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CARTER CENTER

PRIMARY AND GENERAL ELECTIONS MUSCOGEE (CREEK) NATION

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Executive Summary

The Carter Center was honored to be invited by the election board and principal chief of the Muscogee (Creek) Nation to observe the tribe's Nov. 2, 2019, primary and Dec. 14, 2019, general elections for principal chief, second chief, and seats in the National Council.

The Nov. 2 primary election was conducted following a court order annulling the results of a primary election held on Sept. 21. The nation's Supreme Court agreed with a petition filed by a candidate that there had been a problem with the chain of custody of absentee ballots during the Sept. 21 election, but the court did not find that the technicality in oversight of the chain of custody had resulted in any tampering.

During the electoral process, registered voters cast ballots for principal chief, second chief, and the seven "A" legislative seats in the National Council that were up for election.[1] During both election periods, Carter Center observers met with the Election Board and election administrators, candidates, polling officials, the principal chief, and other election stakeholders. Carter Center observers visited all early voting locations for both elections and almost all in-person voting precincts on the two election days. Carter Center teams also observed the retrieval of absentee ballots from the Okmulgee, Oklahoma, United States Post Office as well as the central counting and tabulation process.

Overall, early voting and election day activities during both the primary and general elections were assessed positively by The Carter Center. The polling processes were conducted smoothly, allowing voters to freely cast their votes. The tabulation of votes was efficient and reasonably transparent.

Election Observation Methodology

The Carter Center assesses elections based on international standards for democratic elections elaborated in international human rights treaties and commitments within national legal frameworks. The Center conducts its election observation missions in accordance with the Declaration of Principles for International Election Observation, which was endorsed in 2005.

The Carter Center observed the Muscogee (Creek) Nation's Nov. 2, 2019, primary election and Dec. 14, 2019, general election at the invitation of the Election Board and principal chief. The

[1] An eighth legislative seat was uncontested for the Nov. 2 elections, and so did not appear on the ballot. The eight "B" seats will be up for election in 2021.

Carter Center's observation was a limited mission involving the deployment of three election experts around each election: Democracy Program Associate Director Brett Lacy and Senior Electoral Advisors to The Carter Center Ray Kennedy and Carlos Valenzuela.

Around both elections, The Carter Center conducted meetings with key stakeholders, including the Election Board and election administration, members of the National Council, the principal chief and executive branch, the media, candidates, and other key stakeholders.

During the Nov. 2, 2019, primary elections, The Carter Center observed early voting at all four early voting precincts on Oct. 31. The Center also observed the final training for precinct workers on Oct. 30 and attended a court hearing on Nov. 1 regarding the disposition of late-arriving absentee ballots. On election day, The Carter Center observed the polling process at 16 of 18 in-person voting precincts across the territory. In addition, The Carter Center observed the receipt of absentee ballots at the United States Post Office in Okmulgee, Oklahoma, and witnessed their secure transfer to the counting and tabulation center. The Carter Center observed the verification of all absentee ballots, including verification of signatures against the Election Board's database and in some cases additional verification with the Citizenship Office. The Carter Center observed the sorting and counting of all absentee ballots on Nov. 2, as well as the tabulation of election results from precincts on election day and the early voting machines.

During the Dec. 14, 2019, general elections, the Carter Center team observed early in-person voting on Dec. 11 and 12, visiting three early voting precincts on the 11th and all four precincts on the 12th. The Carter Center also witnessed the arrival of sensitive electoral material from the four early voting stations to the Lighthorse headquarters at the end of each early voting day. On election day, the team observed the polling process at all the nation's 18 in-person voting precincts. Carter Center observers also accompanied members of the Election Board and Lighthorse police to collect absentee ballots from the United States Post Office in Okmulgee and transport them to the MCN government building where processing of those ballots would take place. The Carter Center team observed the verification and counting of the absentee ballots, the receipt of election materials from precincts after the polls had closed, and the tabulation of electoral results. In addition, Carter Center observers met with members of the elections office, spoke with candidates and campaign officials, and met with MCN agencies, including the Citizenship Office, Historic and Cultural Preservation, and Youth Services.

Historical and Political Background

History of the Muscogee (Creek) Nation

The Muscogee (Creek) Nation is a self-governed Native American tribe headquartered in Okmulgee, Oklahoma. The Muscogee (Creek) Nation is the fourth-largest tribe in the United States, with over 89,000 enrolled citizens. The nation's jurisdictional territory extends across 11 counties in east-central Oklahoma. [2]

[2] Tulsa, Creek, Tukvpvtce (Hughes), Okfuskee, Okmulgee, Mayes, McIntosh, Muskogee, Rogers, Seminole, and Wagoner. See https://www.ok.gov/odmhsas/documents/10 37 Federally Recognized Tribes in OK.pdf

Today's citizens of the Muscogee (Creek) Nation[3] are descendants of ancestors that, prior to A.D. 1400, spanned the Southeastern region of the United States, including present-day Georgia, Alabama, Florida, and South Carolina. The Muscogee (Creek) Nation was historically a confederacy of several tribes, organized around tribal towns. Remnants of this confederacy are still evident today in the nation's social fabric and legal framework.

In 1830, U.S. President Andrew Jackson signed into law the Indian Removal Act after intense debate and narrow passage in the U.S. Congress. The law authorized the president to negotiate with southern Native American tribes for their removal to federal territory west of the Mississippi River to make room for white settlement of their ancestral lands. The law led to the forceable removal of members of the Muscogee (Creek) confederacy to Oklahoma, along with other tribes, on what is known as the Trail of Tears. Of the more than 80 tribal towns in the southeast, just over half were reestablished following removal, and some of those have since disappeared. After the forced relocation, the Muscogee people adopted a written constitution in 1867 that established a three-branch government with an executive branch composed of a principal chief and a second chief, a judicial branch, and a bicameral legislature composed of a House of Kings and a House of Warriors. Representation in both houses of the legislature was based on the tribal towns. During this time, a political party structure developed including the Pin or Nationalist Party, the Muscogee Party, and the Loyal Party.[4] This constitutional period lasted for the remainder of the 19th century. A new capital was established in 1867 in what is now Okmulgee, Oklahoma, where a national Council House was constructed.[5]

At the end of the 19th century, the federal government established the Dawes Commission to draw up rolls of membership for the "civilized tribes" in Oklahoma for the purposes of dividing tribal lands into individual plots as part of a broader strategy of privatization. [6] Lamentably, the enrollment ended with approximately 1,500 Muscogee (Creek) not registered.[7]

In response to the Dawes Commission, the Five Civilized Tribes came together in 1905 and proposed establishment of a state separate from the Oklahoma Territory called the State of Sequoyah. A national convention was held, and a constitution developed for the State of Sequoyah, but the proposition was rejected by U.S. President Theodore Roosevelt, and Indian Territory and Oklahoma Territory were combined into the State of Oklahoma in 1907. The tribe held no elections between 1906 and 1971.

In 1934 Congress passed the Indian Reorganization Act, which called for the establishment of tribal constitutions and governments through internal processes, reportedly with support from 172 tribes and opposition from 73 tribes.[8] While the act's call for constitutions lessened federal control and was a shift toward self-governance, the push for American-style constitutions and governance structures created some tension with existing tribal governance systems and cultures.

[3] Approximately 80% of the current citizens have less than 25% Muscogee (Creek) blood.
[4] Information available at the National Council House Museum located in Okmulgee, Oklahoma. December 2019.
[5] Official Guide to the Mvskoke. The Muscogee (Creek) Nation Tourism and Recreation Department.
[6] The five "civilized tribes" were the Cherokee, Creek (Muscogee), Choctaw, Chickasaw, and Seminole.
[7] Interview with Chief Floyd, Dec. 13, 2019.
[8] *The Heartbeat of Wounded Knee.* David Treuer. Riverhead Books, 2019.

In 1970, Congress passed a law commonly known as the "Principal Chiefs Act" authorizing the Five Civilized Tribes to "popularly select" an executive, on the condition that the procedures for selection were subject to the approval of the U.S. Department of the Interior.[9]

In 1971, the Muscogee people, for the first time since the partial dismantling of their national government in 1906, freely elected a principal chief without the federal government's intervention. In the 1970s, the leadership of the Muscogee (Creek) Nation drafted and adopted a new constitution, revitalized the National Council, and began the challenging process of political and economic development.

In 1979, the Muscogee (Creek) Nation was officially reconstituted as a constitutional republic. The Dawes Commission rolls were used as the basis for determining tribal membership. Anyone who can trace their lineage to a person on the 1906 Dawes Commission rolls for the Muscogee (Creek) Nation can apply for membership in the tribe. Despite its sovereign autonomy, the Muscogee (Creek) Nation is viewed by some as having been imposed by the federal government rather than genuinely indigenous, given the importance of clans and the original tribal towns to individuals' identities.

In the 1980s, United States Supreme Court decisions affirmed the nation's sovereign rights to maintain a national court system and levy taxes. The federal courts also have consistently re-affirmed the Muscogee (Creek) Nation's freedom from state jurisdiction.

Political Background

A primary election was held in the Muscogee (Creek) Nation on Sept. 21, 2019, in which no candidate won a majority of votes and the difference between second and third place was only 10 votes. The nation's electoral system provides that the top two candidates in the primary election proceed to a second vote held during the general election, so the small difference between the second- and third-place candidates was contentious, and a dispute surrounding the chain of custody of ballots was filed.

Although the court found that there was no indication that any gaps in the chain of custody contributed to fraud that would compromise the results of the election, an Oct. 2, 2019, court order annulled all results from the Sept. 21 election and ordered a rerun of the primary election. The Election Board decided to hold the new primary election on the date originally set for the general election, Nov. 2, 2019.

Several candidates withdrew from the process between the Sept. 21 election and the vote on Nov. 2 following an Election Board decision to refund the filing fees of any candidates who decided to withdraw. Other consequences of the extended electoral calendar included the administrative expense of holding three elections rather than two, candidates with government jobs having to extend their leaves of absence with further loss of salary in order to avoid conflicts of interest, and an increase in voter confusion and voter fatigue.

Pre-election legal challenge

In the weeks before the Nov. 2 election, the campaign of principal chief candidate Steve Bruner voiced concerns regarding delays in the dispatch of absentee ballots for the new primary election.

[9] Public Law 91-495. An Act to authorize each of the Five Civilized Tribes of Oklahoma to popularly select their principal officer, and for other purposes. October 22, 1970.

On Oct. 31, the Bruner campaign filed a motion seeking to ensure that any ballots arriving after the deadline on Nov. 2 would be retained until the period for challenges to the election had expired. A hearing on the matter was held on Nov. 1, which The Carter Center observed. During the hearing, the judge indicated that the matter at hand was essentially a "petition for irregularities" prior to the election. [10]

The attorney for the Bruner campaign argued that they were seeking to avoid any irreparable harm that might result from the destruction of late-arriving ballots in case any subsequent hearing might lead to a decision to count certain late-arriving ballots, saying that there was no harm to preserving and isolating such ballots. The Office of the Attorney General, responding to the Bruner campaign's objections to its participation in the hearing, stated that it was present to defend the existing law. The election manager, representing the Election Board and election office in the absence of their counsel, who was hospitalized, indicated he had no objection to preserving and isolating any late-arriving absentee ballots.

The judge determined that the Election Office should retrieve ballots at 11 a.m. daily from Nov. 4 to Nov. 9, maintain the ballots received each day separately, and preferably maintain all the late-arriving ballots in a separate building from the timely ballots. He also set a further hearing on the matter for Nov. 7 in the week following the election.

Electoral Institutions and the Legal Framework for Elections

The Muscogee (Creek) Nation government is made up of an executive branch (headed by a principal chief and second chief), a legislative branch consisting of a 16-member National Council, and a judicial branch. All elective posts (executive and legislative) have a term of four years; the legislative terms are staggered so that half of the National Council representatives are chosen every two years.

Legal Framework for Elections

The electoral legal framework for the Muscogee (Creek) Nation (MCN) comprises Article IV of the 1979 Constitution and the Electoral Code (Title 19 of the MCN Code of Laws). The constitution provides for universal and secret ballot. The posts that are elected through popular vote are those of the Principal Chief and Second Chief, as well as the 16 members ("representatives") of the National Council. The constitution states that the election dates for elected offices of the MCN cannot be more than four years apart. Besides specifying the electoral system and stipulating the responsibilities and composition of the electoral authorities, the constitutional provisions also define voter and candidate eligibility criteria.

[10] Section 8-209 of the MCN Electoral Code states: "*In the event a candidate contests the correctness of the announced results of an election, by alleging fraud or any other irregularities, said candidate shall file with the Manager of the Election Board a contest petition, at any time before 5:00 p.m. on the first Friday following an election, setting forth with particularity the facts which are alleged to constitute fraud and irregularities.*" This provision has been interpreted as establishing the only recourse a candidate has in the case of any irregularity at any point in the electoral process.

The code expands on the definition of the different types of elections, the specific tasks of the electoral authorities, voter registration and nomination of candidate procedures, as well as detailed steps for polling, counting, and certification of results. The code also defines crimes and violations and spells out forms for resolution of electoral disputes. Chapter 15 of Title 19, enacted in October 2018 by NCA 18-164, established a campaign finance code to be administered by the Election Board, replacing the Campaign Finance Disclosure Act administered by the Public Officials Ethics Commission, established by NCA 15-081.

Assessment of Legal Framework

The legal framework provides an adequate basis for the conduct of credible elections in MCN. The Carter Center noted that the constitution and electoral legislation align with good international practice in protecting the right of citizens to vote and participate in political affairs. The legislation also provides comprehensive guidance for essential components of democratic elections, including the independence of the election management body and key election processes such as voter registration, candidate nomination, polling, counting, and the certification of results.

While the constitutional provisions and the electoral code are consistent with international principles and serve as a good basis for organizing the elections, there is a general view among experts in democracy that the legal framework should be revised in a holistic manner.[11] The code has been amended over time to address specific issues without much concern for overall consistency or harmonization. This piecemeal approach to electoral reform has resulted in an inconsistent code, with too much detail in some areas that limit the board and election office's flexibility, while leaving important gaps. Some details in the law are outdated and unnecessarily restrictive, including provisions regarding the electoral campaign, the introduction of technology in electoral operations, and the presence of nonpartisan observers.

While countries vary in their approaches, international good practice suggests there be a hierarchy of laws governing elections, with fundamental principles enshrined in the constitution and high-level precepts relating to operational matters (such as who qualifies to be registered to vote and stand as a candidate) set out in an overarching act or code, approved through the normal legislative process.

In addition to the legal framework for elections, detailed procedures can be established in regulations established by the Election Board.

Electoral System

All elected posts (whether principal and second chief or the 16 members of the National Council) are chosen through an absolute majority, with a runoff election between the two highest-placing candidates should no candidate receive an absolute majority.[12] The first round is known as primary elections and the second round or runoff is known as general elections.

