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Department of Electoral
Cooperation and Observation

Secretariat for
Strengthening Democracy

ELECTORAL GOOD PRACTICES GUIDE

For strengthening
electoral processes

2021

**ELECTORAL GOOD PRACTICES GUIDE FOR STRENGTHENING ELECTORAL PROCESSES
SECRETARIAT FOR STRENGTHENING DEMOCRACY (SSD)
DEPARTMENT OF ELECTORAL COOPERATION AND OBSERVATION (DECO)**

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Foreword

This *Electoral Good Practices Guide for Strengthening Electoral Processes* was developed in compliance with General Assembly resolution number 2931 (XLIX-O/19), which requested “the General Secretariat, through the Department of Electoral Cooperation and Observation, to develop a draft electoral good practices guide for strengthening electoral processes in the region.”

It compiles in a single text, for the first time, the principles, rights, electoral procedures, and substance of the juridical development of the Inter-American system, as well as the decisions of the Inter-American Juridical Committee, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, along with the resolutions of the OAS General Assembly and Permanent Council, and the recommendations emanating from Electoral Observation Missions. Taken together, these render the document a fundamental instrument for the effective exercise of democracy.

The commemoration of the twentieth anniversary of the adoption of the Inter-American Democratic Charter constitutes the ideal setting to present this valuable tool, as it opens a space for reflection on its content and the principles and values expressed in this hemispheric instrument. As stated in the Democratic Charter, representative democracy is “an indispensable condition for the stability, peace, and development of the region,”¹; and electoral processes, which are ongoing and always dynamic by nature, require continuous enhancements that allow them to remain on the leading edge as they face the democratic challenges imposed by the current reality.

Strengthening and consolidating democracy in the region is a priority and one of the pillars of the OAS, which translates into a permanent effort to build stronger democratic institutions and improve the organization of electoral processes that are increasingly transparent and fair, and that guarantee legality, certainty and, above all, respect for the will of the citizens, as expressed through the ballot box.

¹ Inter-American Democratic Charter, 2001.

In recent years, we have witnessed in the region - and in the world - highly competitive political contests, which generally take place in highly polarized contexts, where disinformation, fake news, and hate speech have gained space and have tested the resilience of political actors and institutions.

However, the current reality has also brought greater openness and more involvement by citizens, who demand more and improved representation and more inclusive spaces in decision-making. With increasing frequency, we are seeing more women, indigenous people, migrants, and members of the LGBTI community clamoring to make their voices heard at the highest levels of politics and society and thus shine a light on those they represent.

This evolution demands a framework that provides OAS Member States with access to electoral best practices, which then allows them to invest in the improvement and modernization of their own electoral processes. This is the spirit and greatest asset of this guide; to be a point of reference in these changing times. It does not seek to be either a binding or a burdensome document, but rather a useful guide for a better exercise of political rights in the region.

Likewise, the *Electoral Good Practices Guide for Strengthening Electoral Processes* illustrates the crucial work of the OAS Department of Electoral Cooperation and Observation in strengthening democracy in the Americas, not only through its deployments in the field but also at the technical and conceptual level. This publication joins other works that have addressed contemporary electoral challenges and have become fundamental references by influencing the very substance of democratic exercises, such as the *Guide to Organizing Elections during a Pandemic* (2020) and the *Guide to Guarantee the Freedom of Expression against Misinformation in Electoral Contexts* (2019), as well as electoral observation methodologies that are frequently updated to include fresh concepts, in order to observe electoral processes in a comprehensive manner.

This demonstrates clearly the permanent commitment of the OAS General Secretariat to provide Member States with the tools and the necessary support to facilitate long-term institutional modernization and strengthening, which improves the quality of democracy and protects the rights of the citizens of the hemisphere.

Luis Almagro
Secretary General

Introduction

The exercise of democracy and democratic identity are key factors driving prosperity in the States of the Americas, as the Inter-American system acknowledged when it established the defense and promotion of democracy as major objectives. Thus, the Charter of the Organization of American States (OAS) proclaims its conviction that *“representative democracy is an indispensable condition for the stability, peace and development of the region”* and adds that one of the essential purposes of the OAS is to *“promote and consolidate representative democracy.”*² Furthermore, Article 3.d of the Charter mentions that *“[t]he solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy.”*

