication, critical voices pointed out that the calendar included several activities that had started or even ended before the calendar was published (e.g. the update of the voter register or the deadline for political parties to designate authorised persons to hire campaign ads). On 2 September, the CNE published an updated calendar, including the extensions for candidate registration and postponing some linked activities like the telecommunications test or the mock exercise. The latter took place on 10 October and the CNE qualified it as successful. While highlighting the high voter participation, domestic observers denounced the massive presence of campaign activities from both the ruling party and the opposition, and the use of state resources by PSUV activists, such as public busses to transport voters or the distribution of government food packages (*bolsas CLAP*).

The CNE election calendar included 16 audits of different stages of the electoral process, from the voter register and the electronic voting system to the configuration of the voting machines prior to their deployment to the states. Representatives of political parties as well as domestic observers were present in most of these audits, which constituted an important transparency measure.

Many electoral operations in Venezuela are digitalised, from the registration of voters and candidates to polling and results transmission. The CNE explained that, due to the pandemic, they reinforced digital solutions for polling staff training and the registration of party agents. The high level of digitalisation of almost all aspects of the electoral process simplifies some procedures and prevents possible partisan obstructions at regional and municipal level. At the same time, the centralised control, e.g. of candidate registration, together with the lack of publication of detailed information regarding the different phases of registration, made the entire process less transparent.

The electronic voting machines used in these elections were purchased in 2020 and used for the first time in the 2020 National Assembly elections. Academic experts from Venezuelan

universities conducted a comprehensive audit of the electronic voting system in June and July. The audit included the configuration of the voting machines, the tabulation system, the hardware and the biometric voter identification device, and the fingerprint database. The experts' overall assessment was positive, and their final report stated that the system presents sufficient guarantees to protect the integrity of the vote. While most political party and civil society interlocutors expressed confidence in the voting system, they also reported a widespread popular belief that the system does not protect the secrecy of the vote and that the authorities can verify voters' choices.

Polling staff training took place primarily through online training sessions. In areas with poor internet coverage, the CNE organised in-person training sessions. By 18 November, the CNE had trained over 90,318 polling station members, the required number to staff the 30,106 polling stations. Up to 50,756 polling station members who had been selected by public draw received training and 43,516 members participated in training sessions voluntarily.

The CNE's civic and voter education efforts were insufficient. The EU EOM media monitoring identified three institutional voter education broadcasts by the CNE. These spots were thirty-seconds or one-minute-long, aired three times per day on average. In addition, one thousand voting machines were deployed throughout the country to familiarise voters with the voting procedures and the ballot design. The EU EOM observed that the information provided to citizens was unsubstantial and that the option of cross voting was not explained unless a person specifically asked for it. In addition, the EU EOM observed in 13 states that citizens had to hand over the printed paper receipt to the CNE staff after trying out the voting machine. This violates the secrecy of the vote. While individual CNE councillors shared election-related content on their personal social media accounts, there was no comprehensive institutional voter education campaign, especially regarding the secrecy of the vote.

Two days before Election day, the voting machines were set up in the polling stations. The EU EOM observed this process in 38 polling stations in 22 state entities. The CNE coordinator together with party agents, who stood in as polling staff, led the process. EU observers witnessed technical issues with just one voting machine. These were solved after a call to the CNE support centre. Observers qualified the process as good or very good in 31 out of 38 stations. According to the CNE, 99 per cent of voting machines were set up at the end of the day.

Voter Registration

The CNE's Civil and Electoral Register Commission (CRCE) administers the permanent voter register. The last comprehensive audit of the register dates back to 2005. From 1 June to 15 July, the CNE conducted a voter register update campaign. The CNE deployed one thousand biometric devices throughout the country to allow voters to register or update their data. At the end of this period, the CNE counted 394,242 new voters and 1,024,367 address changes. Domestic observers stated that, while the CNE deployed more agents over a longer period than in past elections, the information provided to voters was insufficient. In many cases, agents displayed partisan behaviour. Also, according to domestic observers² 12 per cent of the observed stands were set up in government buildings or areas controlled by the ruling party, while 14 per cent of the stands were not installed in the officially announced location.³

² Súmate: *Informe Preliminar Observación de la Jornada de Inscripción y Actualización del Registro Electoral*.

³ Red Electoral Ciudadana: *Registro Electoral. Oportunidad ciudadana de decidir*.