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[11]Office for Democratic Institutions and Human Rights and the International Institute for Democracy and Electoral Assistance

[12] Article IV of the constitution doesn't explicitly call for an "absolute majority," but the implication is clear: Section 4 states: "No candidate for office shall be considered elected unless the candidate receives a majority of the votes cast"; and Section 5 continues: "If there is any office in which a candidate does not receive the required majority of the votes,

The constitution originally provided for each voter to vote only for a representative of the district where the voter resided.[13] A constitutional review conducted in 2009 changed this provision by introducing "at large" voting, where every voter can choose a candidate for one, more than one or all of the eight electoral districts. As a result of this legislative change to "at large" voting, a single ballot paper is used across the MCN for principal chief, second chief, and the legislative candidates nominated for each of the eight districts, eliminating the need for a specific ballot style for each district.

The introduction of the "at large" system dramatically modified the basis of representation for the legislative branch of government. Members of the National Council no longer strictly represent a particular district, but the whole of the MCN. The fact that two members of the council must come from each of the districts is a measure to ensure that there is geographical distribution of the candidates and avoid having a concentration of legislators coming from a particular district. The "at large" provision also resulted in a decision of the Election Board allowing any registered voter to vote in any polling station (precinct) within the eight districts.[14]

While some citizens indicated to The Carter Center their preference for the new "at large" national constituency method, others raised concerns, especially about the provision that all legislators would be required to represent all voters, even though legislators are assigned to a district. Some citizens raised concerns that the new electoral system disadvantages rural communities since the votes of persons from urban areas could determine the outcome of a rural race even though urban voters would be less familiar with the community's candidates. Some candidates spoke about challenges in campaigning effectively across all districts.

The Electoral System and Boundary Delimitation

International standards for democratic elections indicate that the delimitation of boundaries should protect the equality of suffrage, an essential element of a genuine democratic election, and should be reviewed regularly.[15] Where variances occur between the numbers of voters in constituencies, they should be small.[16]

The Muscogee (Creek) Nation is headquartered in Okmulgee, Oklahoma, approximately 40 miles south of Tulsa. The Muscogee (Creek) Nation Reservation status was reaffirmed in 2017 by decision of the Tenth Circuit Court in Murphy v. Royal, which held that the allotted Muscogee

a run-off election shall be held between the two candidates receiving the highest number of votes in that particular election." According to Chapter 8, Section 105 of the Election Code, the prescribed resolution of a tie vote is to hold another election.

[13] Article IV, Section 8: "Only those citizens having legal residence in a district shall be allowed to vote in an election for that district." That provision was repealed on Nov. 7, 2009, by referendum.

[14] M(C)N Constitution, Article VI, Section 2

[15] United Nations General Assembly (1966). International Covenant on Civil and Political Rights. Treaty Series, 999, 171; (1966) International Convention on the Elimination of All Forms of Racial Discrimination. Treaty Series 660, 195; Organization of American States (1969). American Convention on Human Rights Treaty Series, No. 36 San Jose: Organization of American States.

[16] Council of Europe (Venice Commission), Code of Good Practice, Section 2.2 para. iv, advises that the "permissible departure from the norm should not be more than 10 percent and should certainly not exceed 15 percent, except in special circumstances."

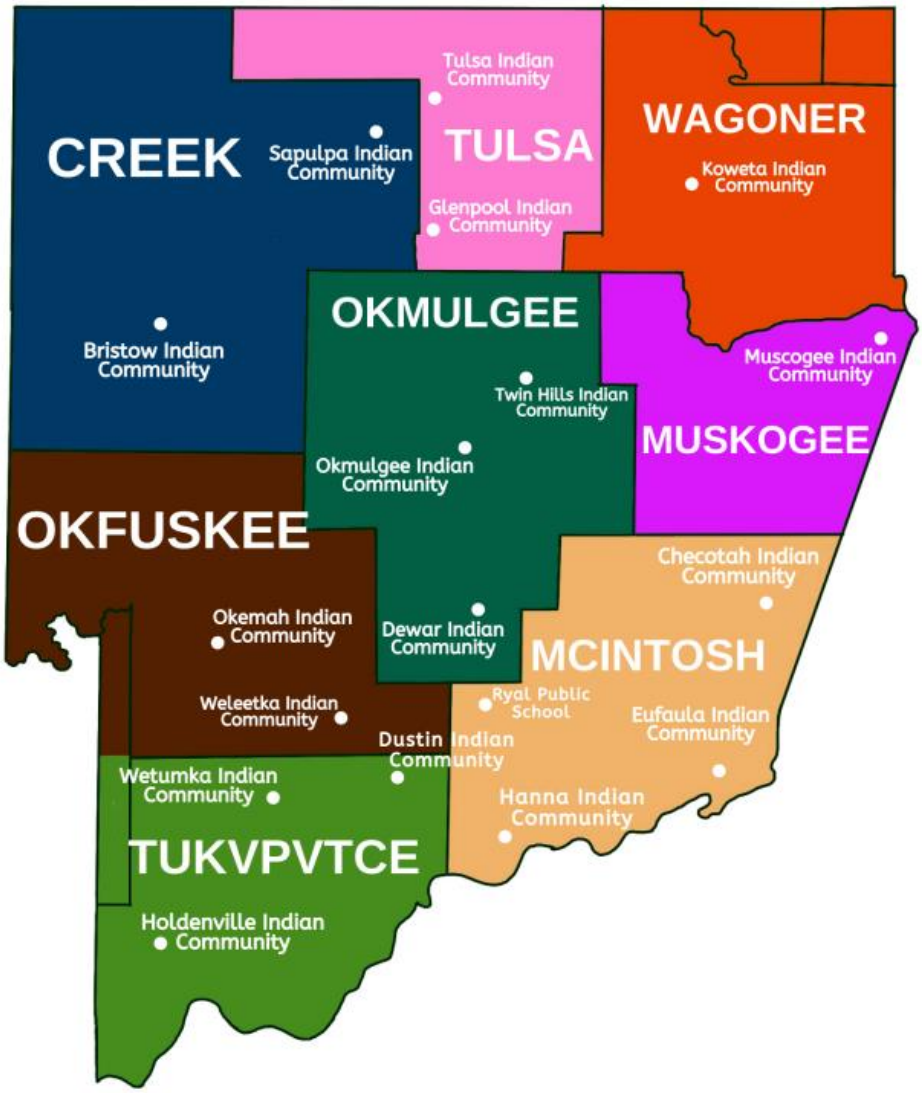
(Creek) Nation reservation in Oklahoma had never been disestablished. [17] *McGirt v. Oklahoma*, a 2020 U.S. Supreme Court decision, further established that land reserved for the Muscogee (Creek) Nation since the 19th century remained separate lands from "any Territory or State" and that the MCN has the "unrestricted right of self-government," with complete jurisdiction over enrolled Tribe members and their property as stipulated in an 1866 treaty and interpreted under the Major Crimes Act.[18]

District boundaries are largely contiguous with those of eight Oklahoma counties (Creek, McIntosh, Muskogee, Okfuskee, Okmulgee, Tukvpvtce (Hughes), Tulsa, and Wagoner) that form the core of the Muscogee (Creek) Nation. Some adjustments have been made, including that parts of Wagoner, Muskogee, and McIntosh counties are part of the Cherokee Nation's territory, while small parts of Rogers, Mayes, and Seminole counties are part of MCN territory but are incorporated into districts based in neighboring counties.[19]

The populations of the electoral districts vary significantly – Okmulgee District has nearly five times as many tribal members as Wagoner District. Nevertheless, as a result of the change to the "at large" system, two members of the National Council must be from each district, regardless of the population.[20] The variation in district population presents important challenges to the principle of equal suffrage, in which each vote should be of equal weight.[21]

[17] *Murphy v. Royal*, 875 F. 3d 896, 918 (10th Cir. 2017)
[18] *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020)
[19] http://mcngis.com/images/stories/maps/voting%20districts.pdf
[20] Contrary to popular belief, since 2009 the members of the National Council no longer exclusively represent the districts they were nominated from, but the whole MCN. See below, "Electoral System."
[21] *Election Obligations and Standards: A Carter Center Assessment Manual.* The Carter Center. Pp 58-59.

Muscogee (Creek) District Boundaries and Precincts



Voting Mechanisms

Traditionally, elections in the Muscogee (Creek) Nation have taken place on a single day (a Saturday by law). Over time, additional options for voting have been added to polling day voting, including absentee (by mail) and early voting.

Absentee voting is done by mail and was initially meant for voters outside the nation's territory.[23] Citizens living outside of Muscogee (Creek) Nation's physical territory wishing to vote absentee were assigned to vote in an electoral district. Currently, any voter is eligible to request an absentee ballot, including those who reside within the territory. Absentee by-mail voting constitutes about half the overall vote.

Early voting was introduced by law in 2018 and was implemented for the first time during the 2019 elections.[24] This modality allows any voter in the territory to vote at any of four specific locations on the Wednesday and Thursday prior to voting day. Early voting was introduced to encourage voters to come to the polls and to provide options for voters. Despite relatively small turnout, voters interviewed by The Carter Center agreed that early voting was a very positive change and should be maintained. Rural voters were particularly positive about the introduction of early voting, citing some challenges with voting on a Saturday, including conflicts with weekly grocery shopping and cultural and sporting events.

Changes to the Legal Framework for the December Primary Election

On Nov. 16, 2019, between the November primary election and the December general election, MCN's National Council passed legislation related to elections.[25] It addressed three primary areas:

First, it amended the electoral code language related to candidate watchers, requiring that watchers must be citizens of the Muscogee (Creek) Nation and registered voters, which is consistent with international good practice.

The new legislation also amended the electoral code regarding recounts to require that only the votes in the contested race would be recounted, and not the votes for the other races. This amendment may need additional consideration given that votes for all races (principal chief, second chief, and National Council seats) are cast on the same ballot paper, rather than separate ballots, making it possible that any issue that might affect one race could affect others on the same ballot paper.[26]

Finally, the National Council created a new law related to the solicitation and collection of absentee ballots, making it a felony to solicit or collect an absentee ballot from another person. This legal modification appeared to be in response to perceptions of strategies implemented by the Bruner campaign around the September and November primary elections to encourage potential supporters to request and vote absentee ballots if they were not going to be able to vote in person. The passage of this legislation between elections created some perceptions of bias, as one

[23] Voters residing outside the MCN's territory must nonetheless declare an electoral domicile in one of the eight districts within the territory.
[24] NCA 18-117, Aug. 25, 2018.
[25] NCA 19-141, Nov. 16, 2019.
[26] Title 19, Chapter 6, Section 103 states: "The Election Board shall cause ballots to be printed for the offices of Principal Chief, Second Chief and National Council Representatives."

candidate for the principal chief general election was a sitting member on the National Council at the time the legislation was passed, creating the perception that the legal move was targeting the other candidate in the principal chief race.

Carter Center recommendation: To address this concern, avoid the passage of election-related legislation during an electoral process. International standards recommend that any election-related legislation should be completed six to 12 months in advance of an election to ensure there is adequate time to implement the changes and to educate the public, voters, and political parties or candidates.[27]

Election Management

According to international standards for democratic elections, a critical means to promote the transparency of an electoral process and facilitate the participation of citizens in the democratic process is an independent and impartial election management body. A transparent, accountable, and professional body is regarded as an effective means of ensuring that other international obligations related to the election process can be met.[28] The election management body should ensure accountable, efficient, and effective public administration of elections.

Elections are about credibility, and in that context, the authorities in charge of managing and conducting the electoral process need to ensure their unquestioned independence and credibility. While elections must be delivered efficiently, the political nature of the process requires that the management of the process be perceived as politically credible. Therefore, it is essential that any electoral management body be (and be perceived as) free from undue external influences, working impartially and in full transparency.

Election Board. Absolute authority for all elections in the MCN resides with the Election Board, a constitutional and independent agency which has a small election office for support as an operational arm. The Election Board is an independent and impartial body and an important asset of the nation, facilitating the ability to conduct independent elections for representatives of sovereign government. As in many other tribal elections, the board contracts a private vendor for several aspects regarding the conduct of major electoral operations, such as voting, counting equipment, and the tabulation system.

The board has five members, including a chairperson, who oversees the conduct of all regular and special elections in the nation. The main purpose of the board is to maintain the highest level of integrity in conducting the MCN elections and enforce the codes in a responsible, impartial and unbiased manner.[29] The Election Board can promulgate, repeal, or modify rules and regulations to ensure the integrity of all tribal elections. Additionally, the Board is responsible for maintaining the voter roll, informing all enrolled registered voters of elections, and promoting voter registration throughout the Nation's eight districts as well as among the absentee voters outside the nation's boundaries.

[27] ECOWAS Protocol, Article 2(1).
[28] U.N., (ICCPR) General Comment 25, para. 20: "An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant."
[29] https://www.mcn-nsn.gov/services/election-board/

Commissioners are appointed by the principal chief, subject to National Council approval. Commissioners serve staggered five-year terms.[30] The board currently includes two women, one of whom is the chairperson. Three of the members have been on the board for many elections. The chairperson joined shortly before the 2017 elections.

The chairperson of the board has general supervisory authority regarding the board. The chairperson has the authority to assign and fix the duties of personnel and to promulgate, repeal, or modify any rules or regulations as he or she deems necessary, subject to the approval of the full board.[31] The board can employ consultants, advisors, planners, and other experts by written consent according to national legislation and federal law. The MCN has retained the services of a legal advisor as well as an external election services provider. While the board is not formally financially independent, the National Council can appropriate funds directly to it for specific expenditures.

Election Office. The Election Board is supported in its duties and operations by a manager and a small staff — the election office.[32] The manager deals with day-to-day administration of the board, advises it on operational issues, recommends any procedural modifications, and follows up on the maintenance of the voter register. Voter information efforts and applications for absentee voting are also handled by the election office. In addition, the manager serves as the main contact point with any external election services providers, ensuring the board has some control over the way contracted services are implemented.

The existence of an election manager, supported by a small staff, within MCN has made a big difference in terms of autonomy and ownership by the authorities of electoral operations when compared with the experience of other tribes. Nonetheless, there is a lack of formal mandate and definition of the manager's duties as well as a lack of clarity in the relationship between the board and the manager. In particular, the board would greatly benefit from clarifying the relationship between the board and the election office and from strengthening the manager to allow for further increasing tribal ownership and control of its elections.

During polling, the board hires temporary contract employees who constitute the precinct election committees. The members of the precinct committees represent the board at the various precincts

[30] Electoral Code, 2-101: "The Principal Chief shall nominate a Muscogee (Creek) Nation Election Board, hereinafter referred to as 'Election Board,' comprised of five (5) members. The members of the Election Board shall be nominated by the Principal Chief by submission of a Tribal Resolution to the National Council. The National Council may at its discretion hold hearings on persons nominated. National Council approval of the Tribal Resolution submitted by the Principal Chief shall be required for confirmation of all appointments to the Election Board. Nominations not approved by majority vote shall be returned to the Principal Chief. Nominations returned shall be replaced by new nominations."