These principles and ideals were also powerfully upheld in the American Declaration of the Rights and Duties of Man (1948), in the American Convention on Human Rights “Pact of San José” (1969), and in the Declaration of the Presidential Summit in Quebec City (2001). This last-mentioned document acknowledges that *“the values and practices of democracy are fundamental to the advancement of all our objectives. The maintenance and strengthening of the rule of law and strict respect for the democratic system are, at the same time, a goal and a shared commitment and are an essential condition of our presence at this and future Summits.”*³ Finally, the Inter-American Democratic Charter (2001) establishes that *“The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.”*⁴

Accordingly, political and electoral rights are pivotal to electoral processes in the region because they constitute unwaivable components of democracies. Electoral processes are not just elections but the means by which modern societies renew their governments in a civilized and peaceful fashion. In those processes, citizens freely choose persons to represent them and grant legitimacy to governments resulting from polls. In other words, they embody the will of the people.

² Charter of the Organization of the American States. 1948.

³ Declaration of the Presidential Summit in Quebec City. 2001.

⁴ Inter-American Democratic Charter. Art. 1. 2001.

Electoral processes are the instruments and *raison d'être* of democratic systems and a prerequisite for democratic governments to be able to fulfill their function of representing the citizens they govern.

This guide was prompted by the OAS General Assembly held from June 26-28, 2019, in Colombia, which issued resolution AG/RES. 2931 (XLIX-0/19), "Strengthening Democracy", Section XI.3 of which resolved "[t]o request the General Secretariat, through the Department of Electoral Cooperation and Observation, to pursue efforts, within the existing resources, to develop a draft electoral good practices guide for strengthening electoral processes in the region."

The OAS Department of Electoral Cooperation and Observation is the area responsible for organizing and deploying Electoral Observation Missions. Those missions constitute a unique and specialized source of information on how electoral processes are conducted in the region and are of great value for highlighting those aspects of electoral processes that strengthen representative democracy in the Americas. The recommendations and observations contained in each of those missions' reports to the Permanent Council formed part of the sources tapped for the preparation of this guide. In the same way, we thank the electoral authorities of the region for the contributions made during the three consultations that were carried out for the development of this work. We likewise value the comments and suggestions made by the representations to the Permanent Council.

While much of the content of this guide has been variously addressed in different documents, there is no single paper dealing with the subject in an orderly manner. Thus, the guide attempts to compile the various rights, principles, freedoms, and facets of the Inter-American system underlying the efforts of the Organization of American States to foster and promote democracy in the Hemisphere.

Democracy in the Inter-American system

The Inter-American system has spelled out the rights and freedoms directly associated with electoral processes in the three above-mentioned documents (the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights "Pact of San José", and the Inter-American Democratic Charter). They, in turn, have triggered resolutions, decisions, or executive orders issued by General Assemblies, the Permanent Council, and the General Secretariat.

Rights relating to electoral processes upheld in instruments of the Inter-American system used as the basis for this guide.

RIGHT-FREEDOM / INSTRUMENT	AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN (1948)	AMERICAN CONVENTION ON HUMAN RIGHTS (PACT OF SAN JOSÉ, COSTA RICA) (1969)	INTER-AMERICAN DEMOCRATIC CHARTER (2001)
1 Right to democracy			Article 1
2 Right to participate in government	Article 20	Article 23	
3 Periodic elections	Article 20	Article 23	Article 3
4 Free elections	Article 20		Article 3 and 23
5 Fair elections			Article 3 and 23
6 Universal and equitable suffrage	Article 20	Article 23	Article 3
7 Secret vote	Article 20	Article 23	Article 3
8 Honest elections	Article 20		
9 Right to participate directly in government	Article 20	Article 23	
10 Right to access power			Article 3
11 Full and equal participation of women			Article 28
12 Pluralist system of political parties and organizations			Article 3
13 Right to security	Article 1	Article 7	
14 Balanced and transparent campaign financing system			Article 5
15 Free press			Article 4
16 Transparency in government activities			Article 4
17 Right to file claims/suits	Article 24		Article 8

RIGHT-FREEDOM / INSTRUMENT	AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN (1948)	AMERICAN CONVENTION ON HUMAN RIGHTS (PACT OF SAN JOSÉ, COSTA RICA) (1969)	INTER-AMERICAN DEMOCRATIC CHARTER (2001)
18 Freedom of association	Article 22	Article 16	Article 3
19 Right of assembly	Article 21	Article 15	
20 Freedom of expression/speech	Article 4	Article 13	Article 4
21 Freedom of movement	Article 8	Article 22	
22 Access to basic civil rights	Article 7		
23 Right to equality	Article 2		
24 Elimination of all forms of discrimination		Article 1	Article 9
25 Respect for human rights			Article 3
26 Rule of law			Article 3 and 4
27 Fundamental freedoms			Article 3

The above table provides a guide to attributes and conditions that should be observed during electoral processes and by those taking part in them. It also lists features of the context in which elections should be held.