Citizens who were eighteen years old on Election day and were not subject to disqualification had the right to vote. In regional and municipal elections, foreigners who have resided in the country for more than ten years also have the right to vote. The CNE published the preliminary voter register on 25 July, followed by two weeks for amendments. The final voter register was posted on 26 August and contained 21,267,813 voters (a 0.5 per cent increase since the 2020 elections). Of these, 21,159,846 were eligible to vote, including 229,859 foreigners residing in Venezuela.

The legal framework establishes that candidates must reside in the municipality or state in which they run.⁴ To comply with this provision, the CNE decided to assign registered candidates to polling centres in the area where they were running, if this was not the case. Consequently, 12,000 candidates were reassigned. However, several political parties had arbitrarily pre-registered people for the different races to book the electoral ticket and buy time to decide on the final candidates. Many of these unvoluntary pre-candidates found out weeks or even days before election day that they had been moved to a different and sometimes distant polling centre. The EU EOM received such reports in 13 states.

While the CNE estimated under-registration at less than 3.4 per cent of all eligible citizens (about 745,000 persons), civil society organisations considered this figure much higher (two to three million). Almost six million Venezuelans have migrated. While there is no out-of-country voting in regional and municipal elections, such a number of migrants distorts turnout rates.

Registration of Candidates and Political Parties

The election calendar established three phases for candidate registration. In phase I (until 29 August), political parties' delegates could register candidates online. In phase II (up to 22 September), delegates could correct registration data and replace candidates. Phase III lasted until 22 October for changes to party lists and until 11 November for nominal lists. The ballot did not reflect changes made in this last phase, as the configuration of the voting machines began in October, before their deployment to the states starting 27 October.

After the CNE granted three extensions at the parties' request, phase I ended on 4 September. On this date, the number of registered candidates had increased from 19,428 to 70,244. Voters could look up the list of approved candidates at a dedicated CNE website and at local CNE offices. However, the CNE did not disclose the initial registration requests. While most interlocutors welcomed the extension of the registration phase, which increased political participation, others criticised the lack of transparency regarding rejected candidates.

In the last phase of the registration process, candidates could withdraw their candidature. Some candidates from the opposition used this to achieve a unified opposition candidature. On 11 November, the MUD candidate for governor for the state of Miranda withdrew his candidature and called for support for the *Fuerza Vecinal* candidate. In a controversial decision, the CNE rejected the request to replace the MUD candidate based on the expiration of the deadline, leading to the nullification of votes cast for him.

⁴RGLOPRE, article 113; Organic Law on Public Municipal Power (*Ley Orgánica del Poder Público Municipal*), articles 85 and 93.

The CNE rejected 27 candidacies based on political disqualification by the Comptroller General. Among these, 14 affected the *Partido Comunista de Venezuela* (PCV). The PCV claimed that the disqualifications were not preceded by any investigation or legal decision.

Campaign Environment

The election campaign is regulated by the Constitution, the LOPRE and a specific regulation for the 2021 regional and municipal elections. The official campaign started on 28 October and went until 18 November. In general, the campaign started at full speed, particularly in the main towns of all states. Freedom of assembly was respected. However, EU EOM interlocutors from the opposition reported the unequal access to fuel as a factor limiting their freedom of movement. This was confirmed by civil society organisations.

Even before the start of the official campaign, domestic observers reported campaign activities, for example throughout the voter register drive in June and July and the mock exercise on 10 October. In addition, there were reports on government campaigning at non-electoral public events, such as the vaccination effort.

The EU EOM attended 120 campaign events in 22 states and the capital district. The environment was calm and peaceful, with no incidents or highly tense situations. While opposition parties and coalitions reported that their campaign was limited by a lack of resources, the PSUV campaign was predominant around the country. PSUV candidates could count on a wide network of activists to mobilise voters within the communities. The most common campaign activities of the opposition were marches, door-to-door meetings and small neighbourhood sit-ins, while PSUV organised large-scale rallies. Average participation in PSUV rallies was more than three times higher than that of opposition campaign events.

The electoral campaign was vibrant on Facebook, Twitter and Instagram, except for some states where internet access is difficult, like Apure, Trujillo or Delta Amacuro. Most candidates used WhatsApp; some reported that they ran dozens of WhatsApp groups to campaign, or that they used pre-existent WhatsApp groups. A CNE campaign regulation allowed parties and candidates to send voters maximum one SMS per day.⁵ This limit did not apply to WhatsApp or Telegram.

