

PRELIMINARY STATEMENT

3 October 2017 – Barcelona, Spain

International
Limited
Observation
Mission

Introduction

Since early September, the International Limited Observation Mission (ILOM), a team of independent international election experts, facilitated by The Hague Centre for Strategic Studies (HCSS), has been observing developments with respect to the organization of the 1 October referendum. During the course of its work, the ILOM covered legal and political developments, election administration, and 1 October events. The ILOM was joined by international short-term observers, who were deployed throughout Catalonia to observe and report on the day. The ILOM mandate is to report on the dynamics surrounding the referendum, but not the political and/or legal outcome.

Executive Summary

The ILOM strongly condemns the violence that injured hundreds of people and has been widely reported on in the international media. The use of force displayed by the Spanish police has no place in established democracies. Given the tense conditions of the day, the ILOM noted the dedication of local poll workers and the determination of citizens to cast their vote.

The 1 October referendum took place against the backdrop of prolonged legal and political disagreements between the Government of Spain and the Government of Catalonia over questions of Catalonia's autonomy and the sovereignty of the Spanish state. Following a Constitutional Court ruling suspending the Catalan Law on the Referendum on Self-Determination, the Spanish government responded forcefully to prevent and dismantle any attempts to implement it, issuing warnings of legal consequences to senior officials, mayors, election commission members, media outlets, non-governmental organizations, and others. In the wake of the actions that followed, many stakeholders raised serious concerns about fundamental freedoms of expression, assembly, association, and due process. There were also expressions of concern from abroad. These actions included the closing of websites, the search and seizure of materials, the assumption of control over Catalonia's finances, the bringing of Catalonia's police force under the coordination of the Ministry of Interior, the deployment of extra police forces, the use of the Constitutional Court's ability to impose fines, the detainment of Catalan officials, and multiple investigations into sedition.

The Spanish government response, while intending to uphold the rule of law and protect territorial integrity, had the counterproductive effect of reinforcing the numbers

of those who supported the referendum. As a result, public discourse appeared to shift from those promoting independence to those advocating for the right to vote.

The Election Administration, which organized the voting, struggled with its preparations for the referendum due to concerns about repercussions from the Spanish government, which led them to work in anonymity and without transparency. As a consequence, the ILOM observed that internationally accepted guarantees of a properly conducted referendum were unlikely to occur.

Because of the adverse circumstances under which the event took place, the ILOM has to conclude that the referendum, as held, could not comply with key international standards. At the same time, the ILOM observed that, despite these circumstances, polling station staff performed to the best of their ability in trying to cope, and in trying to follow electoral procedures.

Legal and Political Context

The Spanish Constitution and rulings of the Constitutional Court assert the sovereignty of the Spanish people and the indivisibility and indissolubility of the Spanish nation. The Constitution provides that referendums on matters of “special importance” must be put to all citizens, and that such referendums are consultative, rather than binding. The Venice Commission of the Council of Europe has noted that referendums should only take place in compliance with the Constitution and applicable law.

In adopting the Law on the Referendum of Self-Determination, the Catalan Parliament deviated from a number of good practices, passing it in a single day with a single reading, with limited debate, without consultation with the Council on Statutory Guarantees, and with a simple rather than qualified majority (72 voting in favor, 52 walking out of the vote, and 11 abstaining).

For many Catalan stakeholders, the 2010 ruling of the Constitutional Court, which invalidated significant portions of a 2006 revised Statute of Autonomy that had been approved through proper constitutional and parliamentary procedures, was a key turning point in their relationship with Spain. Since then, the Spanish government is perceived to have repeatedly refused to substantively address their concerns around areas such as language and fiscal policy. These thwarted attempts have led many to believe that they are either justified in challenging the legal order, or that it no longer holds legitimacy. That the constitutional appeal had been submitted by the People’s Party (then in the opposition and now the ruling party) also strengthens their opposition to the Spanish government.

Other voices advocated for a legitimate referendum that could be held under legal conditions, and/or called for political dialogue that would support reform of the Constitution and greater autonomy for Catalonia. However, within the polarized environment, dissenting or nuanced opinions have faced difficulties in being heard,

including reports of pressure to conform to the dominant positions, or remain silent. As 1 October approached, discussions on the potential consequences of the intention to declare independence in the case of a “Yes” majority vote, were less and less discussed.