[31] Electoral Code, 2-105: The Chairperson "may promulgate, repeal or modify such rules or regulations as he or she deems necessary to facilitate and assist in achieving and maintaining uniformity in the application, operation and correctness, impartiality and efficiency in the administration of this Revised Election Code; provided, that such rules or regulations, to be binding and effective, must be consistent with this Code and must have been officially adopted by the Election Board."

[32] Current staffing includes a manager, administrative assistant, and two voter registration specialists. The manager has requested an additional VR specialist oOutreach) and two more VR specialists to catch up on records.

and are trained by both the private vendor and the election manager. According to the electoral code, in order to qualify to become a member of a "precinct election committee," a person must be a registered voter of the district in which he or she would serve and demonstrate competence to perform the required duties. A person cannot serve as a member of the precinct election committee if closely related to a candidate in the district where the person would serve. Additionally, to be appointed judge — the senior-most member of the precinct committee — one must be able to speak and translate the Muscogee (Creek) language.

Based on its observations, The Carter Center assesses that the role and structure of the MCN electoral authorities, including the Election Board and the election office, are broadly consistent with international good practice. While both appear to operate in a responsible and impartial form, the transparency of electoral decisions could be improved. To do so, a more pro-active approach to public relations and information may be beneficial.

The approach of the board and the election office regarding retaining control of the electoral operations, despite the need to rely heavily on private vendors, is highly commendable.

Carter Center recommendation: It is recommended that the Election Office be strengthened with some additional staff (including for continuous voter information) and that the role of the election manager be further clarified and formalized to retain MCN control (and therefore accountability).

Automated Election Services (AES)

As it had in previous elections, the Muscogee (Creek) Nation contracted the services of a private vendor, Automated Election Services (AES), to provide operational support necessary for the balloting, polling, counting, and tabulation of the 2019 electoral process. AES has ample experience in supporting tribal electoral processes across the U.S., and their services have been used by the MCN authorities with generally satisfactory results.

Despite some issues regarding late dispatch of absentee ballots, the MCN electoral authorities generally expressed satisfaction with AES's work. The Carter Center noted a respectful approach from the vendor regarding the MCN electoral authorities and saw them as receptive to directives from the board and the election manager. AES workers were an integral part of the precinct staff training, although they concentrated exclusively on technical aspects of the process and the use of the equipment AES provided, including laptops, printers, and voting machines.

On election days in November and December, AES staff were circulating among polling precincts to provide helpful support to the members of the precinct election committees. When polling staff experienced occasional technical difficulties, AES staff were quick to respond and resolve any issues. AES staff were also present during the processing of absentee ballots — so much so that, to some observers, it sometimes felt as if AES oversaw the process.

Although the Election Board and Election Office are responsible for the administration of elections, there are some concerns regarding dependency on the vendor for operational matters. The gradual but substantive introduction of technology in the electoral administration has resulted in the use of an outside vendor, which has been welcomed by electoral officials and voters.

However, it was difficult to determine if the use of technology in MCN's elections was in response to needs identified by the nation or was vendor-led.

Overall, while the relationship between AES and MCN authorities seems positive and productive, it would be beneficial to further clarify the role of the vendor as a provider of operational services and to enhance the policy- and decision-making roles of the board and manager as the electoral authorities. It will also be important to review training materials produced by the Election Office against those produced by the vendor to ensure that any inconsistencies are eliminated.

Carter Center recommendation: The Muscogee (Creek) Nation should explore the services provided by external vendors and determine whether any of those services can be provided within the nation.

U.S. Postal Service

The Election Office and its vendor are dependent on the U.S. Postal Service for the delivery and return of electoral materials, including requests for absentee ballots, absentee ballots, and voter registration forms. The Carter Center observed that the Election Office was working successfully with USPS, including on quality control issues related to mailing addresses. The election manager also indicated that he would explore working with his USPS contacts to implement the use of USPS's "Election Mail" class for election-related mailings to ensure that they receive the necessary priority in the USPS mail stream.

Some absentee ballots were returned via the use of United Parcel Service (UPS), not USPS. In the case of ballots returned by UPS, ballots were delivered to a physical address at Muscogee (Creek) Nation's government complex and not picked up at the U.S. Post Office in Okmulgee. Greater effort should be made to ensure that ballots delivered by UPS are received by the Election Board in a timely fashion.[33]

Security

The Lighthorse Tribal Police are an independent agency of the Muscogee (Creek) Nation charged with "safeguarding the lives and property of the Nation to reduce the incidence of fear and crime, and to enhance public safety while working with the communities within the Muscogee (Creek) Nation to improve their quality of life."[34]

The Lighthorse Police cooperate closely with the Election Board and Election Office to organize the security of the electoral process and electoral materials. The Lighthorse Police play a particularly important role in elections by providing escort and safekeeping of sensitive election materials, including ballots. Lighthorse officers escort precinct judges and their sensitive materials

[33] On Nov. 4, an absentee ballot that had been received on Oct. 31 via Priority Mail was turned over to the election manager by staff of the Okmulgee Post Office in the presence of a Carter Center observer. Although no explanation was provided as to why the ballot had not been turned over sooner (before Election Day), the postal clerk promised to locate and make available to the election manager the records showing that the ballot had arrived on the 31st.
[34] https://www.mcn-nsn.gov/services/lighthorse-police/

to Okmulgee at the end of each day of early voting and at the end of polling on election day. Materials are stored in the Lighthorse headquarters secure holding cell as needed. Lighthorse officers also escorted the Election Manager to pick up absentee ballots at the Okmulgee Post Office and, in the case of the November election, to store late-arriving absentee ballots in accordance with the District Court's order.

The Carter Center team observed that the Lighthorse Police were well coordinated with election officials and performed their responsibilities with professionalism, integrity, transparency, and neutrality.

Participation of Women, Youth, and Minorities

According to international standards for democratic elections, the principle of universal suffrage requires that countries must ensure that all people entitled to vote are able to exercise that right. Further, states should consider "taking appropriate measures to publicly encourage and promote the importance of participation of all citizens in political and public affairs, in particular women, persons belonging to marginalized groups or to minorities, and persons in vulnerable situations, including by engaging them in designing, evaluating, and reviewing policies on participation in political and public affairs."[35]

Women. The Carter Center team observed that women made up a significant percentage of both precinct workers and voters during both the Nov. 2 primary elections and Dec. 14 general elections. Women hold two of five seats on the Election Board, including the chair. While women were well represented among the election administration and voters, they were underrepresented as candidates. In November, although 40 percent of legislative candidates were women, there were no female candidates for principal chief or second chief.[36] Prior to the elections, 23 percent of legislative seats were held by women (three of the total 16 seats). The next National Council will have four women (25 percent).

Youth. Over the course of their observation and meetings with key stakeholders and citizens in November and December, Carter Center observers heard concerns of an overall lack of interest among Muscogee (Creek) Nation youth in participating in the nation's elections. Some stakeholders indicated that youth are marginalized from politics and decision-making.

At the initiative of one of its members, the Muscogee Youth Council hosted a candidate forum Aug. 24, 2019, which was attended by approximately 20 youth (up to age 24). The forum included two sessions for National Council candidates (four districts per session) and a session for candidates for principal chief and second chief. The Election Board set up a voter registration table at the event.[37] The Youth Council also provided rides to the polls for students and supported the Election Board by creating a social media page for it.

[35] Para. 4.d of the UNHCR Resolution 27/24 (2014). United Nations Human Rights Committee. 1996. General Comment 25: Article 25 (The Right to Participate in Public Affairs, Voting Rights, and the Right to Equal Access to Public Service).
[36] In the Nov. 2 primary election, there were 13 male and eight female candidates for National Council seats.
[37] Mvskoke News, Sept. 1, 2019, p. 14.

Carter Center recommendation: The Carter Center recommends that the Muscogee (Creek) Nation identify strategies to increase youth electoral participation and create space for youth political leaders. This could include voter registration drives and voter education programming for youth as they approach voting age, opportunities for youth to volunteer in the Election Office or on campaigns, and advocating for candidates to prioritize issues important to youth.

Persons with Disabilities. According to international standards for democratic elections, an inclusive electoral process requires that all voters be entitled to vote, unimpeded by physical barriers at the polling stations. Likewise, reasonable accommodation measures should be put in place to ensure that the secrecy of the vote is guaranteed for voters with disabilities.[38]Carter Center observers noted during the November primary election that polling staff in at least one precinct had set up a tabletop voting screen for voters with disabilities and that for the December general election, the Election Office had provided low-cost tabletop voting screens for voters with disabilities at all polling locations (though there was at least one location where the table-top screen was not deployed). Polling staff in the December elections reported that voters with disabilities were satisfied with the screens and had been using them.

For those (mostly elderly) voters with limited English proficiency, the Election Office provided copies of a "How to Mark the Ballot" flyer in the Muscogee (Creek) language in each polling kit (along with an English-language version), in line with Chapter 3, Section 107 of the Election Code.[39] These were generally displayed on the voter check-in table and in at least one voting booth in each precinct in each election.

The Media

The media play an indispensable role during elections by giving voters access to information that will allow them to make an informed decision. International obligations related to the media and elections include freedom of expression and opinion and the right to seek, receive, and impart information through a range of media.[40]

In accordance with international standards, all candidates and parties should have equal access to the media for campaign purposes. Impartial media play an important role in ensuring that citizens can make an informed choice when casting their ballot. All media outlets, especially state media, should publish advertising rates, charge the same rates to all candidates, and provide balanced reporting.

The Muscogee (Creek) Nation has a tribal news agency, Mvskoke Media, based in Okmulgee. The agency publishes the tribe's official newspaper, the bi-weekly Mvskoke News, which has 9,300 newspaper subscribers.[41] Mvskoke Media also produces Mvskoke Vision, a weekly television

[38] U.N. CCPR, General Comment 25
[39] Title 19, Chapter 3, Section 107, "Instruction to voters" reads: "Instructions to voters describing the manner for casting one's vote shall be posted inside each polling place. Said instructions shall be prescribed by the Election Board and printed in Mvskoke (Creek) and English."
[40] ICCPR, Article 19. UNHRC, General Comment 25, para. 25.
[41] Subscriptions are free to any enrolled member of the MCN.

broadcast[42] that is also accessible on the Mvskoke Media YouTube page, which has 1,892 subscribers, and Mvskoke Radio, a weekly radio program broadcast on AM1240. Mvskoke Media's Creative Division does graphic design work for both internal and external clients. Mvskoke Media has good relationships with external media in the MCN territory, including the McIntosh Democrat covering Checotah and Eufaula, the Muskogee Phoenix, and others. Mvskoke Media stories also go out over the Associated Press wire.

The tribe has a public relations department, which plays an important role in providing access to information for citizens separate from that played by Mvskoke Media. The existence of a free and independent press in Mvskoke Media is a strong asset of Muscogee (Creek) Nation's democracy.

2018 and 2019 saw the Muscogee (Creek) Nation struggling with the question of press freedom. Although not universal, freedom of the tribal press had been enshrined in MCN law since the passage of NCA 15-218 in October 2015. The "Findings" section of that act read:

> *"A. All Muscogee (Creek) citizens should be allowed to have access to information regarding Muscogee (Creek) Nation activities and news.*
> *B. There is a need to create an independent media of the Nation to have news and activities reported objectively without interference or bias.*
> *C. The Nation's media should be overseen by an Editorial Board and the Board and media shall have protections permitting them to report news and activities without interference or bias."*

In February 2019, the MCN National Council approved and Principal Chief James R. Floyd signed the "Shield Act,"[43], which was seen as undermining the freedom of the press and, according to one interlocutor, protected sources but not journalists.

There have been discussions on enshrining freedom of the press in the tribe's constitution, but efforts in that direction have not yet been successful. In advance of the first primary election, legislation was proposed (NCA 19-121) that would have included in the general election a vote on a constitutional amendment with protections for the freedom of the press. The legislation failed to obtain the required two-thirds majority. The Native American Journalists Association (NAJA) issued a statement condemning the failed passage of the legislation.[44]

However, as of July 2020, the Muscogee (Creek) Nation passed the Independent Press Law, which placed Mvskoke Media under an organizational structure that protects journalistic integrity for the first time since the repeal of the tribes "Free Press" law in November 2018. "Mvskoke Media is now organized as an Independent Statutory agency that shall be funded by the Muscogee (Creek) Nation."[45] This legislation is a positive step in establishing free press within the Muscogee (Creek) Nation.

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[42] Carried by the CW affiliate in Tulsa.
[43] NCA 19-031
[44] https://najanewsroom.com/tag/free-press/
[45] Ellis, Angel. "Free Press Returns to MCN: Muscogee (Creek) Nation Leaders Vote and Sign Law Restore Critical Components to Reinstate Press Freedoms for Tribally Funded Media," The Mvskoke News, Aug. 1, 2020. Vol. 50, Issue 14.

Furthermore, it was reported to Carter Center observers that the College of the Muscogee (Creek) Nation is considering the establishment of a communications department to help train new generations of indigenous journalists. Such an initiative would be a welcome contribution to the critical role that journalism and independent media play in sovereign democratic nations.

Carter Center recommendation: The Carter Center recommends that there be constitutional guarantees for the freedom of expression, and that law provide sufficient safeguards to ensure the political independence of state-owned media. While the new Independent Press Law is a positive addition, a constitutional amendment guaranteeing free press, adopted with the support of the people, would reduce the frequency of legislative changes.

Ensure equal access to the media. In future elections, consideration should be given to mandating that state media provide free airtime for all contesting candidates and political parties.

Campaign Period

The right to be elected is a universal right requiring that states ensure that their citizens have the opportunity to stand for elected office, free from unreasonable restriction. All have the right to be elected, to freely express opinions, and to participate in public affairs.[46] Equitable treatment of candidates and political parties during elections and the maintenance of an open and transparent campaign environment are important to protecting the integrity of democratic elections and the right of every citizen to be elected.

According to the Office for Democratic Institutions and Human Rights, "Fundamental freedoms are essential to the democratic character of the campaign period, and all political participants should enjoy the freedom of association and should be able to freely express their campaign messages and assemble with their constituents free from intimidation or hindrance. Citizens should have the right to express their political convictions freely."[47]

The MCN Electoral Code does not define a specific campaign period, and campaigning had been taking place since the call for elections. Candidates moved to full campaign mode following their nomination as candidates.

There are no specific regulations concerning the electoral campaign in the legal framework, although there are provisions that pertain to campaigning and electioneering in Chapter 12 of the Electoral Code (Criminal Violations and Penalties). Section 12–101 of the Electoral Code deals with "anonymous campaign literature," which forbids any person or organization to write, print, post or distribute any anonymous circular, poster or advertisement which is designed to injure or oppose the nomination or election of a candidate, to influence the voters in an election on any constitutional or statutory amendment, or any other issue in a tribal election. Any circular, poster or advertisement should have either the name and address of the author or the name and address of

[46] ICCPR, Article 19(2)
[47]OSCE Office for Democratic Institutions and Human Rights. Handbook for Domestic Election Observers. Organization for Security and Co-operation in Europe, 2003.

the president, chairman, and secretary of the organization that sponsored the publication of the written document.