A. Principles

▶ DEMOCRATIC PRINCIPLE

The Inter-American Democratic Charter declares: *“The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.”*⁵

Democracy is an inalienable value of the Inter-American system and is based on the freely expressed will of peoples to decide on their own political, economic, social, and cultural systems and on full participation in all aspect of their own lives.

The effective exercise of democracy, the rule of law, the rights and freedoms of citizens and the means that guarantee them, along with the holding of periodic, free, and fair elections based on universal and secret suffrage as an expression of the sovereignty of the people, a pluralist system of political parties and organizations, and the independence of the branches of government constitute the foundation and goal of the Inter-American system and of its Member States.

“

The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. Democracy is essential for the social, political, and economic development of the peoples of the Americas.

Article 1, Inter-American Democratic Charter

”

The democratic principle makes it possible to fulfill and respect human rights, the rule of law, and the existence of institutional oversight of acts by government authorities. Citizens' right to decide is a natural consequence of the democratic principle.

⁵ Inter-American Democratic Charter. Art. 1. 2001.

► EQUALITY AND NON-DISCRIMINATION PRINCIPLE

Under the American Convention on Human Rights “Pact of San José”, this component comprises both: 1) the right of individuals not to suffer discrimination; and 2) the obligation of the State to guarantee the substantive equality that precludes it. Both approaches are core features of the human rights protection system.

In equality, the Inter-American system acknowledges respect for the rights and freedoms contemplated in each territory’s constitution and electoral law and in international human rights instruments that ban discrimination on grounds of race, color, sex, language, religion, political or any other kind of opinions, national or social origin, economic status, birth, or any other social condition.⁶

“

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

Article 20, American Declaration of the Rights and Duties of Man

”

All persons, without distinction, possess, as a birthright, the same human rights. Therefore, all those pertaining to a political community shall be guaranteed enjoyment of the fundamental rights essential to the rule of law in the Americas.

The Inter-American system considers that equality and non-discrimination are its governing principles, offering guarantees so powerful that they impact all other rights upheld under both domestic and international law.

⁶ American Declaration of the Rights and Duties of Man. Art. 20. 1948; American Convention on Human Rights “Pact of San José”. Art. 23. 1969.

► EFFECTIVENESS OF POLITICAL RIGHTS PRINCIPLE

Political rights enable citizens to exercise, express, and participate in the democratic life of the society they belong to. Those rights therefore consolidate democracy and include the instruments enabling citizens to take part in public life, one aspect of which is constituted by elections.

The fundamental importance of the effectiveness and validity of political rights means that they must never be suspended. Together with other rights, they make democracy possible.⁷

It is best to espouse a broad interpretation of political rights, in keeping with the standards and case law of the Inter-American system, which include the right to participate in governance, either directly or through freely chosen representatives; to vote and to be elected in genuine periodic elections based on universal and equal suffrage and secret ballot guaranteeing the free expression of the will of the electorate; and to have access, on an equal footing, to public service in each country.⁸

“

Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country.

Article 23, American Convention on Human Rights “Pact of San José”

”

Their application is an end in itself and, at the same time, a key means by which democratic societies can guarantee observance of the other human rights. For that reason, it is vital to generate optimal conditions and mechanisms for the effective exercise of political rights.⁹

⁷ Inter-American Court of Human Rights. Case Castañeda Gutman v. Mexico. Paragraph 140. 2009.

⁸ American Convention on Human Rights “Pact of San José”. Art. 23. 1969.

⁹ American Declaration of the Rights and Duties of Man. Art. 20. 1948; American Convention on Human Rights “Pact of San José”. Art. 23. 1969; Inter-American Democratic Charter. Art. 3. 2001.

► JUSTICE AND THE RULE OF LAW PRINCIPLE

The rule of law is widely recognized as a prerequisite for protecting and safeguarding human rights. A key part of it is full and strict observance of the principle of legality. It follows therefore that the rule of law must also be democratic, since the legality principle requires that all conduct, both by those who govern and those who are governed, complies with the legal system in force.¹⁰ That notion presupposes a legal-political system with ties between two components: a type of state and a type of government, namely a constitutional state and a democratic form of government.