The EU EOM observed the use of state resources at 30 per cent of PSUV campaign events and at 2.5 per cent of events of the opposition. The EU EOM observed at 23 per cent of PSUV events that citizens were pressured to attend, while this was observed at 2.5 per cent of opposition events. Police was present at over half of observed PSUV campaign events and at 17 per cent of opposition events. The campaign messages focused on local development, improved services, and utilities supply. Most of the minor parties had no visible campaign activities.

National laws prohibit public officials from using state resources to favour political parties or political interests.⁶ The EU EOM reported the use of state resources in 20 out of 24 state entities; in 20 states these were linked to PSUV, and in one state respectively to MUD and AD. Public officials were observed to participate in campaign events in 16 states, the distribution of

⁵ CNE Resolution 211018-0083 from October 2021.

⁶ Venezuelan Constitution, article 145; Law against Corruption and for the Safeguarding of Public Property, article 12; LOPRE, article 75; and RGLOPRE, articles 221 and 257.

government food packages as well as items like gas cylinders, power plants or water pumps in nine states, and vaccination events were used for campaign purposes in three states. EU observers reported a widespread use of public vehicles for PSUV rallies.

The CNE hired and trained 2,000 inspectors to monitor and document violations against campaign regulations. The CNE announced the opening of administrative proceedings against six candidates and three political parties for violations of the advertising rules. The concerned candidates and parties had been warned previously, but as they did not make the requested corrections, the CNE took precautionary measures and suspended the broadcast of the advertisements in question.⁷

The Constitution and the LOPE establish the CNE's sanctioning power in matters of campaign financing and advertising. The LOPRE and the RGLOPRE further define sanctions for a number of electoral offences, such as obstructing electoral processes, destroying campaign material or violations of campaign regulations by public and private media. However, there is a gap in the legal framework regarding the election campaign conducted by political parties as well as electoral offences committed by public servants. In practice, the CNE failed to sanction violations of campaign regulations and the use of state resources.

Media

The Constitution guarantees freedom of expression, and the Law on Social Responsibility in Radio and Television sets forth the protections and obligations of the mass media. State-owned outlets dominate Venezuela's landscape of traditional media. They have seen their management and financing strengthened since the creation in 2006 of the Bolivarian Communication and Information System under the Ministry of Information. At the same time, technical and political difficulties encountered by independent media further curtail media pluralism. Administrative closures, equipment seizures, fear of retaliation, coupled with a lack of advertising revenue and a shortage of paper, have contributed to the impoverishment of private media. Some private media, previously critical of the government, have changed ownership, and their current editorial line is now in line with the government.

Some laws endanger freedom of the media. The communications regulatory body (CONATEL) can directly sanction the media through executive warrants (*exhortos*), usually communicated by phone or in person. Warrants do not require a judicial verification of the infraction and may entail the withdrawal of licenses or the suspension of broadcasts. In addition, the 2021 controversial Law on Transparency and Access to Information of Public Interest do not meet international standards regarding media freedom, as it requires to justify requests for information. Moreover, since 2019 CONATEL blocks international news channels on pay TV.

The EU EOM media monitoring sampled four TV and four radio stations broadcasting nationwide.⁸ Most of the monitored coverage comprises news content, political talk shows and coverage of government events. Paid advertising (11 per cent) and voter education (2 per cent) by the CNE make up one-eighth of the monitored coverage. No political debates were found during the monitored hours.

⁷ LOPRE, article 75, RGLOPRE articles 204 and 221, CNE resolution number 211018-0083.

⁸ *Venezolana de Televisión (VTV), Venevisión, Televén, Globovisión, Radio Nacional de Venezuela, Actualidad Unión Radio, Radio Miraflores and Éxitos.*

According to the EU EOM monitoring, coverage of the ruling party's candidates on state television (VTV) was disproportionate, accounting for more than half of all candidates' mentions and media appearances on that channel. *Alianza Democrática* (AD) candidates accounted for 28 per cent of the news and editorial content on VTV. MUD candidates were almost absent on the state-owned TV, and their minimal coverage was negative. PSUV candidates also had a significant presence on two of the three monitored private TV channels (Televisión and Venevisión), followed by AD and MUD. Most of the editorial coverage of the private TV channel *Globovisión* favoured AD, followed by PSUV and MUD. Independent candidates and the *Alianza Popular Revolucionaria* (APR) coalition received a small proportion of news and editorial coverage in all channels monitored by the EU EOM, public and private.