Additional campaign violations refer to bribing with the intent to directly or indirectly influence the vote of a person, or to influence the withdrawal of any candidate. Finally, electioneering within 300 hundred feet of any precinct while an election is in progress is also considered a violation.

The Carter Center did not observe any problems with public displays of political propaganda, which centered on the display of signs encouraging voters to vote for a particular candidate, generally along the approaches to the polling precincts. The Carter Center did not receive any complaints of signs having been removed by opponents' supporters. Other forms of propaganda were used, such as print media and radio time, as well as door-to-door campaigning and public events. However, it appeared to Carter Center observers that the discourse in social media could turn very aggressive, particularly for the principal chief race.

The Carter Center did hear reports that the Bruner campaign was confronted for using the Muscogee (Creek) Nation seal in election campaign materials unfairly and disproportionately, as the same rules regarding use of the nation's official seal were not being applied to other candidates.

Annex 8 includes examples of campaign ads that appeared in the *Mvskoke News* over the course of the electoral period.

Campaign Finance

The MCN electoral legal framework contains a specific chapter regulating campaign finance (Chapter 15 of the Electoral Code), which focuses on the nature, scope and reporting of campaign contributions. It establishes that campaign contribution regulations are overseen by the Election Board with the objective of ensuring "that the Nation's public officials are independent and impartial and to prevent any conflict of interest."[48]

All candidates for elective office are required to file a statement disclosing the source and amount of all monetary or in-kind contributions over $100, made to either the candidate, a campaign worker, or a campaign committee. Any single contributor (excluding a candidate's own personal funds), whether an individual, a business or corporation, is limited to a maximum cumulative monetary contribution of $5,000; any contributions in excess of this limit must be declined or returned to the donor immediately. The Election Board serves as the official repository of campaign contributions and expenditure disclosure reports as well as any other documents filed by candidates or candidates' committees.

All candidates, in the event they accept campaign contributions, are required to have a separate campaign bank account for contributions (excluding a candidate's own personal funds). Each candidate is required to accurately report all contributions received for disclosure purposes regardless of when the contribution was made. The Election Board provides candidates with a campaign contribution disclosure statement form to be used for disclosing campaign contributions and expenditures. All candidates must use the form provided by the Election Board in making campaign finance disclosure reports, which includes, among others, the identity of each contributor

[48] Title 19, § 15-101.

(including name, address and occupation) whose cumulative donations exceed the total sum of $100; the date the contribution was accepted by the candidate or the candidate's campaign; a description and value of the contribution received during the reporting period; and the total sum of all donations received during the reporting period.

The campaign disclosure statements must be filed with the Election Board upon filing for office. the campaign disclosure statements are to be updated at the end of every month throughout the election season until the candidate's participation in the election cycle has ended.

If any candidate fails to file a campaign contribution report within five days after the last day of the preceding month, the Election Board files a show cause notice against that candidate. A candidate who has received a show cause notice has five working days from the day of receipt of notice to file a response with the Election Board. If requested, a hearing can be held before the Election Board to determine whether the candidate failed to file a campaign disclosure statement within the stipulated time.

Penalties are imposed should there be a violation of the campaign contribution reporting provisions, and no candidate can be sworn into office unless all campaign disclosure statements have been filed and any assessed fines have been paid by the candidate. Additionally, any candidate convicted of filing a false or inaccurate campaign disclosure statement or failing to disclose the source or amount of any campaign contribution is not eligible to run for any elective office within the MCN for a period of 10 years after the date of conviction.

Carter Center recommendation: To foster a level playing field and greater transparency, campaign finance regulations should be closely monitored and enforced, and the Election Board's capacity to monitor and enforce regulations should be bolstered.

Candidate Watchers

Representatives of the political contestants (candidate watchers) are a fundamental element in the transparency and credibility of any electoral process. Candidate watchers or party agents act as crucial links between a candidate's headquarters and polling precincts where agents or watchers represent the interests of their candidate or party. They provide a critical level of transparency during voting, counting, and tabulation processes.

In a political system where candidates are fielded by political parties, recruitment and training of "watchers" is an easier affair. However, where those tasks fall exclusively on candidates, having sufficient presence of trained watchers becomes a more complicated issue, as is the case in the MCN elections. During the 2019 primary and general elections, candidate watchers had a limited presence in the precincts during early voting and election day, as well as during the absentee ballot processing. During the general election, The Carter Center saw watchers for one principal chief candidate (Bruner) at two polling precincts on election day, and none at precincts during early voting. Watchers for principal chief candidate David Hill were present during the processing and counting of absentee ballots, but there were none at the voting precincts.

During both the September and November 2019 primary elections, issues with candidate watchers were reported to The Carter Center regarding instances where watchers seemed to misunderstand their role and were reported as being confrontational and even aggressive toward electoral officials.[49]

During the December general elections, unfortunately, the watcher designated by principal chief candidate Steve Bruner to observe the counting of absentee ballots was not allowed to witness the proceedings. MCN Election Board authorities applied a strict interpretation of the law and asked the watcher to leave, noting that she had arrived after the start of work and after they had administered an oath to other candidate watchers present. The watcher for the Bruner campaign stated that she had arrived at the premises but had stepped out of the room when the oath was administered. The restrictive provisions regarding candidate watchers and the fact that watchers for only one of the two principal chief candidates in the general election were allowed to observe the counting of absentee ballots undermined the transparency that is provided by the presence of candidate agents.

Carter Center recommendation: To enhance the transparency and legitimacy of future electoral processes, candidate watchers and nonpartisan citizen observers should have a greater presence during voting at the precincts as well as the counting of absentee ballots. Offering a training session to candidate watchers on electoral processes would enhance their role.

Electoral Preparations

Pre-polling preparations

Preparations for the primary and general elections included voter registration, nomination of candidates, and operational preparations for all modalities of voting (absentee ballots, early voting, and election day voting). Many of these preparations were contracted to the private vendor, such as preparing equipment, training the precinct committee members on technological issues, distribution of the equipment, and the mailing of absentee ballots. The Elections Board, through the Elections Office, is directly in charge of the recruitment of the members of the precinct election committees and is responsible for staff training, ensuring the voter register is updated, and receiving candidate nominations.

Voter Registration

As stipulated by the constitution and the electoral laws, all citizens of the nation are allowed to vote in the tribal elections provided that: (a) they are registered as voters on the roll maintained by the MCN Election Office; and (b) they are at least 18 years of age at the date of the elections.[50]

In order to register, individuals must complete a voter registration form – either in person at the Election Board office in Okmulgee or elsewhere via a downloaded voter registration form that is completed, signed, scanned, and faxed or attached to an e-mail to the Election Board office. The

[49] These instances were reported to Carter Center observers by political party leaders, candidates, and election officials.
[50] Constitution, Section 2: "Every citizen of the Muscogee (Creek) Nation, regardless of religion, creed, or sex, shall be eligible to vote in the tribal elections provided that (a) they are registered voters for elections; (b) they are at least eighteen (18) years of age at the date of election, with the registrant providing sufficient proof of age to the Election Board; and (c) they hold citizenship."

form calls for full name, date of birth, tribal roll number, last four digits of the registrant's Social Security number, gender, phone number, mailing address, physical address, choice of precinct voter or absentee voter, indication of home district, options to share information with candidates and government departments or programs, registrant's signature, and date. If the applicant lives within the MCN boundaries, the district is the district of their residence. If not, applicants can declare an electoral domicile in one of the eight districts. The voter's address is an important element of information for registering to vote. In the past, this has been a point of contention, as the voter lists have been known to contain many outdated addresses.

Once registered, a voter is issued a voter card. The voter card is an acceptable form of ID to be used during polling, but other forms of identification are also accepted, including the Muscogee (Creek) Nation citizen card, a U.S. state driver's license, and others.

There is also a form to update registrations, allowing registrants to change their intended form of voting (precinct to absentee or absentee to precinct), register a name or address change, change their declared home district, request a new voter card, or change their information-sharing preferences. The form notes that voters registering name changes may be asked for copies of relevant documents (marriage license, divorce papers, driver's license, updated citizenship card) signed by the registrant. The update forms are included in the supplies provided to precincts on election day.

The registration of any voter may be canceled through a written notice of cancellation from the voter, through death, or through enrollment as a citizen of another tribe.

The chairperson of the Election Board is required to certify no later than Jan. 15 of each year the total number of registered voters in each district as of the first day of the year.[51]

Tribal citizenship, a requirement of eligibility to vote, is verified through the Citizenship Office. The Citizenship Office is governed by a five-member Citizenship Board that meets once or twice a month. The mission of this office is to verify the lineage of descendants of persons listed on the 1906 Dawes Commission Roll. The Citizenship Commission also decides on removals from the tribal rolls. The criteria for citizenship are that the person must be Muscogee (Creek) by blood (without any specific blood-quantum requirements) and trace back to a direct ancestor listed on the 1906 Dawes Roll through birth and/or death certificates.[52] Muscogee (Creek) Nation does not allow dual enrollment like some neighboring tribes do, including the Cherokee, so the Citizenship Office periodically verifies membership with other tribes via e-mail and fax.

The Citizenship Board and Election Board have been working to build a closer relationship. The two databases were compared prior to the November primary election, and the Election Board database was scrubbed of those no longer in the Citizenship database.

Voter registration can happen at any time except the period from 10 days before any election to three days following the election. Voter registration was reopened after the Nov. 2 primary election

[51] Elections Code, 2-109.

[52] Article 2, Section 1 of the constitution stipulates that: "Each Muscogee (Creek) Indian by blood shall have the opportunity for citizenship in The Muscogee (Creek) Nation." Required documents by the Citizenship Board include the completed citizenship application, the state certified full image birth certificate, original Social Security card, and, if 18 years or older, state identification or driver license.

and closed on Nov. 19 for absentee voting and on Dec. 4 for in-person voters. There were 17,417 registered voters as of 13 September 2019 (for the September primary elections) and 17,939 registered voters as of 23 October 2019 (for the November primary), which is an increase of 522 registered voters. For the December general elections, there were 18,125 registered voters, or an increase of 186 voters. These numbers represent approximately 20% of the total tribal membership, or roughly 28% of the voting-age population.[53] By way of comparison, the tribe employs approximately 4,000 people, or roughly 22% of the electorate.

Carter Center recommendation: The Election Board, the Election Office, and other MCN authorities should increase efforts in the period between elections to register eligible voters and ensure that more citizens are engaged in exercising their franchise so that elected offices can better represent the will of the people.

Candidate Nomination

Section 4 of the constitution stipulates that to hold office one must be a citizen of the Muscogee (Creek) Nation and be at least one-quarter Muscogee (Creek) by blood.[54] Additional eligibility criteria for the posts of principal chief and second chief include being 30 years of age, as well as residing within the Muscogee (Creek) Nation boundaries for one full calendar year. The candidate must also be a registered Muscogee (Creek) voter six months prior to filing as a candidate and not be convicted of any felony. For prospective members of the National Council, the criteria are similar to those for chief, although the age requirement is decreased to 18 years, the residence requirement applies within the district the candidate is running to represent, and the requirement of not being convicted of felony is conditioned by a period of time (within the last 10 years). There are filing fees for declarations of candidacy.[55] Candidates may challenge the candidacies of other candidates for the same office. Only in the case of unopposed candidates is any registered voter allowed to challenge a nomination.[56] There is a nonrefundable fee for filing a challenge.[57]

Employees of Muscogee (Creek) Nation that file for candidacy must file for a leave of absence from their employment from the day they file for candidacy until the day after the election.[58] This requirement proved particularly challenging in the 2019 elections as the process was protracted due to the annulment of the September polls and the rescheduling of the primary and general election for November and December. Although this requirement protects against conflicts of interest of state officials contesting office, it may have contributed to the withdrawal of some candidates between rounds who couldn't afford to continue without pay.

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[53] Tribal population statistics are from https://www.mcn-nsn.gov/services/citizenship/citizenship-facts-and-stats/, viewed Jan. 12, 2020

[54] Section 4: All Muscogee (Creek) Indians by blood who are less than one-quarter Muscogee (Creek) Indian by blood shall be considered citizens and shall have all rights and entitlement as members of the Muscogee (Creek) Nation except the right to hold office.

[55] Title 19, Chapter 5, Section 108
[56] Title 19, Chapter 5, Section 201
[57] Title 19, Chapter 5, Section 204
[58] Title 19, Chapter 5, Section 102

The Electoral Code states that in the event of the death of a nominee for office, a substitute candidate will not be permitted to have their name placed on the general election ballot. A ruling must be made by the National Council regarding any special election to replace a deceased candidate.

Nominations for the 2019 primary elections were accepted from July 15 to July 17, 2019, and the list of candidates became official on July 19, 2019. There were 35 candidates in total, of which 10 were for the office of principal chief and two were for the office of second chief. The rest were candidates for the eight National Council districts. The nomination period was perceived as being smooth and inclusive.

With the Supreme Court's decision to nullify the Sept. 21 primary elections, it was decided not to restart with a new nomination process. Instead, candidates were given the opportunity to remain in the new primary election on Nov. 2 or to withdraw and have their deposits refunded. The deadline for candidates to inform the Election Board on whether they wanted to remain or withdraw from the elections was 2 p.m. Oct. 8, 2019. Three of the original 10 candidates for principal chief withdrew. One National Council candidate for Wagoner District withdrew and two of the candidates for Tulsa District also withdrew, which left a single unopposed candidate. The new ballot paper did not feature any contest for that district.

Recruitment and Training of Polling Day Staff

The Election Board hires temporary staff, the precinct election committees, to administer polling in each precinct during early voting and on election days. Each committee consists of three members: a judge, a clerk, and an inspector. Additional staff may be hired if determined necessary, particularly for precincts where there may be higher than expected voter turnout.[59]

Traditionally, polling day staff are recruited from those who have worked in previous elections. In 2019, however, the board introduced a new recruitment methodology using applications and tests, which strengthened the process and allowed for a balanced mix of "old- timers" and new poll workers. The updated recruitment process offered the opportunity to bring in individuals with technical abilities to deal with the introduction of technology in the polling and counting processes. Descriptions of each position were posted on the Election Board's web page, along with the application. The application could be completed online or printed out to be completed by hand and mailed, faxed, or emailed to the Election Office. Applicants were asked to indicate their preferred position and location and whether they had worked in previous elections.

Training for the precinct election committees took place before early voting in each round of elections. Training was primarily conducted by representatives of the external vendor and focused largely on technical aspects of the operations and how to use the key electoral equipment, including printers for ballot papers, tablets, and voting machines.

Training for the November primary election was conducted on Oct. 31. Trainees received instruction on three topics: using the laptops and printers, wi-fi setup and e-pollbooks, and voting

[59] Elections Code: 2–110 and 2-111.

machines. No training manuals were seen, and trainees did not appear to be taking notes. This was refresher training for most of them, as many had worked the September election.

Following the November primary election, the Carter Center recommended a few enhancements to the training of precinct committees, including an enhanced role for the Election Board and Election Office on polling procedures beyond the operation of the equipment, introducing more hands-on training activities, and development of a training and operations manual for future elections.