Accordingly, what characterizes a democratic society is effective exercise of the rule of law in which the actions of both authorities and citizens are constantly governed by the enforcement and observance of laws. Here a key factor is that voters perform a vital function in ensuring that State goals are met. It is they who guarantee that electoral processes are properly conducted and that the principles governing elections are followed to ensure political representation, fair competition, and political pluralism. For their part, the electoral authorities ensure that, at all times, candidates, voters, and political parties can count on the legal means needed to assert their rights.

“

Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

Article 3, Inter-American Democratic Charter

”

A political culture that fosters legal conduct and civic observance of democratic standards helps minimize the potential for political and electoral conflicts, by allowing only the most polemical and obvious disputes to be aired.

Thus, ideally, there should be mechanisms and structures that provide legal protection on an equal footing for all; that process claims within a reasonable period of time; and do so

¹⁰ Inter-American Democratic Charter. Art. 3-4. 2001.

independently and impartially.¹¹ In the same vein, Member States of the Inter-American system should have electoral courts and legal procedures for settling conflicts that are recognized and accepted by political actors. That helps legitimize government authority and enhances the quality of governance; thereby, political stakeholders accept legal channels as the only way to resolve disputes.

▶ TRANSPARENCY AND MAXIMUM PUBLICITY PRINCIPLE

The transparency principle has to do with mechanisms allowing anyone to freely investigate, in detail, how public funds are used and any actions undertaken by State institutions and their personnel.¹² Transparency is needed for citizens to be able to trust elections and maximum publicity assumes that restrictions are exceptional, that openness should be the general rule, and that, with the exception of justified instances involving protection of privacy, the public interest and its right to know should be paramount.

Transparency is also an especially useful tool for ensuring informed exercise of other rights, such as political rights. It is particularly relevant for protecting marginalized or excluded segments of the population, who typically lack systematic and secure information mechanisms informing them of the scope of their rights and of ways to enforce them.

“

Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.

Article 4, Inter-American Democratic Charter

”

¹¹ American Declaration of the Rights and Duties of Man. Art. 24. 1948; Inter-American Democratic Charter. 2001.

¹² Inter-American Democratic Charter. Art. 4. 2001.

The transparency principle should always apply to relations between the electoral authorities and citizens. Memory and historical truth are key aspects of elections, so that openly showing documents, even years after elections were held, needs to be routine practice. An effort should be made to include voting slips and tally sheets, provided that there is no violation of the secrecy of individual votes.

▶ CERTAINTY PRINCIPLE

As a democratic principle, certainty presupposes that the basic rules for competing and participating in politics are clear for all parties prior to the start of the respective political processes. For that reason, it is preferable that no substantial changes are introduced while these processes are in progress, that could distort procedural guarantees. Certainty is a key principle for eliciting citizens' trust and assuring them that actions by the authorities are in accordance with the regulations and powers granted them by law, as well as for guaranteeing that the rules are accepted and cannot be altered on a whim.

It is recommended that all acts undertaken in an electoral process and all political participation procedures are true and real, so that the outcomes are trustworthy, verifiable, and, therefore, reliable.

▶ PLURALITY PRINCIPLE

Democracy is government by many achieved through elections in which citizens decide who they want to be in charge of government for a given period of time. It is a system that should guarantee all citizens are able to express opinions and arguments, as well as carry out activities.

Democracy necessarily entails pluralism with respect to the ideas of others. He or she who governs has the obligation to ensure that public services are open to all and that public spaces can be accessed by any groups or persons wishing to have access to them, while abiding by the rules and regulations that the community as a whole has established.

“

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

Article 4, American Declaration of the Rights and Duties of Man

”

The plurality principle implies respect for the rights of minorities and allows for groups entering into dialogue and taking joint decisions. It is therefore best for the State to uphold that principle by safeguarding the rights that enable it to be practiced.

Diversity of thoughts and ideas is an asset and a value cherished by democracies as fostering debate and generating knowledge. Full exercise of the right to express one’s ideas and opinions, as well as access to available information and the possibility of deliberating openly and uninhibitedly regarding matters of interest to the community as a whole, are essential for the consolidation, operation, and preservation of democratic regimes. Ideally, the State should be a partner co-responsible for fostering and establishing the conditions needed for this principle to be respected.¹³

It is recommended that electoral authorities espouse a pro-person approach guaranteeing that their resolutions protect citizens’ political and electoral rights. That approach, in turn, generates ideal conditions for those rights and political parties to thrive as part of a robust and orderly democracy in a democratic State governed by the rule of law.