EU observers reported that candidates from different parties had no access to state media in 15 states. This affected above all MUD (in 13 states) and *Alianza Democrática* (in nine states). Media interlocutors in 21 states reported to exercise self-censorship, and in 13 states there were reports about pressure to change their editorial line or programming. However, press officers of opposition parties informed the EU EOM that they had been invited by the state-owned TV to send footage or to participate in television programmes.

The PSUV vice president is the anchor of the VTV program *Con el Mazo Dando*, broadcast by four TV channels and ten radio stations, where he frequently directs heated criticism at government opponents. During this campaign, he harshly attacked CNE councillor Roberto Picón, who had denounced the use of institutional social media accounts to favour the ruling party's candidates. The CNE never issued an institutional reaction to the attacks.

As for paid advertising, the EU EOM monitoring did not identify any violations of the daily ceilings set by law. Except on the private radio, PSUV and its allies are the parties with most paid ads on the monitored media, followed closely by *Alianza Democrática*. There was a significant increase in paid advertising by these two candidatures in the last two days of the campaign. In private TV and radio, *Fuerza Vecinal* shows a very large share of ads. There were no MUD ads on any state-owned TV or radio.

The EU EOM did not identify any compulsory broadcasts of government messages (*cadena*s), frequent in past campaigns or even non-electoral periods. However, the state-owned media jointly broadcast PSUV candidates' appearances. Opposition parties complained that audio-visual media, both private and state, broadcast all events of the Venezuelan president or senior officials.

Social media

Half of Venezuelans (about 14 million people) are social media users. Internet has increased its relevance in recent years after trust in traditional media, some of which are subject to government control, has declined. The lack of paper led to many newspapers only existing in their digital versions, increasing the importance of online media.

Civil society organisations describe the so-called Law Against Hatred, passed by the National Constituent Assembly in November 2017, as the main threat to the freedom of expression online. The law provides for severe penalties of 10 to 20 years in prison for anyone who publicly

“encourages, promotes or incites hatred, discrimination or violence”. The law does not define these terms, leaving a wide margin of interpretation and limiting legal certainty.

Online media are subject to repeated selective internet blocks that make their reporting complex and expensive. According to monitoring by the EU EOM, while government-aligned news websites such as the Venezuelan News Agency or *Últimas Noticias* were constantly accessible in every state and through any Internet service provider, websites of independent online media as *El Pitazo* o *Armando.info* were very difficult or impossible to access in 16 of the 23 states.

Civil society organisations documented that the election campaign on social media began at least two months before the official campaign started. Candidates from all political parties posted photos and videos of marches on social media, violating the legal prohibition to campaign outside the timeframe established by the CNE.⁹ In addition, social media accounts of several institutions and public officials shared PSUV political ads, often using the campaign hashtag #VenezuelaTieneConQué.

Some institutions and public officials continued to use their official social media accounts to support the ruling party. For example, in the first week of the campaign, the Venezuelan Institute of Social Security, the Ministry for Education and entities linked to them, repeatedly tweeted in support of PSUV candidates.

Participation of Women

Although there are no legal barriers to women’s participation in elections, and despite a CNE instruction on parity in candidatures for these elections, women’s effective access to the right to political representation and electoral participation was only partially fulfilled. The only political party competing in these elections that had a proactive policy and structure for women’s empowerment and capacity-building was *Un Nuevo Tiempo*.¹⁰

The CNE instruction on candidature parity for these elections required 40 to 50 per cent of candidacies of each sex, and resulted in an overall percentage of 49.44 women candidatures at the end of the initial registration phase. However, political parties could substitute candidates until 10 days before Election day. The instruction succeeded in ensuring the required proportion of women candidates for municipal and state legislative councils. For governors and mayors, political parties applied parity only vertically (nominating men as principal and women as substitute candidates), and not horizontally (respecting parity across the candidatures in all state entities).

Participation of Persons with Disabilities (PWD)

Although PwD have full access to the right to vote and to be elected, and despite a CNE pilot project for the inclusion of voters with disabilities, limitations remained for both candidates and voters with disabilities. Social prejudices against PwD as holders of public offices and reduced mobility contributed to the difficulties for PwD candidates to be nominated and to campaign.