Carter Center observers noted positively that the Election Board and Election Office were very responsive to these recommendations and made changes that significantly improved the training process in advance of the December general election. In particular, training was introduced for different members of the polling staff on their unique roles and responsibilities. A binder containing practical information and instructions, including forms, in an organized and systematic manner was developed and distributed to the precinct committee members. Precinct committee members interviewed by Carter Center observers expressed appreciation for the introduction of this tool. This is a positive step in codifying and formalizing operational procedures, which enhances the consistency of the operations in the different precincts. Nevertheless, training time continued to be short, good enough for the "old-timers" as a refresher course, but not sufficient for the newcomers.

Lack of Formalized Procedures

The development of thorough and clear procedures and training of electoral staff are key tasks in the preparation of electoral operations. During the operational preparations, the procedural training of the electoral officials, in particular of the polling and counting officials, is crucial to ensure consistency in the application of the procedures and promoting the professional performance of the staff at the polling sites. Development of written and publicly available procedures combined with effective procedural training are critical to enhancing the overall credibility of the electoral process.

To date, Muscogee (Creek) Nation elections have lacked written formal procedures beyond the legal provisions governing the preparation and conduct of the electoral operations. Partly, this is because large elements of the polling and counting processes are outsourced to a private vendor. The vendor's focus is on the use of technology and not on the substantive operational procedures in the broader electoral process.

As noted above, efforts to begin codifying procedures were implemented by the Elections Office between the primary elections and the general elections. The introduction of the binder for polling staff was a welcome development and could serve as the basis for further formalization of operational procedures and instructions.

Carter Center recommendation: The Election Board and Election Office should develop a manual in advance of the next elections to outline procedures for the entirety of the electoral process. Such a manual would detail procedures for election day workers, including technical elements and operation of equipment, as well as procedures for opening and closing of polling stations, identification of voters and issuance of ballots, the roles and responsibilities of different members of the precinct committee, handling situations such as a voter's name not appearing on

the voters list, when to issue a provisional ballot, and how to pack up forms and materials at the end of the day.

Other Operational Preparations

The Election Board, through the Election Office, introduced several other procedures to the process in response to complaints that arose during the September primary election and the court's orders. These measures, which included bolstering the documentation of the chain of custody of sensitive electoral materials, were positive additions that strengthened the electoral process and the December general election. Other measures included strengthening procedures for verifying, sorting, and counting of absentee ballots, as well as formalizing security processes for ballots and ballot boxes.

Secrecy of the vote for voters with disabilities also improved in the December general election with the introduction of a new tabletop voting screen that gave disabled and elderly voters the option to complete their ballots in secret while sitting at tables rather than standing at voting booths. The board and office took additional measures to enhance transparency at all stages of the general elections process, particularly during the processing of absentee ballots, including by providing more information to observers and watchers.

Additionally, as in recent elections, registered voters who had requested an absentee ballot but decided instead to vote in person on election day were treated in the same way as voters who could cast "challenged votes." Challenged votes cast on election day are counted only after inspection by the Election Board and confirmation that they were cast by a registered voter and that that person did not also cast an absentee ballot.

Civic and Voter Education

Effective civic and voter education are crucial to ensuring that an informed electorate can properly exercise the right to vote.[60]

The Election Board, the manager, and the staff travel around MCN territory, as well as to other concentrations of MCN citizens, to promote voter registration and voting. There were more than 20 such face-to-face events in 2019, including visits to health care clinics and food distribution sites.

The Election Board has a website that is regularly updated with relevant electoral information, although updates are currently made by staff in the government's public relations department. The Election Board also maintains a Facebook page where updates on the electoral process are shared; as of February 2021, it had 1,575 followers.

The Election Office also produced and distributed effective posters to encourage voter participation and inform voters of key dates. Some of the local communities prepared their own flyers, which seemed to be effective in reminding voters about the election. The Tulsa community included reminders in its monthly newsletter sent to members who regularly visit the Tulsa community center.

[60] ICCPR, Article 25(b); UNHRC General Comment 25, para. 11: "The Right to Participate in Public Affairs, Voting Rights, and the Right to Equal Access in Public Service."

During early voting and on both election days, Carter Center observers noted that voters largely understood the process, although some voters were unfamiliar with how to mark the ballot. In some cases, voters were unfamiliar with the legislative change to the "at large" system and didn't understand that they could vote for one (but not more than one) candidate in each district, and not just the district where they live. In a few cases, voters weren't aware of the implications of the court decision regarding the September primary election and that the November election was a "re-do" of the primary and the general election had been pushed into December.

Carter Center recommendation: In advance of future elections, civic and voter education should be advanced to help increase numbers of registered voters and ensure voters understand the voting process, the ballot, and the electoral system that defines the representation of government.

Election Days: Nov. 2 Primary Election and Dec. 14 General Election

The quality of voting operations and secrecy of the ballot are crucial to determining the degree to which an election is consistent with democratic obligations. All citizens should enjoy the right to universal and equal suffrage, subject only to reasonable and objective limitations.[61]

Early Voting

The 2019 elections were the first in which Muscogee (Creek) voters were offered the opportunity to vote early in person. The National Council's Act NCA 18-117, approved on Aug. 25, 2018, stipulates that "Early in person voting shall take place on the Wednesday and Thursday immediately preceding the day of an election between the hours of 7:00 AM and 7:00 PM" and that "The number and specific locations of such early in person voting sites shall be established by Election Board Resolution, subject to approval by Tribal Resolution." The Election Board is mandated to "implement and maintain a system and process that prohibits persons from voting multiple times in an election" and to count the ballots from early in-person voting "at the same time election day in person ballots are counted, using the same counting procedure."[62]

In advance of the Nov. 2, 2019, primary election there were two days of early voting on Oct. 30 and 31. Carter Center observers visited all four early-voting locations on Oct. 31 and assessed operations positively. In advance of the Dec. 14 general election, Carter Center observers visited three of the four early voting locations on Dec. 11, and all four locations on Dec. 12. The early voting locations (Tulsa, Okmulgee, Eufaula, and Okemah) are located throughout the Muscogee (Creek) Nation territory.

Precinct committee members interviewed by Carter Center observers reported that the early voting days are appreciated by voters who have busy weekend schedules and would thus be unable to vote in person on the Saturdays when tribal elections take place.

[61] U.N. ICCPR, Article 25; U.N. HRC, General Comment 25; U.N. UDHR, Article 21; IPU Declaration on Criteria for Free and Fair Elections, Article 2; U.N. Convention on the Rights of Persons with Disabilities, Article 29.
[62] NCA 18-117, Section 3.

Primary Election Day, Nov. 2, 2019

On election day, Carter Center observers reported a calm atmosphere and assessed voting procedures positively in all precincts visited. Precinct committee members applied their training well and operated with professionalism and efficiency. Voters were able to cast their ballots in secret. The most common type of voter education required on election day related to the at-large system and clarifying for voters that they could vote for one candidate in each district.

Some polling precincts experienced minor challenges with a curling of ballot papers that caused some voters to have difficulty inserting their ballots into the counting machines. Polling staff were able to assist voters in these instances while remaining respectful of the secrecy of the vote. A power outage in the Okemah area the night before voting raised concerns, but polling was able to proceed normally. Some precincts had challenges with the setup of polling stations. For example, one polling precinct had the voting screens set up so that the back of the voter was toward those in line, making it possible for violation of the secrecy of the vote if persons in line to see into the voting booth. Guidelines in training materials on the appropriate setup of polling stations that support an efficient flow and protect the secrecy of the vote would be welcome.

Placement of signs at precincts, particularly the 50-foot-limit sign and the 300-foot-limit sign, was inconsistent. Some teams had obviously gone to significant effort to ensure their signs were properly placed and easily visible, while others clearly did not. Despite this inconsistency, there seemed to be no issue with campaigning taking place too close to the polling locations, and campaign signs were not seen impinging on the "neutral zone."

Voter turnout has historically been low in Muscogee (Creek) Nation elections, and the Nov. 2 polls were no exception. Voter turnout was similar to or slightly higher than turnout in the Sept. 21 election, with only about 28% of registered voters participating.

Based on its observations of the process, The Carter Center issued a statement that commended the people of the Muscogee (Creek) Nation on a smooth electoral process during the November primary election. Polling precinct staff conducted their responsibilities with professionalism in precincts where The Carter Center observed during early voting and on election day. The Center's team found that Election Board commissioners and staff performed their responsibilities with integrity.[63]

General Election, Dec. 14, 2019

The successful organization of the Nov. 2 primary election paved the way for the preparations of the General Election to be held on Dec. 14. The two highest-ranking candidates for principal chief and the two highest-ranking candidates for National Council representatives for the five districts that were not decided in the primary election were included on the ballot for the December general election.

[63] The Carter Center: "Carter Center Observers Smooth Muscogee (Creek) Elections, Recommends Additional Training." Nov. 5, 2019. https://www.cartercenter.org/news/pr/2019/creek-110519.html

Election Day, Dec. 14. The polling process proceeded smoothly at all precincts observed. Carter Center observers witnessed an efficient voting process and noted that the positive changes made following the November primary elections contributed to smoother operations. Minor problems were attended to — with vendor support when necessary — in a timely manner.
The Carter Center observers were pleased to note that some of the preliminary recommendations stemming from observation of the November Primary Elections were implemented by the Nation's electoral authorities, which improved the electoral process. These positive changes included strengthening of poll worker training and introducing specialized training for different members of the polling staff. Procedures intended to bolster the documentation of the chain of custody of sensitive electoral materials were further strengthened for the December general election.

Voter turnout was similar to turnout in the November primary election, with 5,178 total votes reported in the principal chief race (compared to 5,137 who voted in the principal chief race in the November primary elections).

In a statement issued on Dec. 17, 2019, The Carter Center again commended the people of Muscogee (Creek) Nation on a smooth electoral process. The Center reported that polling staff conducted their responsibilities with professionalism in precincts where Carter Center observers were present, both during early voting and on election day. Election Board commissioners and staff once again performed their responsibilities with integrity and competence.[64]

Counting, Tabulation, and Results

Accurate and fair counting plays an indispensable role in ensuring that the electoral process is democratic and reflects the will of the voters. According to international standards for democratic election, there should be independent scrutiny of the counting process to foster public confidence.[65]

Processing of Absentee Ballots and Overall Counting and Tabulation

Counting of Votes at Precincts on Election Day. Counting of the votes for Election Day happens automatically at the various precincts, as the ballot box counts and totals the votes at each precinct when scanning each ballot paper as it is entered into the machine. At the close of polling, the precinct staff gets a results notice generated by the device. The notices are first relayed by phone and then brought to the center where absentee and early voting results are being processed. Precinct staff also brought the challenged votes they had issued during the day for them to be dealt with. Processing of challenged votes was done at the end of the process, to give a chance to verify that none of the challenged voters had mailed an absentee ballot. The arrival of materials and results from the election day precincts was a bit disorganized in the November primary elections, creating significant delays, but these issues were resolved for the December general elections, where substantial improvements were noted.

Collecting Vote Totals from Early Voting. The ballot boxes used during early voting, which were stored at Lighthorse headquarters under close security, are transported during election day to the location where absentee ballots are being processed. Like the election day ballot boxes, the ballot

[64] The Carter Center: "Carter Center Comments Muscogee (Creek) Nation on Smooth Electoral Process." Dec. 17, 2019. https://www.cartercenter.org/news/pr/2019/muscogee-121719.html
[65] U.N. Human Rights Committee, General Comment 25., para. 20; U.N. Convention Against Corruption, Article 18.

boxes used during early voting are actually counting machines. The vote total, or results notice, is printed from each machine and added to the overall election results.

Processing of Absentee Ballots and Primary Election, Counting, and Tabulation. The major operation during election day is the processing and counting of absentee ballots. This process begins in the morning, following the retrieval of the absentee ballots from the post office in Okmulgee. The manner of dealing with absentee ballots follows a standard processing of postal voting: Envelopes are opened, signatures are verified through scanning, secrecy envelopes are removed from the postal envelopes, and ballot papers are removed and then counted in the tabulation machine.

The Election Board conducted the counting of absentee ballots and tabulation of election results with assistance from Automated Election Services (AES), and in the presence of Carter Center observers and watchers representing candidates. The tabulation process was also live streamed by the national media outlet Mvskoke Media. These efforts toward transparency in the counting and tabulation process are commendable.

Overall, the counting and tabulation process was conducted smoothly. The Carter Center observed that measures were put in place since the Sept. 21 election to improve the efficiency of the process, including the addition of a second workstation to verify the signatures on absentee ballots.

Members of the Citizenship Office were present throughout the process to provide additional verification as needed if questions arose regarding the eligibility of any voter to cast a ballot, including absentee ballots, challenged ballots, or any questions from polling precincts. In some cases, members of the same household accidentally returned their ballots in the wrong envelopes. In these cases, the Citizenship Office representatives were able to confirm that the persons lived in the same household and ballots were counted, despite being returned in the wrong envelopes that had been switched with household members.

Role and Responsibilities of the Private Vendor: Polling and Counting

For the 2019 primary and general elections, preparations for and the implementation of polling and counting were contracted to AES, as has been the case for years. While outsourcing the implementation of electoral operations is not uncommon in tribal elections, it is important to remember that the entity responsible and accountable for the electoral process is the Election Board.

The private vendor is not an electoral authority. The role of the private vendor is to develop and implement technological options to conduct electoral operations. At times it seemed that important responsibilities of the electoral administration had been switched over to the vendor, who is not by law the entity responsible for the preparation and conduct of the election. It is extremely important that the Election Board remain on top of the process and accountable for all decisions being made regarding the polling and counting operations.

It was clear that the vendor was focused on the technologies needed to facilitate key operations of the electoral process. The focus on technology obscured other critical elements in the administration of the elections.

General Election, Counting and Tabulation. The counting of absentee ballots and tabulation of election results were conducted by the Election Board with assistance from AES in the presence of Carter Center observers and several watchers representing candidates. As in the November primary election, the MCN Citizenship Office was present during the counting of absentee ballots to help ensure that absentee voters were verified and their votes counted.

Overall, the counting and tabulation process was conducted smoothly. The Carter Center observed that after both the Sept. 21 and Nov. 2 primary elections, additional steps were put in place to improve the efficiency of the process, including the addition of workstations to verify the signatures on absentee ballots. The process was streamlined for the December general elections and was more efficient than on Nov. 2. Improvements included strengthened procedures for verifying, sorting, and counting of absentee ballots, as well as formalizing security processes for ballots and ballot boxes. The process was also improved by increased communication with watchers and observers to ensure better understanding and more effective observation as different steps of the counting and tabulation process were conducted.

The restrictive provisions regarding candidate watchers and the fact that watchers for only one of the two principal chief candidates in the general election were allowed to observe the counting of absentee ballots undermined the transparency that the presence of candidate agents could provide.[66] In addition, no independent citizen observers were present to witness the process during early voting or on election day, which also had been the case in most previous Muscogee (Creek) Nation elections and appears also to be true for many other elections in Native America. Given that there are no legal provisions for independent citizen observers, adding appropriate provision would be a good first step.