This principle likewise requires electoral rights to be protected on an equal footing and that regulations are enforced in such a way that individuals are able to enjoy and effectively exercise their rights. Accordingly, it is necessary to remove any obstacles impeding full access to rights, particularly if they are rooted in the historical and systematic exclusion of persons and groups based on their personal, social, and cultural characteristics or contexts.

For that reason, whenever appeals or challenges arise in relation to the protection of constitutional principles and rights established on behalf of a group that has historically suffered structural discrimination, any member of that group may take the matter to court, as an effective mechanism for the protection of those principles and rights.

¹³ American Declaration of the Rights and Duties of Man. Art. 4. 1948; American Convention on Human Rights “Pact of San José”. Art. 13. 1969. Inter-American Democratic Charter. Art. 3-4. 2001.

► INCLUSION AND GENDER EQUALITY PRINCIPLE

Human rights apply to all persons, regardless of gender.¹⁴ Given the historical marginalization of women, inclusion and gender equality principles stress that human rights need to be recognized for all women, along with the freedom established in international instruments. In addition, women must be granted guarantees that they can enjoy and freely exercise those rights and freedoms without violence.

From a political and electoral standpoint, those principles translate into equal access to public functions and decision-making.¹⁵ Thus, in addition to the right to active and passive voting rights, women must enjoy equal conditions for accessing political structures,¹⁶ holding public office, and the protection afforded by law.¹⁷

It must be stressed here that a purely formal legal approach (formal equality) is not enough to achieve actual (substantive) equality between men and women. Consequently, it is to be recommended that the State guarantee both legal and material equality for all.¹⁸

Substantive equality

Substantive equality is the actual realization, in practice, of the principle that men and women are equal.¹⁹ It is achieved by eliminating historical and systemic barriers.

In a democratic context, greater participation of women in the political arena depends on them achieving substantive representation, that is to say, a situation in which their representatives really do pursue their interests. That can also be construed as a goal pursued by public authorities for advancing their democratic legitimation through initiatives backed by the State. That forges the foundations of a democracy based on parity in which the principles of equality and nondiscrimination are in line with the obligations to defend, protect, guarantee, and disseminate human rights in both the public and the private sphere.

¹⁴ Charter of the Organization of the American States. Art. 3. 1948.

¹⁵ Convention on the Political Rights of Women. Art. II-III. 1952; Belém do Pará Convention. Art. 4. 1994.

¹⁶ Inter-American Democratic Charter. Art. 28. 2001

¹⁷ American Convention on Human Rights "Pact of San José". Art. 23-24. 1969.

¹⁸ American Declaration of the Rights and Duties of Man. Art. 2. 1948.

¹⁹ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Art. 2.a. 1979.

It is recommended that Member States of the Inter-American system broaden guarantees for ensuring that the gender parity criterion is really adopted in the registration of candidacies for representative office and in the composition of public bodies. Also, implement an effective strategy geared to correcting the under-representation of women and redistributing both resources and power between men and women.²⁰

These kinds of affirmative actions, which typify an equality model, should not be deemed either unconstitutional²¹ or as constituting arbitrary discrimination, because there is a reason for them: namely, to narrow the structural gap between men and women.

Gender-based violence

“

For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

Article 1, Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)

”

Violence against women is any act or conduct, based on gender, which causes death or physical, sexual, or psychological harm or suffering to women, whether in the public or private sphere.²² In a political and electoral context, it entails violation of the political rights to vote and to stand for election, to form political associations, and to hold public office, and it may be manifested in universally recognized types of violence: femicide or sexual, psychological, moral, financial, digital, and other forms of violence.

Every woman has the right to a life free from violence and to the full exercise of her human, civil, and political rights,²³ so that States have an obligation to guarantee and protect them, both formally and substantively.

²⁰ Forms of Discrimination against Women (CEDAW). General Recommendation no. 25 regarding Art. 4. 1979.

²¹ Code of Best Practices in Electoral Matters. European Commission for Democracy through Law. 2011.

²² Belém do Pará Convention. Art. 1. 1994.

²³ Belém do Pará Convention. Art. 3, 5. 1994.

“

Every woman has the right to be free from violence in both the public and private spheres.

Article 3, Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)

”

It is essential that women’s participation in political and public life not be governed by stereotypes.²⁴ In this regard, it must be acknowledged that parity is not just a question of requiring the involvement of women.²⁵ On the contrary, it is recommended that States ponder and address the issue of masculine behavior. In order to eliminate the structural barriers that lead to discrimination and limit the effectiveness of affirmative actions, collective rights, and access to justice, it is necessary to relearn forms of social behavior and revisit social constructs.