Media

While the ILOM has not systematically monitored media coverage, it has noted that, prior to 1 October, the media offered access to a diversity of viewpoints; however, the media has also been highly polarized and partial, and pressures on journalists and media houses have been reported. In addition to traditional media, cyberspace became an increasing battleground, with the Catalan government and pro-referendum advocates turning to the Internet, social media, and mobile applications to disseminate information, while the Spanish government closed down a large number of websites related to the referendum. The ILOM also observed the use of technology and attempts to block it on 1 October.

Electoral Administration

The Electoral Administration, as defined in the Catalan referendum law, consists of the Electoral Commission of Catalonia (ECC), the regional electoral commissions (REC), the polling station committees, and the electoral administration of the Government of Catalonia (GoC). The role of the ECC and RECs was to supervise the referendum, and the ILOM met with the ECC on a number of occasions and with all five RECs. Procedures and implementation of the election processes were carried out by representatives of the GoC.

Given the situation, including threats of legal consequences and the search and seizure of materials, many of the arrangements for the referendum were not made public and the process was not transparent. On 21 September, the Constitutional Court issued daily fines of 12,000 EUR and 6,000 EUR to the ECC and RECs, respectively, if they did not heed warnings to resign and rescind decisions taken since they came into office. On 22 September, the Catalan government officially announced that it was transferring the responsibilities of the election commissions to other bodies, and following their request, the commissions resigned.

The Electoral Administration reported that they were following procedures from previous Spanish elections including the selection of poll workers chosen by means of a draw; however, the Spanish government prohibited postal services from delivering electoral information or notices, preventing notification of the selected polling members. Although the ILOM was not informed of any training or instruction manuals prepared for voting day by the election administration, some poll workers reported to the ILOM short-term observers that they had been trained a few weeks before 1 October. The observers found, however, that voting procedures varied from polling station to polling station.

In addition, obtaining polling information became more difficult and secretive in nature closer to 1 October. No polling station lists were provided, it was unclear as to when and how election materials would be delivered, and it became an issue whether any Catalans would know where to vote. However, the ILOM observers found that alternative sources, including social media, enabled voters to find polling stations.

Referendum Day Observations

The 10 ILOM observer teams visited 106 polling stations during the day, found a mixture of situations, and provided observation reports on each station visited. While this number is a small proportion of the 2,315 polling stations used on 1 October, it does provide an indication of the activities occurring that day.

In the polling stations, a variety of devices were used to access an electronic list of persons eligible to vote. However, shortly after the polling stations opened for voting, the electronic registry failed in numerous places and queues of voters were asked to wait until a substitute plan could be implemented. Many polling stations resorted to their own method of verification until the electronic lists were available.

In two-thirds of the polling stations visited, some essential election materials such as ballot boxes, ballot papers, voting booths or electoral registries were not available. However, in 98% of the polling stations visited people were able to cast their vote. There were large queues of people, particularly in the morning; however, voters remained calm and patient. Although there were delays in the process of verifying voters, most were able to cast their vote at the allocated polling station or at a nearby alternative location.

The observer teams were present at the closing of eight polling stations and witnessed the counting of the votes. It was noted that some polling stations closed before 20:00h in polling locations where there were multiple polling stations. However, this did not hinder the voting process for those remaining voters. After the closing, the seals were removed from the ballot boxes and the envelopes and ballot papers were taken out.

In all cases observed, the polling staff showed those present how each ballot had been marked and they were then sorted into “YES” votes and “NO” votes and counted. Following the counting, a protocol was completed with the result for each polling station and this was passed on to the representative of the administration who passed protocols to a higher level for tabulation and inclusion in the final results.

Security

In more than 90% of the polling stations visited, members of the public organised themselves to protect the polling site and materials. That approach resulted in several confrontations with security forces. In the majority of polling stations visited by ILOM observers, the Catalan police force (*Mossos d'Esquadra*) was present. The nature of their

activities ranged from observing and taking notes to, in few instances, confiscating polling material. Furthermore, the ILOM observed the intervention of Spanish National Police (*Cuerpo Nacional de Policía*) and Civil Guard (*Guardia Civil*) into the process. In more than 25% of the polling stations visited, the voting process was temporarily suspended, and the voting materials were hidden in order to prevent confiscation by security forces.

Acknowledgements

The deployment of the ILOM team, headed by former Ambassador Daan Everts of The Netherlands, abided by the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers. They are independent from any institutions in their home countries as well as from their governments. As part of the ILOM's independence, the HCSS was not substantially involved in any way, but restricted itself to administrative and logistical support. The ILOM acknowledges the support and information provided by numerous stakeholders and will issue a final report in mid-October.

Contact Information

To contact the ILOM, email intl.lom@outlook.com. For information about The Hague Centre for Strategic Studies, visit www.hcss.nl.