Results, Primary Election

Results of the primary elections were certified following the challenge period (ending Nov. 9, 2019), during which no complaints or petitions were submitted. On Nov. 7, an injunction regarding absentee ballots that had been filed in advance of the primary election was dismissed by the courts. The Election Board released (on social media) unofficial results by precinct on Nov. 7. Interestingly, the results of the Nov. 2 primary election did not differ significantly from the results of the Sept. 21 election that was annulled.

Results, General Election

Preliminary results of the general election were available on election night, showing that Muscogee (Creek) Nation National Council Second Speaker David Hill was ahead of former Tulsa District Representative Bim Stephen Bruner in the principal chief runoff election. Bruner conceded on election night with a public message on social media thanking his supporters and congratulating Hill.

The official complaint period concluded on Friday, Dec. 20, with no complaints filed.

[66] Please see section on candidate watchers on page 12 for more discussion.

Voter turnout was like that for the November primary, with 5,178 total votes reported in the principal chief race, compared to 5,137 who voted in that race in the November primary.

The Muscogee (Creek) Nation ushered in a new era of leadership with the inauguration ceremony of Principal Chief David Hill and Second Chief Del Beaver on Jan. 4, 2021, at the River Spirit Casino Resort. Hill and Beaver were officially sworn into office on Jan. 1 at the MCN Council House in Okmulgee.

Annex 9: Results of the September 21, 2019, Primary Election
Annex 10: Results of the November 2, 2019, Primary Election
Annex 11: Results of the December 14, 2019, General Election

Electoral Dispute Resolution

Effective, clear, and fair procedures for electoral dispute resolution are an essential part of a well-functioning electoral process and ensure that effective remedies are available for the redress of violations of fundamental rights related to the electoral process. Expeditious hearings for election matters are necessary to ensure an effective remedy, particularly given the relatively compressed time frame of electoral processes.[67]

The Sept. 21, 2019, Primary Election

On the Friday following the Sept. 21 primary election, a candidate for principal chief, Deputy Speaker of the National Council Lucien Tiger, submitted a request for a recount, arguing that there had been a breach in the chain of custody of sensitive electoral materials (absentee ballots). The court agreed that a breach in the chain of custody had occurred, though the court also noted that there was no evidence of any tampering or fraud that was conducted because of the technicality. On Oct. 2, the Supreme Court of the Muscogee (Creek) Nation declared the results of the Sept. 21 elections null and void and issued an order for a new primary election to be held within 60 days of the order.[68] A second primary election was organized for Nov. 2, 2019.

The results of the Nov. 2 primary election replicated the results of the Sept. 21 primary that was annulled.

The Nov. 2, 2019, Primary Election

On Wednesday, Oct. 30, a request was filed in advance of the elections by a candidate for principal chief, Bim Steve Bruner, for an injunction to allow additional time for the receipt and counting of absentee ballots past the legal deadline of election day, Nov. 2. The candidate argued that the mailing out of absentee ballots had been delayed, and therefore additional time should be ordered for them to be returned and counted. A district court heard the case on Thursday, Oct. 31, and ordered that all absentee ballots be collected from the United States Post Office by the Election Board at 11 a.m. each day (Monday-Friday) in the week following the election, and that the ballots be maintained securely, separated by date of arrival, and in a separate building if possible. The

[67] See Article 2.3 of the ICCPR and Article 8 of the UDHR.
[68] Muscogee (Creek) Nation Supreme Court. Case Number SC 19-01, *In Re: Election Recount Petition of Lucien Tiger*. Order and Opinion filed Oct. 2, 2019.

court set a hearing for Thursday, Nov. 7, to determine what, if anything, to do with absentee ballots that were returned after the legal deadline.

The Carter Center independently observed and verified the collection, transfer, and secure storage of absentee ballots on the first two weekdays following the election (Monday, Nov. 4, and Tuesday, Nov. 5) in accordance with the court order. Ballots were collected from the United States Post Office by the Election Board in the presence of Lighthorse Police and Carter Center observers. The ballots were placed in secure boxes with three locks, in accordance with the MCN Electoral Code, and were sealed with a unique seal number. The ballots were transferred securely by Lighthorse Police to a secure location. The only key to the secure storage facility was in the possession of Lighthorse Police, while the only keys to the boxes containing the ballots were held by the Election Office. Cameras and other security measures were in place. With each collection and transfer of ballots, a clear chain of custody was maintained and well documented.

The Dec. 14, 2019, General Election

In accordance with MCN law, a dispute period was open following the December 14 general election until 5 p.m. on Friday, Dec. 20. No disputes were filed during this period.

Jurisdiction, Sovereignty, and the Electoral Process

At times in the electoral process, there was concern regarding persons from outside the tribe violating elements of the nation's Electoral Code and Legal Framework for Elections and negatively impacting the electoral process. For example, in advance of the Nov. 2 primary election, some citizens received negative campaign material in the mail against a candidate, a violation of the Electoral Code. The materials were marked as being produced by "Indianz.com," and were thought to be produced by persons outside of the tribe. The situation raised questions regarding the tribe's jurisdiction and authority to prosecute persons from outside the tribe for violations of Muscogee (Creek) Nation law.

McGirt v Oklahoma. In November 2018, the United States Supreme Court heard a murder case involving Muscogee (Creek) land. The case involves a Muscogee (Creek) citizen who was convicted of murder in an Oklahoma court for a crime committed on Muscogee (Creek) territory. Muscogee (Creek) Nation has argued that the Muscogee (Creek) should have jurisdiction to try the case in the Muscogee (Creek) Nation's court system.

On July 9, 2020, the United States Supreme Court issued a 5-4 decision in favor of the Muscogee (Creek) Nation and against the State of Oklahoma. The decision recognizes that the eastern half of Oklahoma is tribal territory under tribal jurisdiction. In its ruling, the United States Supreme Court recognized a series of treaties between 1832 and 1866 that promised a homeland after the forced relocation of tribes and noted that the Creek Reservation was never disestablished by the U.S. Congress.[69] The MCN issued the following public statement on the landmark decision:

> "The Supreme Court today kept the United States' sacred promise to the Muscogee (Creek) Nation of a protected reservation. Today's decision will allow the Nation to honor our ancestors by maintaining our established sovereignty and territorial boundaries. We will

[69] *United States Supreme Court. McGirt v. Oklahoma. July 9, 2020.*

> continue to work with federal and state law enforcement agencies to ensure that public safety will be maintained throughout the territorial boundaries of the Muscogee (Creek) Nation."[70]

The decision will have important implications for tribal sovereignty across the United States. It will also impact future elections, confirming MCN's jurisdiction, enabling easier implementation of electoral activity, and allowing for the prosecution of electoral offenses within the now fully legally recognized territory.

Citizenship and Eligibility to Vote and Contest Elections

In recent years, the Muscogee (Creek) Nation has been involved in legal disputes related to claims of citizenship by descendants of freed black slaves of the Muscogee (Creek) Nation, or the Freedmen. Most recently, in October 2019, a civil suit was filed in which petitioner Ron Graham seeks to appeal a decision from the Muscogee (Creek) Nation Citizenship Board denying his application for citizenship. According to reporting by the Mvskoke News, "Graham claims that the 1979 Constitutional Reorganization and series of subsequent referendum disenfranchised Freedmen, causing them to lose citizenship, voting rights, and access to federally funded programs and identity."[71]

A similar separate case was dismissed in May 2019 by a District of Columbia federal court in which the Muscogee (Creek) Indian Freedmen Band brought suit against tribal leaders and the U.S. Department of the Interior related to denial of claims of citizenship and associated voting rights and access to services and benefits. The case was reportedly dismissed because of a lack of records showing that citizenship applications had been filed and denied within the last decade.[72]

Conclusions and Recommendations

The Carter Center was honored to provide independent and impartial observation and reporting around the Muscogee (Creek) Nation's primary and general elections in 2019. The nation's constitutional and legal framework for elections, together with the independent election management body in the Election Board, provide an important foundation for the MCN's democratic processes. The primary election on Nov. 2 was orderly and transparent, and the Dec. 14 general election demonstrated improvements over the earlier rounds.

Going forward, and in a spirit of respect and support, the Carter Center identified several areas where steps can be taken to improve the conduct of future elections in the Muscogee (Creek) Nation, as outlined below:

[70] Muscogee (Creek) Nation statement regarding U.S. Supreme Court decision. July 9, 2020.
[71] Ellis, Angel. "MCN Freedman Citizenship Civil Case Filed in MCN District Court: Latest Filings for the MCN Freedman Show Nearly Two Decades of Litigation." The Mvskoke News. December 15, 2019. Vol. 49, Issue 24.
[72] Ibid.

To the National Council

To update the legal framework and to address gaps and inconsistencies, a full review of electoral legislation should be considered. The review should involve an inclusive consultative process with a broad range of electoral stakeholders, including members of the Election Board and Election Office, precinct workers, candidates, representatives of relevant agencies such as the Citizenship Office, and civil society. The current electoral code contains some gaps, several contradictions, and in some places too much detail that is both out of date and overly restrictive.

- *Provisions for annulment.* The Carter Center recommends strong consideration be given to including in new legislation provisions clearly establishing the legal bases for the annulment of an election. No election is technically perfect, and to annul the results of an election, there must be strong evidence presented that the results of the election do not reflect the will of the people. Otherwise, the annulment of an election risks becoming or being perceived as a controversial decision to overturn the will of the people without justification.

- *Strengthen regulations regarding absentee ballots.* The Center recommends strengthening regulations regarding the use of absentee ballots, including establishing clear start and end dates to the timeframe during which absentee ballots can be mailed.[73]

- *Double voting and equal suffrage.* The Election Code requires clarification to explicitly bar double voting.

- *Constitutional guarantee of freedom of the press.* The Carter Center recommends that there be constitutional guarantees for the freedom of expression, and that law provide sufficient safeguards to ensure the political independence of state-owned media. A constitutional amendment guaranteeing free press, adopted with the support of the people, would reduce the frequency of legislative changes.

- *Ensure equal access to the media.* In future elections, consideration should be given to mandating that state media provide free airtime for all contesting candidates and political parties.

- *Strengthen election management.* The existence of an independent agency (the Election Board) and the operational support it receives from a professionally managed Election Office are positive elements that support democratic elections in the Muscogee (Creek) Nation and are consistent with international standards. The MCN should stake steps to further strengthen the election manager's office administratively and operationally to increase national ownership of electoral processes. External vendors playing a role should be limited to providing those services that would not be cost-effective for the Election Office to take on. While concerns raised by senior MCN leadership about the independence and impartiality of staff that might be borrowed from other agencies are valid, the Election

[73] Current legislation establishes that absentee ballots should be mailed not more than 20 days prior to an election, or not prior to 30 days for those outside the continental United States.

Office needs access to adequate headquarters staffing, mostly on a temporary basis, to ensure the success of complex election processes under tight timelines.

To the Electoral Authorities

- *Strengthen the election manager's office in administrative and operational terms to increase local ownership of the process.* While vendors may be necessary for some components of the process, providing additional resources to the office of the election manager will help ensure consistent Muscogee (Creek) ownership of all aspects of the electoral process.

- *Develop comprehensive election procedures and manuals.* The creation of the binder with instructions and forms was a positive addition to the December general elections. The Carter Center recommends that this concept be strengthened and further developed into a user-friendly manual of comprehensive operational procedures for use in future elections. Such procedures do not need to be extensive or overly complicated but should be comprehensive and rigorous enough to ensure consistency across the different polling sites. These procedures, including for early voting, election day voting, and processing of absentee ballots, should be made public in advance of future elections to increase awareness and transparency. In particular, they should be provided to all electoral staff, including precinct committee members, as well as to candidates and any civil society groups that might be accredited to observe the elections. Tables of contents and indexes should facilitate locating specific information quickly. This will also relieve some of the burden on the election manager and his limited staff on election day to the extent that the reference materials available to polling staff can respond to the bulk of questions that might arise during the course of their work.

- *Recruitment of precinct committee staff.* The improvements to the recruitment of precinct committee staff during the 2019 elections were welcome. Additional steps could be taken to ensure transparency and fairness in the recruitment of precinct workers and other staff.

- *Enhance the training of precinct workers.* Future electoral processes would be improved by ensuring a more proactive participation of the Election Board and Election Office staff in the development and delivery of substantive parts of the training sessions and ensuring that training goes beyond the technical aspects of the operation to include practical exercises, especially for those who are new to the process. Training of precinct workers would benefit by including live simulations and providing more instruction on the handling of exceptional cases. Precinct workers should be instructed to inventory supplies in the midafternoon so that anything that might run short can be supplied before closing.

- *Conduct a public logic and accuracy test of the ballot scanning equipment prior to the start of polling*. Using sample ballots, a logic and accuracy test would ensure that machines are counting ballots accurately and could be compared to a hand count of the sample ballots to enhance the integrity of the count. To ensure that the results of such a test are reflective of the accuracy of the equipment, the test deck should be prepared at the public event.

- *Continue strengthening chain-of-custody procedures*. Election managers should maintain the use of chain-of-custody documentation where a witness verifies and signs documents attesting that they have witnessed the transport of ballot boxes and that the boxes have not been tampered with. An inventory form could be included in each ballot case before it is put into storage, with space for the signatures of the electoral manager, at least one Election Board member, and perhaps one other witness.

- *Improve ballot design/layout.* The Election Office and its vendor should ensure that the layout of the ballot minimizes voter confusion and the possibility of overvotes and undervotes.

- *Increase voter and civic education.* The MCN should increase and amplify voter awareness and information efforts, including additional information about the election date, the ballot, the voting process, how to request an absentee ballot, and deadlines for the receipt of returned absentee ballots, not just through social media but also through other means. The Center recommends greater efforts to reach out to tribal members to encourage increased meaningful participation in the electoral process. Active partnerships between the electoral authorities and different agencies such as the Youth Council, Public Relations Department, Citizenship Office, and others, would be helpful in this regard.

- *Increase voter registration.* The Election Board and Election Office should strengthen efforts to increase voter registration, including through increased publicity, voter education drives, increased coordination with other offices, and greater outreach in general. Consideration could be given to publicity and awareness campaigns that feature respected leaders and celebrities.

- *Promote the deployment of candidate watchers and citizen observers.* The MCN government and electoral authorities should take steps to increase the capacity and deployment of both candidate watchers and independent citizen observers, especially youth, women, and people with disabilities, including by providing appropriate training. Watchers and observers provide an important layer of transparency to the process. The Carter Center recommends the Election Board undertake training for candidate watchers and observers, both pre-election and onsite training during the processing of absentee ballots. During the processing of absentee ballots, the Election Board and election manager can provide brief presentations at each step of the counting and tabulation process to ensure all witnesses understand its key aspects. Watchers and observers should be given badges and information packets.