Indigenous women

Women belonging to indigenous peoples or communities must enjoy their rights and fundamental freedoms fully and on an equal footing with men –including their active and passive voting rights– and to participate in public and community decision-making. Like other social and cultural groups, this segment of the population is entitled to equal opportunities vis-à-vis elective institutions.²⁶ Moreover, it should also have equal access to justice, based on respect for its cultural identity.²⁷

The American Declaration on the Rights of Indigenous Peoples establishes that everyone is responsible for combating any form of discrimination including violence against indigenous communities and persons, and gender-based violence.²⁸

²⁴ Beijing Declaration. Paragraph 18. 1995.

²⁵ Beijing Declaration. Paragraph 41. 1995.

²⁶ Convention 169 of the International Labour Organization. Art. 2, 3, 6. 1989.

²⁷ Inter-American Court of Human Rights. Case of Rosendo Cantú et. al. v. Mexico. 2010.

²⁸ American Declaration on the Rights of Indigenous Peoples. Art. VII and XXX. 2016.

“

Indigenous women have the right to the recognition, protection, and enjoyment of all human rights and fundamental freedoms provided for in international law, free from discrimination of any kind.

Article 7, American Declaration on the Rights of Indigenous Peoples

”

States are advised to pay particular attention to the rights and needs of women from indigenous communities,²⁹ and to adopt measures guaranteeing a life free from all forms of violence and discrimination with due regard for their internal regulatory systems (practices and customs).³⁰

Women of African descent

A core aspect of inclusion and equality is acknowledgment of the multiple forms of discrimination and violence to which women pertaining to racial minorities and marginalized ethnic groups –such as women of African descent– are subjected.³¹

Racism has a profound impact on women of African descent,³² so that efforts need to be redoubled to ensure their inclusion and substantive equality in discussions and decision-making in public, political, electoral, and judicial spheres.³³

It is recommended that States condemn and combat racial discrimination and xenophobia in electoral processes and that they guarantee the exercise of Afrodescendants' political and electoral rights, as well as their full and equal participation in government administration, public affairs, and access to justice, as well as other spheres.³⁴

²⁹ United Nations Declaration on the Rights of Indigenous Peoples. Art. 22. 2007.

³⁰ Convention 169 of the International Labour Organization. Art. 22. 1989.

³¹ Santiago Declaration and Plan of Action. Art. 52, 53, 54. 1998; Durban Declaration and Plan of Action. Art. 50, 59, 69, 94. 2001; Inter-American Convention against Racial Discrimination and All Forms of Intolerance of the Organization of American States. Paragraphs 7, 9. 2013.

³² Santiago Declaration and Plan of Action. Art. 155. 1998.

³³ Durban Declaration and Plan of Action. Art. 108. 2001.

³⁴ Santiago Declaration and Plan of Action. Art. 7. 1998; Inter-American Convention against Racial Discrimination and All Forms of Intolerance of the Organization of American States. Art. 9. 2013.

“

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 1, Universal Declaration of Human Rights

”

LGBTTTQIA community

It is recommended that States ensure the participation and equal political representation of persons pertaining to the LGBTTTQIA³⁵ community, along with the presentation of candidacies by intersex, transsexual, and transgender persons and by persons whose gender identity is linked to indigenous self-determination.

▶ POLITICAL REPRESENTATION PRINCIPLE

Modern democracy requires the formation of political parties, of voluntary organizations specializing precisely in the formation and presentation of candidacies for elective office³². In short, modern democracy comprises a set of procedures which render the fundamental principle of the sovereignty of the people feasible.

The democratic election of representatives and officials is an essential component of modern democracy. Each individual, regardless of gender, social status, or cultural identity can freely express his or her political preferences on the understanding that they will carry exactly the same weight as those of any other individual.

³⁵ Lesbian, gay, bisexual, transsexual, transgender, transvestite, intersexual, queer and asexual.

³⁶ Inter-American Democratic Charter. Art. 3. 2001.

B. Rights

▶ RIGHT TO DEMOCRACY

Article 1 of the Inter-American Democratic Charter establishes that “The peoples of the Americas have a right to democracy.”

The legitimacy and authority of the government stems from the will of the people. Free, authentic, and periodic elections, conducted under conditions that are equal for all and via universal suffrage, form the basis for democracy.