⁹ LOPRE, article 63.

¹⁰ According to *Un Nuevo Tiempo*, they filed 65 per cent women candidates.

To promote the electoral participation of PwD, the CNE created a special commission¹¹ together with the National Council of Persons with Disabilities (CONAPDIS). The commission elaborated a register of voters with disabilities (447,593 persons), developed posters for polling centres with guidelines on how to accompany different categories of voters with disabilities, and disseminated targeted voter information online. In addition, voters registered as PwD were assigned to the first polling station of each centre, located at the ground floor. However, many PwD had not registered as such and thus were not assigned to the first polling station. Other shortcomings observed by the EU EOM were the deficient accessibility of public buildings, and the lack of sign language interpreters in polling centres. Assisted voting was criticised by PwD representatives for not guaranteeing the secrecy of the vote and remains an unsatisfactory compromise regarding international standards.

Participation of Ethnic Minorities

Venezuela's 52 indigenous peoples enjoy the right to full political representation according to the Constitution. However, this right is negatively affected by socio-economic factors such as remoteness, scarce education, transport and infrastructure, and the fact that parts of their ancestral areas are affected by conflicts caused by illegal mining, environmental destruction and armed groups. Indigenous people's right to vote is considered in the legal framework and governmental institutions, but gaps in the adaptation of legal norms to contextual conditions compromise the full exercise of electoral participation. While indigenous people represent 53.7 per cent of the population in Amazonas, in the seven remaining states with indigenous population¹² the percentage ranges between two and 25.4 per cent (2011 census). Without special mechanisms, indigenous voters have little numeric weight to reach meaningful representation.

Indigenous people could participate in the general regional and municipal elections of 21 November. In addition, indigenous population living permanently in their ancestral areas¹³ could participate in the election of indigenous representatives to municipal and state legislative councils. These indigenous elections take place in two steps: first, indigenous community assemblies elected 4,334 delegates (*voceros*) in July and August 2021 according to the respective indigenous people's customs, one of the options being open voting. In a second step, on 26 November, the 4,334 delegates will elect the representatives to municipal and state legislative councils in an election organised by the CNE.¹⁴ The CNE considers these indigenous elections as an intermediate step pending the establishment of a register of indigenous voters, delayed by the COVID-19 pandemic. Representatives of indigenous organisations and communities criticised the second-degree elections for having legitimacy deficits and for compromising the constitutional right to a direct and secret vote.

Civil Society and Election Observation

A CNE regulation sets the general framework for election observation (*veeduría*). This regulation limits observers' activities: they must follow a deployment plan approved by the CNE and sign CNE audits. Furthermore, they cannot publish any report without prior CNE approval. In practice, domestic observers did not report any limitations regarding freedom of movement or expression to the EU EOM.

¹¹ *Comisión Especial para la Atención Integral de las Personas con Discapacidad*

¹² Anzoátegui, Apure, Bolívar, Delta Amacuro, Monagas, Sucre and Zulia

¹³ 37 per cent of the entire indigenous population according to the 2011 census

¹⁴ One indigenous representative for the state legislative council in the eight mentioned states and one representative to 69 municipal councils.

The CNE initially granted 600 accreditations to each domestic observer organisation, but some negotiated additional accreditations. The six domestic observer organisations accredited by the CNE for these elections were *Observatorio Electoral Venezolano*, *Red de Observación Electoral de la Asamblea de Educación*, *Proyecto Social*, *Asociación Venezolana de Juristas*, *Fundación por un Pueblo Digno*, and *Centro Internacional de Estudios Superiores*. Other civil society organisations such as *Voto Joven*, *Movimiento Ciudadano Dale Letra*, and *Observatorio Global de Comunicación y Democracia* engaged in voter education campaigns and organised online events to strengthen citizen participation.

Two days after the signature of the Administrative Arrangement between the CNE and the EU, the CNE adopted a resolution to fit this agreement into the existing legal framework. The resolution allowed the presence of international observers “exceptionally” for these elections granting them the ability to observing according to their established methodology. Civil society organisations criticised this situation, as it implies double standards for national and international election observation. The CNE declared to have issued accreditations to 300 international observers, including observers from the Council of Election Specialists of Latin America (CEELA) and six observers of the Carter Center. The UN deployed a three-person election expert team. Angola, Benin, Indonesia, Russia, Tunisia, and Turkey deployed accompaniment missions.