- *Publish detailed election results expeditiously.* The Carter Center recommends ensuring that comprehensive results are produced in a timely manner, including results per voting modality (early voting, absentee ballots, and election day precincts). Results per polling district (polling stations for both early and election day voting) should also be made public expeditiously, as well as the number of absentee ballots sent, received, verified and counted, and the number of challenged ballots received, counted, and rejected (along with the reasons for rejection). Providing final results with this level of detail and transparency will build confidence in the electoral process and its outcome.

Acknowledgements

The Carter Center would like to thank the Election Board of Muscogee (Creek) Nation and Chief Floyd for extending the letters of invitation to observe the primary and general elections in 2019. Carter Center observers received a warm welcome from Election Board members, members of the National Council, candidates and their supporters, election workers, Mvskoke Media, and the Lighthorse police throughout the Muscogee (Creek) Nation. The Carter Center is grateful for the warm welcome from citizens.

The Carter Center's observation team included international electoral experts James Ray Kennedy and Carlos Valenzuela along with Democracy Program Associate Director Brett Lacy, Oversight was provided by Democracy Program Director David Carroll. The final report was drafted by James Ray Kennedy, Carlos Valenzuela, and Brett Lacy with editing by Brett Lacy, David Carroll, Sijuwade Falade, and Jim Kavanagh. The mission was supported by Communications Associate Director Soyia Ellison, and Democracy Program Assistant Erika Perry.

Annex 1: Letter of Invitation from Chair of Muscogee (Creek) Nation Election Board Wendy Dunson, October 23, 2019

THE
MUSCOGEE (CREEK) NATION
Election Board | Election Board Office
P.O. Box 580 | OKMULGEE, OK 74447
T 918.732.7631 | F 918.756.2637

JAMES R. FLOYD
PRINCIPAL CHIEF
LOUIS A. HICKS
SECOND CHIEF

October 23, 2019

The Carter Center
453 Freedom Parkway
Atlanta, GA 30307

To Whom It May Concern:

As Chair of the Muscogee Creek Nation Election Board, I am requesting your organization assist us by observing our upcoming Primary Election on November 2, 2019, or our General Election on December 14, 2019. Our headquarters is in Okmulgee, Oklahoma along with 18 precinct sites throughout the eastern part of Oklahoma (Muscogee Creek Nation Jurisdictional boundaries).

Sorry for the short notice but we just recently learned of your organization and what you can do to help make our elections and procedures better. We have been updating our codes, processes this last year, and are in need of some fresh eyes, and experienced people to help us in this endeavor.

Should you have questions about anything related to our elections, processes etc. you can contact Mr. Nelson Harjo, Jr., our Election Office Manager, at 918-732-7683 or by email at nelsonsh@mcn-nsn.gov.

Thank you in advance for any assistance you can provide.

Sincerely,

Wendy Dunson

Wendy Dunson, Chair
Muscogee Creek Nation Election Board

Annex 2: Letter of Invitation from Principal Chief James R. Floyd, October 23, 2019

Muscogee (CREEK) Nation

October 23, 2019

The Carter Center
453 Freedom Parkway
Atlanta, GA 30307

To Whom It May Concern:

On behalf of the Muscogee (Creek) Nation, as the Principal Chief, I request that your organization provide assistance and observation of our upcoming elections. The Muscogee (Creek) Election Board, an independent agency of our Tribe, will also be sending a similar request with details of the dates of our Primary and General Elections.

The Carter Center's experience of assisting more than 100 elections, with all types of governments, can help the Muscogee (Creek) Nation Election Board analyze and improve their practices, while respecting our sovereignty. As a nonpartisan, not-for-profit organization, I understand that you would not bill us nor accept any financial support from our Nation to avoid any perception of conflict of interest.

I recognize that this is very short notice, and appreciate your consideration of this request. Muscogee (Creek) Nation citizens deserve the best possible election process. The Election Board's goal is to conduct an election with the highest level of integrity. With your help, I feel this is possible. Should you have questions, you may reach me at 918-732-7601.

Sincerely,

James R. Floyd
Principal Chief

CC: Wendy Dunson, Muscogee (Creek) Nation Election Board Chair
Nelson Harjo Jr., Muscogee (Creek) Nation Election Office Manager
Lucian Tiger III, Speaker, Muscogee (Creek) Nation National Council

P. O. Box 580 Okmulgee, OK 74447-0580 1-800-482-1979

Annex 3: Carter Center Response to Muscogee (Creek) Nation Election Board Letter of Invitation, October 28, 2019

THE
CARTER CENTER

October 28, 2019

Mr. Nelson Harjo, Jr.
The Muscogee (Creek) Nation
Election board
P.O. Box 580
Okmulgee, OK 74447

Dear Mr. Harjo,

Thank you for the letter of invitation to observe upcoming elections in Muscogee (Creek) Nation. We welcome the opportunity to support Muscogee (Creek) Nation through impartial and professional election observation and are pleased to accept the invitation.

The Carter Center is prepared to deploy a small number of international election observers to observe the process and develop a report with their findings and recommendations. The team will be led by Democracy Program Associate Director Brett Lacy and will include senior electoral advisors to the Carter Center, Mr. James Ray Kennedy (United States) and Mr. Carlos Valenzuela (Colombia). Our team will be in touch regarding logistical preparations.

The Carter Center conducts its election observation work in accordance with the Declaration of Principles for International Election Observation and Code of Conduct for International Observers, which provides guidelines for professional and impartial methods of international election observation. The Carter Center conducts international non-governmental election observation missions which are composed of expert delegates and assess the electoral process against the constitution, election laws, and other pertinent legislation of the host country, as well as the host country's international commitments as outlined in key international and regional treaties.

Should you have any questions, please don't hesitate to contact me directly at david.carroll@cartercenter.org or by phone at 404-420-5172.

Best regards,

David Carroll
Director
Democracy Program

DEMOCRACY PROGRAM
ONE COPENHILL · 453 FREEDOM PARKWAY · ATLANTA, GEORGIA 30307 · (404) 420 5188 · FAX (404) 420-5196

Annex 4: Carter Center Response to Chief Floyd Letter of Invitation, October 28, 2019

THE
CARTER CENTER

October 28, 2019

Honorable Principal Chief James R. Floyd
The Muscogee (Creek) Nation
P.O. Box 580
Okmulgee, OK 74447

Dear Honorable Floyd,

Thank you for the letter of invitation to observe upcoming elections in Muscogee (Creek) Nation. We welcome the opportunity to support Muscogee (Creek) Nation through impartial and professional election observation and are pleased to accept the invitation.

The Carter Center is prepared to deploy a small number of international election observers to observe the process and develop a report with their findings and recommendations. The team will be led by Democracy Program Associate Director Brett Lacy and will include senior electoral advisors to the Carter Center, Mr. James Ray Kennedy (United States) and Mr. Carlos Valenzuela (Colombia). Our team will be in touch regarding logistical preparations.

The Carter Center conducts its election observation work in accordance with the Declaration of Principles for International Election Observation and Code of Conduct for International Observers, which provides guidelines for professional and impartial methods of international election observation. The Carter Center conducts international non-governmental election observation missions which are composed of expert delegates and assess the electoral process against the constitution, election laws, and other pertinent legislation of the host country, as well as the host country's international commitments as outlined in key international and regional treaties.

Should you have any questions, please don't hesitate to contact me directly at david.carroll@cartercenter.org or by phone at 404-420-5172.

Best regards,

David Carroll
Director
Democracy Program

DEMOCRACY PROGRAM
ONE COPENHILL · 453 FREEDOM PARKWAY · ATLANTA, GEORGIA 30307 · (404) 420-5188 · FAX (404) 420-5196

Annex 5: Carter Center News Release, October 28, 2019

THE CARTER CENTER

NEWS RELEASE

Carter Center to Send Observers to Muscogee (Creek) Elections

ATLANTA (Oct. 28, 2019) — Following letters of invitation from the election board and principal chief, The Carter Center is preparing to deploy a small team of observers to the Nov. 2 primary election in Muscogee (Creek) Nation as well as a general election anticipated in December.

The Center respects the tribe's sovereign status and is conducting this observation mission with the understanding that these are elections of a sovereign people for their government.

The Carter Center conducts its election observation work in accordance with the Declaration of Principles for International Election Observation and the Code of Conduct for International Observers, which provide guidelines for professional and impartial methods of international election observation. As an international non-governmental organization, The Carter Center assesses electoral processes against the host nation's constitution, election laws, and other pertinent legislation.

The Center's limited mission will produce a report that focuses on the legal framework and election-day processes of voting, counting, and tabulation.

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Contact: In Atlanta, Soyia Ellison, soyia.ellison@cartercenter.org

The Carter Center
Waging Peace. Fighting Disease. Building Hope.

A not-for-profit, nongovernmental organization, The Carter Center has helped to improve life for people in over 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and former First Lady Rosalynn Carter, in partnership with Emory University, to advance peace and health worldwide.

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Annex 6: Carter Center News Release, November 5, 2019

NEWS

THE CARTER CENTER

ONE COPENHILL ATLANTA, GA 30307

For Immediate Release

Tuesday, November 5, 2019

Contact: In Atlanta, Deanna Congileo, deannacongileo@cartercenter.org

Carter Center Observes Smooth Muscogee (Creek) Elections, Recommends Additional Training

OKMULGEE, OKLAHOMA — Following letters of invitation from the election board and principal chief, The Carter Center deployed a small team of observers to the Nov. 2 primary election in Muscogee (Creek) Nation for the tribe's principal chief, second chief, and members of the National Council. A general election is anticipated on December 14, 2019.

The Carter Center deployed a team of three international electoral experts to Muscogee (Creek) Nation (MCN), which retains jurisdiction over tribal citizens in eight counties in east-central Oklahoma. The team observed early in-person voting at all four early voting precincts in advance of election day as well as the training of poll workers. On election day, the team observed the polling process at 16 of the nation's 18 in-person voting precincts. In addition, The Carter Center accompanied members of the election board and Lighthorse police to collect absentee ballots from the United States Post Office in Okmulgee, Oklahoma, and transport them to the MCN government building where the processing of ballots took place. The Carter Center observed the verification and counting of the absentee ballots, the receipt of election materials from precincts after the polls had closed, and the tabulation of electoral results.

The Carter Center conducts its election observation work in accordance with the Declaration of Principles for International Election Observation and the Code of Conduct for International Observers, which provide guidelines for professional and impartial methods of international election observation.[1]* As an international nongovernmental organization, The Carter Center assesses electoral processes against the host nation's constitution, election laws, and other pertinent legislation.

[1] https://www.cartercenter.org/resources/pdfs/peace/democracy/des/declaration_code_english_revised.pdf

The electoral process is ongoing, as an electoral dispute resolution process allows for the filing of appeals November 4-8. Following questions raised about the mailing of absentee ballots, a court hearing is scheduled for Thursday, November 7, to determine whether any action should be taken on absentee ballots that arrived at the post office after the legal deadline. As the process is ongoing, the following are only preliminary observations. The Carter Center will release a final report and recommendations after the conclusion of the electoral process following the general election in December.

Background

A primary election was held in Muscogee (Creek) Nation on September 21, 2019. An electoral dispute resulted in a court order on October 2, 2019, to annul all results from the September 21 election and hold a second primary election. Several candidates withdrew from the process between the September 21 election and the vote on November 2. Under the MCN Electoral Code, if no candidate wins a majority of votes, the top two vote getters advance to the general election. The Muscogee (Creek) Nation's electoral system allows voters to vote for one candidate in each legislative district race.

Summary of Observations

The Carter Center commends the people of Muscogee (Creek) Nation on a smooth electoral process. Polling precinct staff conducted their responsibilities with professionalism in precincts where The Carter Center observed during early voting and on election day. The Center's team found that election board commissioners and staff performed their responsibilities with integrity.

The Electoral Process. The November 2 primary election featured two days of early in-person voting at four precincts across the territory on October 30 and 31. Early voting, intended to afford voters greater opportunity to exercise their franchise, was introduced for the 2019 elections and was received positively by those interviewed by Carter Center observers.

In addition to the early voting days, the election board introduced a number of other procedures to the process in response to complaints that arose during the September primary election and the court's orders. These measures, which included bolstering the documentation of the chain of custody of sensitive electoral materials, were positive additions that strengthened the electoral process. Other measures included strengthening procedures for verifying, sorting, and counting of absentee ballots, as well as formalizing security processes for ballots and ballot boxes. Additionally, as in recent elections, registered voters who had requested an absentee ballot but decided instead to vote in person on election day were treated in the same way as voters who were allowed to cast "challenged votes." "Challenged votes" cast on election day are counted only after inspection by the election board and confirmation that they were cast by a registered voter and that that person did not also cast an absentee ballot.

For these elections the election board also strengthened its recruitment process for precinct workers, including the implementation of an application process. The training of poll workers focused on the technical aspects of the electoral process and was a useful refresher for the many experienced precinct workers.

Election Day. The polling process proceeded smoothly on election day. Some polling precincts experienced minor challenges with a curling of ballot papers that caused some voters to have difficulty inserting their ballots into the counting machines. Polling staff were able to assist voters in these instances.

Voter turnout has historically been low in Muscogee (Creek) Nation elections, and the November 2 polls were no exception. Although results have not yet been certified, voter turnout appears to be similar to or slightly higher than turnout in the September 21 election, with only about 28 percent of registered voters participating. Voter registration numbers are low in the nation, as only about 18,000 of 89,000 citizens are registered voters. The Carter Center hopes participation will increase in future elections so that the will of the Muscogee (Creek) Nation people is more fully represented.

Counting and Tabulation. The election board conducted the counting of absentee ballots and tabulation of election results with assistance from Automated Election Services (AES), the private vendor that provides the voting and counting machines, and in the presence of Carter Center observers and watchers representing candidates. The tabulation process was also live-streamed by the national media outlet Mvskoke Media. These efforts toward transparency in the counting and tabulation process are commendable.

Overall, the counting and tabulation process was conducted smoothly. The Carter Center observed that additional steps were put in place since the September 21 election to improve the efficiency of the process, including the addition of a second workstation to verify the signatures on absentee ballots. Members of the Citizenship Office were present throughout the process to provide additional verification as needed if questions arose regarding the eligibility of any voter to cast a ballot, including absentee ballots, challenged ballots, or any questions from polling precincts.

Recommendations

The Carter Center respectfully offers the following recommendations for additional improvements in advance of the December 14 general elections:

Increase public information, including voter awareness efforts. The Carter Center recommends that public information campaigns regarding the elections be increased, including additional information about the election date, the ballot, the voting process, how to request an absentee ballot, and deadlines for the receipt of returned absentee ballots.

Enhance training of precinct workers. Future electoral processes would be improved by ensuring a more proactive participation of the board and election manager in the development and implementation of substantive parts of the training sessions and ensuring that training goes beyond the technical aspects of the operation to include practical exercises, especially for those who are new to the process.

Provide onsite training for watchers and observers during tabulation. Watchers and observers provide an important layer of transparency to the process. The Carter Center recommends that the election board provide brief presentations at each step of the counting and tabulation process to ensure that all witnesses understand its key aspects. Information shared by election board members during the counting and tabulation process on November 2 was helpful, and the Center recommends that this communication be increased for the December 14 general election.