Everyone has a right to participate in the government of her or his country, either directly or through freely elected representatives.

Democracy is a necessary condition for the effective exercise of all human rights and makes it possible for men and women to participate on an equal footing in the political and public life of their nations. Furthermore, it generates the conditions required for the establishment, exercise, and observance of human rights.

In accordance with the Inter-American Democratic Charter and recognizing that democracy is essential for the development of the peoples of the Americas, it is important that governments promote and defend it.

Democracy must always accord pride of place to the rights of persons. Neither the prevalence of a single, irremovable economic model in the Hemisphere, nor the primacy of one or other ideology or specific political affiliation are prerequisites for democracy; whereas the guaranteed and effective exercise of human rights is such a precondition.

Representative democracy is grounded in authentic, periodic, and free elections, based on secret balloting.³⁷

³⁷ American Declaration of the Rights and Duties of Man. Art. XX. 1948; American Convention on Human Rights “Pact of San José”. Art. 23. 1969; Inter-American Democratic Charter. Art. 3, 23. 2001.

► POLITICAL RIGHTS

Political rights are one aspect of human rights. Governments are responsible for the establishment of political rights and for providing the guarantees needed for their full and effective exercise. Without them, citizens would be unable to achieve genuine self-determination and set democratic limits to the exercise of power.

Political rights, as enshrined in diverse international instruments³⁸, help strengthen democracy and political pluralism.³⁹ Moreover, for the peoples of the Americas, they are vital for expanding their freedoms and reining in any temptation to misuse power. As a whole, political rights are a set of human rights that safeguard a person's status as a citizen and endow citizens with the capacity to decide and take part in public affairs that affect them.

The political rights recognized in the instruments of the Inter-American system are the right to vote, to stand for election, to participate in government and to hold public office. Also acknowledged are the right to demonstrate and the rights of association, affiliation, and assembly.

It is important to recall that the Inter-American Court of Human Rights has determined that political rights are not absolute. In a democratic society they are subject to limits, which means abiding by an electoral process (periodic, authentic elections) and the principles of suffrage.⁴⁰

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It is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy.

Article 6, Inter-American Democratic Charter

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³⁸ American Declaration of the Rights and Duties of Man. Art. 20. 1948; American Convention on Human Rights “Pact of San José”. Art. 23. 1969; Inter-American Democratic Charter. Art. 2, 3, 6. 2001.

³⁹ That is the position taken by the Inter-American Court of Human Rights in its principal pronouncements on political rights: the cases of *Castañeda Gutman v. Mexico* (Inter-American Court of Human Rights, 2008b, 42, par. 141) and *Yatama v. Nicaragua* (Inter-American Court of Human Rights, 2005b, 88, par. 192).

⁴⁰ Inter-American Court of Human Rights. Cases of *Yatama v. Nicaragua* [2005b] and *Castañeda Gutman v. Mexico* [2008b].

It is suggested that political rights be fully guaranteed and rooted in equality, pluralism, accessibility, and nondiscrimination. The exercise of those rights may not be curtailed or suspended, except under exceptional circumstances provided for in the constitutions of the nations of the Americas.

▶ RIGHT TO VOTE AND TO STAND FOR ELECTION

There are two sides to the right to vote. On the one hand, it is a prerogative of citizenship, granting an individual the option of voting and, on the other hand, the right to stand for election, that is, to be elected via suffrage to hold a position or serve in government.

Voting is universal, free, direct, secret, personal, and non-transferable.⁴¹ Those fundamental attributes of the right to vote must be upheld for all peoples in the nations of the Americas, because that right is the key to citizens' participation in the political life of their countries.

There must be guarantees ensuring that voting is free from artificial constraints, that is, without any curtailment of any of the attributes associated with the exercise of the right to vote.

The authorities must ensure that suffrage is universal, without exceptions. To be free, voting must be devoid of pressures of any kind: in other words, a manifestation of the free will of the voter, without any form of coercion. No one must be obliged or pressured into revealing their choice.

It must not be forgotten that Article 23 of the American Convention on Human Rights "Pact of San José" establishes general guidelines as to how States may regulate, limit, and restrict rights to political participation, including the right to be elected.

The laws of each country may regulate the exercise of voting or of standing for election solely on grounds of age, nationality, residence, language, level of education, civil capacity, or conviction by a competent judge in legal proceedings. It is best for States to organize electoral systems and establish a series of conditions and formalities that have to be met to ensure exercise of the right to vote and stand for election.⁴²

⁴¹ American Declaration of the Rights and Duties of Man. Art. 20. 1948; American Convention on Human Rights "Pact of San José". Art. 23. 1969; Inter-American Democratic Charter. Art. 3. 2001.