According to the election calendar, parties and candidates could register their agents for regional and municipal boards and polling stations between 9 October and 8 November. The CNE announced the opening of the online registration platform on 13 October and extended the registration phase from 8 till 19 November. According to the CNE, by 11 November, the parties with most registered agents were PSUV, which registered agents for 99 per cent of all polling stations, MUD for 66 per cent, AD for 33 per cent, *Primero Venezuela* for 17 per cent, COPEI for 16 per cent and PCV for 13 per cent.

Polling and Counting

On Election day, EU observers visited 665 polling stations in all 23 states and the capital district.¹⁵ Overall, Election day was marked by significant delays in the opening and closing of polling stations, as well as reports on voter coercion. PSUV set up points to control voters (*puntos rojos*) in all 24 state entities, despite the CNE’s explicit prohibition. Abuse of assisted voting was also observed across the country, except for the state of Amazonas. In 16 states, the EU EOM observed organised transport of voters to the polling centres. In the municipality of San Francisco (Zulia), one voter was killed and two others injured in a shooting incident outside a polling centre.

Opening procedures were mostly or always followed in 45 out of 61 polling stations (74 per cent). However, only 10 per cent opened on time or up to 10 minutes late, while 30 per cent opened within 30 minutes and 26 per cent after more than one hour. Delays were mainly due to lack of polling staff, poor organisation and inadequate training. Half of the polling staff in the observed stations were substitutes. In 12 cases, these substitutions were not made according to the established procedures. MUD agents were present at the opening of 50 polling stations (82 per cent), *Gran Polo Patriótico* in 44 (72 per cent), and *Alianza Democrática* in 33 (54 per cent).

¹⁵ Data processed as of midnight on 21 November. The total number of polling stations belonging to the polling centres visited was 1,318. Observers attended the opening in 61 stations, voting in 518, closing and results transmission in 51, and the recount of paper receipts in 35 stations.

In 150 of the 518 polling stations (29 per cent) visited during voting, problems were reported around the polling centre, mostly *puntos rojos* (22 per cent). More than half of the staff at the observed polling stations corresponded to members originally chosen by lot by the CNE (54 per cent), while the remaining 46 per cent were substitutes. Party agents of *Alianza Democrática* were present at 81 per cent of observed stations, MUD at 77 per cent, and *Gran Polo Patriótico* at 43 per cent. The relatively low presence of agents of the ruling coalition during voting can be explained by the fact that many of them replaced missing polling staff and were thus acting as polling station members. Domestic observers were present at 11 per cent of observed stations.

Closing of polling stations and transmission of results was observed in 51 stations across the 24 state entities. Only in three stations (6 per cent) were voters queueing to vote at 6pm, the legally established time for closing. However, 48 of the observed stations (94 per cent) did not close on time. 31 per cent closed at least 30 minutes late and 43 per cent closed more than an hour after the established time.

At 6:20 pm, President Maduro published on his Twitter account a call on his followers to mobilise to vote. This call went against the prohibition for elected officials to campaign. Moreover, though an audio file associated to the tweet was apparently recorded around 4:00 pm, the tweet was released after the legal closing time.

In 42 of the observed stations (82 per cent), the voting machine transmitted the results without problems. In the stations where the machine could not transmit the results, polling staff acted according to the established procedures in 78 per cent of the cases, while in 22 per cent of the observed stations the procedures were not followed.

The recount of paper receipts was considered as good or very good in 77 per cent of the observed stations. However, in 26 per cent of stations, the recount was carried out for a smaller number of stations than determined by the CNE, and in seven stations the recount was not carried out at all.¹⁶

An electronic version of this Preliminary Statement is available on the Mission website (<http://www.venezuela2021.eueom.eu>). For further information, please contact: Renaud Dewit, EU EOM Press Officer, Tel.+58 412-8019359, renaud.dewit@moeuevenezuela2021.eu

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¹⁶ The number of polling stations where paper receipts are counted after closing varies according to the number of polling stations in the centre. Centres with up to four polling stations must count the paper receipts of one station; centres with 5 to 8 stations must count two; with 9 to 11, three; and with more than 11, four.