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Annex 7: Carter Center Statement, December 18, 2019

THE
CARTER CENTER

CARTER CENTER COMMENDS MUSCOGEE (CREEK) NATION ON SMOOTH ELECTORAL PROCESS

Following letters of invitation from the Muscogee (Creek) Nation Election Board and principal chief, The Carter Center deployed a small team of three international electoral experts to observe elections in Muscogee (Creek) Nation (MCN) for principal chief, second chief, and members of the National Council. The Center deployed observers to the Nov. 2, 2019, primary election and the Dec. 14, 2019, general election. The Center released a preliminary statement following the Nov. 2 primary. This statement provides a summary of observations of the Dec. 14 general election.

As it did for the Nov. 2 primary, the Carter Center team observed early in-person voting for the general election, which took place on Dec. 11 and 12, visiting all four early-voting precincts. In addition, the Center accompanied the election manager and Lighthorse (Muscogee (Creek) Nation police) as they delivered sensitive electoral material from the four early-voting stations to Lighthorse headquarters at the end of each early-voting day.

On election day, the team observed the polling process at all of Muscogee (Creek) Nation's 18 in-person voting precincts. Carter Center observers also accompanied members of the Muscogee (Creek) Nation Election Board and Lighthorse police when they collected absentee ballots from the U. S. post office in Okmulgee, Oklahoma, and transported them to the MCN government building, where processing of those ballots would take place. The Carter Center observed the verification and counting of the absentee ballots, the receipt of election materials from precincts after the polls had closed, and the tabulation of electoral results. In addition, Carter Center observers met with members of the election office, spoke with candidates and campaign officials, and with MCN agencies, including the Citizenship Office, Historic and Cultural Preservation, and Youth Services.

The electoral process continues, as an electoral dispute-resolution process allows for the filing of challenges from Dec. 16 – 20. As the process is ongoing, the following are only preliminary observations that complement the initial statement issued following the Nov. 2 primary. The Carter Center will release a more comprehensive final report after the conclusion of the electoral process.

Background

Results of the Nov. 2 primary were certified following the challenge period (which ended on Nov. 9), during which no complaints or petitions were submitted. On Nov. 7, an injunction involving absentee ballots that had been filed in advance of the Nov. 2 preliminary election was dismissed by the courts.

Voter registration was re-opened after the Nov. 2 primary election primary and closed on Nov. 19 for absentee voting and on Dec. 4 for in-person voters.

These developments paved the way for preparations for the general election. The two highest-ranking candidates for principal chief and the two highest-ranking candidates for National Council representatives for five districts were included on the ballot in the December general election.

Changes to the Legal Framework for the December General Election

New legislation related to elections was passed by MCN's National Council on Nov. 16, between the November primary and December general election.[1] The new legislation addressed three main areas. First, it amended the electoral code to require that watchers be a citizen and registered voter of Muscogee (Creek) Nation, which is consistent with international best practice.

The new legislation also amended the electoral code to require that in the case of a recount, only the votes in the contested race be recounted, not the votes for the other races. This amendment may need additional consideration, given that votes for all races (principal chief, second chief, and National Council seats) are cast on the same ballot paper, rather than separate ballots, making it possible that an issue that might affect one race might affect others on the same ballot paper.

Finally, the legislation created a new law that made it a felony to solicit or collect an absentee ballot from another person. This law appeared to be in response to perceptions of strategies implemented by the Steve Brunner campaign for the September and November primary elections.

Summary of Observations

The Carter Center commends the people of Muscogee (Creek) Nation on what appears so far to have been a smooth electoral process. Polling staff conducted their responsibilities with professionalism in precincts where The Carter Center observed, both during early voting and on election day. Muscogee (Creek) Nation Election Board commissioners and staff once again performed their responsibilities with integrity and competence.

The Electoral Process. The Carter Center observers were pleased that some of the preliminary recommendations stemming from the Center's observation of the November primary election were implemented by the nation's electoral authorities, which improved the electoral process. These positive changes include strengthening poll worker training and introducing specialized training for different members of the polling staff.

MCN election officials introduced a binder or polling manual for the December general election that contained practical information and instructions, including detailed information on procedures and important forms. The binder of materials was well-organized, and poll workers expressed great appreciation for the introduction of this tool. This is a positive step in codifying and formalizing operational procedures, which enhances the consistency of the operations in the different precincts.

Procedures intended to bolster the documentation of the chain of custody of sensitive electoral materials were further strengthened for the December general election.

Secrecy of the vote for disabled voters was improved in the December general election with the introduction of a new table-top voting screen that gave disabled and elderly voters the option to complete their ballots in secret while sitting at tables rather than standing at voting booths.

Election Day. The polling process proceeded smoothly, both during early voting and on election day. The changes made following the November primary contributed to more efficient operations.

[1] National Council Act (NCA) 19-141, Nov. 16, 2019.

Counting and Tabulation. The counting of absentee ballots and the tabulation of election results was conducted by the Muscogee (Creek) Nation Election Board with assistance from Automated Election Services (AES) in the presence of Carter Center observers and several watchers representing candidates. As in the primary, the MCN Citizenship Office was present during the counting of absentee ballots to help ensure that absentee voters were verified as MCN citizens so that their votes could be counted. The process was more streamlined and efficient than on Nov. 2. It also was improved by increased communication with watchers and observers to ensure better understanding and more effective observation as different steps of the counting and tabulation process were conducted.

Preliminary Results. Final results of the elections have not yet been released by the Muscogee (Creek) Nation Election Board, and a complaint period is currently open and will conclude on Friday, Dec. 20. Although official results have not yet been released, preliminary results indicate that voter turnout was similar to that for the November primary, with 5,178 total votes reported in the principal chief race (compared to 5,137 who voted in the principal chief race in the November primary). There were 18,125 registered voters for the Dec. general election.

Preliminary results that are publicly available on the website of the Muscogee (Creek) Nation show David Hill in the lead with 66 percent of the vote, and Steve Bruner with 34 percent of the vote. Bruner conceded with a public message on social media thanking his supporters and congratulating Hill.

Watchers. Candidate "watchers" had a limited presence in the precincts on election day and during the absentee-ballot processing. The Carter Center saw watchers for one principal chief candidate (Bruner) at two polling precincts on election day, and none at precincts during early voting. Watchers for principal chief candidate David Hill were present during the processing and counting of absentee ballots.

Unfortunately, the watcher designated by principal chief candidate Steve Bruner to observe the counting of absentee ballots was not allowed to witness the proceedings. Muscogee (Creek) Nation Election Board authorities applied a strict interpretation of the law and asked the watcher to leave, noting that she had arrived after the start of work and after they had issued an oath to other watchers present. The restrictive provisions regarding candidate watchers and the fact that watchers for only one of the two principal chief candidates was allowed to observe the counting of absentee ballots limited the transparency provided by monitoring. In addition, unfortunately, no independent citizen observers were present to witness the process during early voting or on election day, which also has been the case in most previous Muscogee (Creek) Nation elections and appears also to be true for many other elections in Native America.

Recommendations

The Carter Center respectfully offers the following recommendations for additional improvements for future electoral processes. Additional recommendations will be made in a final report following the conclusion of the electoral process.

Review and Reform the Electoral Code. MCN's next National Council should conduct a comprehensive review of the electoral code involving as many stakeholders as possible. The current

electoral code contains some gaps, contradictions, and, in some places, too much detail that is out of date and restrictive. Among the areas of the code to review are provisions related to watchers and observers (with the goal of increasing transparency), election management structures, polling, and counting procedures.

Strengthen Election Management. The fact that the Muscogee (Creek) Nation Election Board administers the elections as an independent agency, with operational support from the election office, is a positive attribute in Muscogee (Creek) Nation and consistent with international standards. MCN should take steps to further strengthen the election manager's office administratively and operationally to further increase national ownership of electoral processes.

Develop Comprehensive Election Procedures and a Manual. The creation of the binder with instructions and forms was a welcome and positive addition to the December general election. The Carter Center recommends that this be further developed into a manual of comprehensive operational procedures for use in future elections. Such procedures do not need to be extensive or overly complicated but should be rigorous enough to ensure consistency across the different polling sites. These procedures – including those for early voting, election day voting, and processing of absentee ballots – should be made public in advance of future elections to increase awareness and transparency. They should be presented in written form to all electoral staff, including poll workers, as well as to candidates.

Increase Voter and Civic Education. MCN should increase and amplify voter awareness and information efforts, not just through social media but also through other means. The Center recommends greater efforts to reach out to tribal members to encourage participation in the electoral process. Partnerships between the electoral authorities and different agencies such as the MCN Youth Council, public relations department, MCN Citizenship Office, and others, would be helpful in this regard.

Increase Voter Registration. The Muscogee (Creek) Nation Election Board and Muscogee (Creek) Nation Election Office should strengthen efforts to increase voter registration, including through increased publicity, voter education drives, increased coordination with other offices, and greater outreach. Consideration could be given to publicity and awareness campaigns that feature respected leaders and celebrities.

Observation Background:

The Carter Center conducts its election observation work in accordance with the Declaration of Principles for International Election Observation and the Code of Conduct for International Observers, which provide guidelines for professional and impartial methods of international election observation. As an international non-governmental organization, the Center assesses electoral processes against the host nation's constitution, election laws, and other pertinent legislation.

Annex 8: Sample of Campaign Advertisements

Elect Charles Son McHenry
MCN National Council Representative
Wagoner District
Willing to listen, Willing to advocate.
A desire to serve.
Elect
SEPTEMBER 21, 2019
Bert Robison
FOR NATIONAL COUNCIL OKFUSKEE DISTRICT SEAT A
"A voice for the people"
"If elected I will be dedicated and accountable to the Muscogee People of the Okfuskee District and to the Nation as a whole. I will truly be a voice for the people. I believe my experience and the positions that I have held working for the Muscogee (Creek) Nation have uniquely prepared me for this opportunity. I intend to bring Honesty, Integrity, Accountability

Annex 9: Results of the September 21, 2019, Primary Election

FINAL REPORT

The Muscogee (Creek) Nation
Official Election Results
Primary Election
Saturday, September 21, 2019

PRINCIPAL CHIEF		
LUCIAN TIGER	1029	20.58%
JOSEPH ROGERS	48	0.96%
MONTE RANDAL	617	12.34%
TIMOTHY GOOD VOICE	306	6.12%
SAMUEL ALEXANDER	125	2.50%
BRENDA GOLDEN	261	5.22%
BIM STEVE BRUNER	1039	20.78%
DAVID HILL	1272	25.44%
JACKIE JACKSON	168	3.36%
GEORGE TIGER	135	2.70%

SECOND CHIEF		
DEL BEAVER	3065	63.05%
ADAM JONES	1796	36.95%

CREEK (SEAT A)		
JOSEPH HICKS	1492	31.71%
DODE WARRINGTON-BARNETT	1394	29.63%
DEAN HUGHES	1819	38.66%

MCINTOSH (SEAT A)		
DARRELL PROCTOR	3180	68.64%
CHARLES COLBERT	1453	31.36%

MUSKOGEE (SEAT A)		
MARY CRAWFORD	1707	37.43%
LORA HARJO-KING	1891	41.46%
JESSINA BROWN	963	21.11%

OKFUSKEE (SEAT A)		
RANDALL HICKS	3030	65.64%
BERT ROBISON	1586	34.36%

TUKVPVTCE (SEAT A)		
RUFUS SCOTT	1596	34.12%
EDWIN MARSHALL	1443	30.85%
ANNA MARSHALL	1638	35.02%

OKMULGEE (SEAT A)		
PATRICK MOORE	598	12.53%
WILLIAM LOWE	1059	22.18%
GROVER WIND	1056	22.12%
BRIAN JONES	678	14.20%
CARMIN TECUMSEH-WILLIAMS	1383	28.97%

TULSA (SEAT A)		
ROBERT HUFFT	2973	63.01%
JERRY WILSON	692	14.67%
CYNTHIA TIGER	1053	22.32%

WAGONER (SEAT A)		
PAMELA SNYDER-OSMUN	378	8.18%
TERRI JORGENSEN	840	18.19%
CHARLES MCHENRY	2040	44.17%
DIERDRA SOAP	1361	29.47%

Annex 10: Results of the November 2, 2019, Primary Election

FINAL REPORT

The Muscogee (Creek) Nation
Unofficial Election Results
Primary Election
Saturday, November 2, 2019

PRINCIPAL CHIEF		
SAMUEL ALEXANDER	88	1.71%
BIM STEVE BRUNER	1172	22.81%
TIMOTHY GOOD VOICE	254	4.94%
DAVID HILL	1966	38.27%
LUCIAN TIGER	1161	22.60%
MONTE RANDALL	496	9.66%

SECOND CHIEF		
DEL BEAVER	3480	69.39%
ADAM JONES	1535	30.61%

CREEK (SEAT A)		
JOSEPH HICKS	1760	36.25%
DEAN HUGHES	1687	34.75%
DODE WARRINGTON-BARNETT	1408	29.00%

MCINTOSH (SEAT A)		
CHARLES COLBERT	1451	30.24%
DARRELL PROCTOR	3347	69.76%

MUSKOGEE (SEAT A)		
JESSINA BROWN	834	17.58%
MARY CRAWFORD	1746	36.80%
LORA HARJO-KING	2165	45.63%

OKFUSKEE (SEAT A)		
RANDALL HICKS	3242	67.39%
BERT ROBISON	1569	32.61%

OKMULGEE (SEAT A)		
BRIAN JONES	554	11.32%
WILLIAM LOWE	1248	25.50%
PATRICK MOORE	435	8.89%
CARMIN TECUMSEH-WILLIAMS	1509	30.83%
GROVER WIND	1149	23.47%

TUKVPVTCE (SEAT A)		
ANNA MARSHALL	1890	39.15%
EDWIN MARSHALL	1370	28.38%
RUFUS SCOTT	1567	32.46%

WAGONER (SEAT A)		
TERRI JORGENSEN	803	16.58%
CHARLES MCHENRY	2328	48.07%
DIERDRA SOAP	1712	35.35%

Annex 11: Results of the December 14, 2019, General Election

FINAL REPORT

The Muscogee (Creek) Nation
Official Election Results
General Election
Saturday, December 14, 2019

PRINCIPAL CHIEF		
BIM STEVE BRUNER	1779	34.36%
DAVID HILL	3399	65.64%
CREEK (SEAT A)		
JOSEPH HICKS	2520	51.54%
DEAN HUGHES	2369	48.46%
MUSKOGEE (SEAT A)		
MARY CRAWFORD	2454	50.53%
LORA HARJO-KING	2403	49.47%
OKMULGEE (SEAT A)		
WILLIAM LOWE	2504	50.87%
CARMIN TECUMSEH-WILLIAMS	2418	49.13%
TUKVPVTCE (SEAT A)		
ANNA MARSHALL	2846	58.48%
RUFUS SCOTT	2021	41.52%
WAGONER (SEAT A)		
CHARLES MCHENRY	2775	56.74%
DIERDRA SOAP	2116	43.26%