⁴² Inter-American Court of Human Rights. Case Castañeda Gutman v. Mexico. Resolution August 6, 2008. Pg. 46, paragraph 157.

It is recommended that citizens of a State residing in another country exercise their right to vote under conditions guaranteeing equity, inclusion, equality, and accessibility as part of national procedures for electing political representatives and of direct democracy processes.

The citizens of the Americas have a right to be elected to public office in their respective countries. The right of individuals to stand for elective office is a core component of democratic systems. It is best, therefore, for Member States to ensure that the right conditions are in place for the full exercise of that right.

It is recommended that regulations be clear and mindful of the principles of certainty and of citizen participation.

▶ RIGHT TO PARTICIPATE IN GOVERNMENT

Every legally competent person is entitled to take part in the government of his or her country, be it directly or through representatives.⁴³

A citizen's right to participate in government, by being elected or by holding some position of responsibility within formal government structures must be respected and fostered in accordance with the principles of nondiscrimination, non-exclusion, and equal opportunities for both men and women.

⁴³ Universal Declaration of Human Rights. Art. 21. 1948; American Declaration of the Rights and Duties of Man. Art. 20. 1948; American Convention on Human Rights "Pact of San José". Art. 23. 1969.

▶ RIGHT TO FREEDOM OF ASSOCIATION

The right to form or join associations based on shared ideals, projects, or interests is one of the pillars on which democracy is founded. Within the framework of electoral processes, that right translates into the possibility of forming organizations, associations, or political parties with which to take part in political processes. The law upholding this right may include requirements regarding the way it is exercised but may not in any way curtail it.⁴⁴

The right of association is based on the prerogative of citizens to be affiliated and meet with others with a view to participating in the political affairs of their peoples. Individuals have a right to join organizations, associations, or political parties as a form of participation based on their interests. That right must not be restricted in any way. The principle of freedom must be understood to mean an individual's ability to choose her or his own way of life.⁴⁵

The right of assembly is crucial for electoral processes, because incorporation in or adherence to a political option largely occurs via assemblies or meetings characterized by debate, discussions, exchanges of ideas, or the promotion of government plans. Such activities may be subject to security, location, and duration requirements, but must never be limited or banned.⁴⁶

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The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

Article 16.2, American Convention on Human Rights “Pact of San José”

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It is recommended that all peoples of the Americas have the right to associate freely, whether for political, ideological, religious, economic, work-related, cultural, sporting, or any other lawful purpose.

Under no circumstances, and on no pretext, may anyone be forced to belong to any association.

⁴⁴ American Declaration of the Rights and Duties of Man. Art. 22. 1948; American Convention on Human Rights “Pact of San José”. Art. 16. 1969..

⁴⁵ American Convention on Human Rights “Pact of San José”. Art. 11.2. 1969.

⁴⁶ American Convention on Human Rights “Pact of San José”. Art. 16.2. 1969.

▶ RIGHT TO FREEDOM OF EXPRESSION

The Inter-American human rights system has maintained that freedom of expression is a right that has two sides to it: an individual dimension relating to the expression of a person's own thoughts, ideas, and information; and a collective or social dimension consisting of society's right to seek and receive information, to know the thoughts, ideas, and information that others have, and to be well-informed.

The right to express ideas and disseminate the information at one's disposal is indispensable for the inhabitants of a country to be able to participate in public activities. This key function of freedom of expression, in its individual dimension (expressing one's own ideas) and social dimension (knowing what others think and say) has been extensively recognized by the organs of the Inter-American system concerned with the protection of human rights. For example, the American Convention on Human Rights "Pact of San José" offers broad guarantees for freedom of expression –more extensive than those found in any other regional human rights instrument.⁴⁷

Accordingly, it must be established that democratic debate implies allowing the free circulation of ideas and information regarding candidates and their political parties via the media or by the candidates themselves or anyone else wishing to express an opinion or to provide information. It is vital that everyone be able to question and investigate candidates' abilities and suitability, to disagree with and oppose their proposals, ideas, and opinions, so that voters can make an informed choice at the polls. For that reason, political rights and freedom of thought and expression are intimately linked and mutually reinforcing.

Freedom of speech is the cornerstone of democracy enabling individuals and groups to enjoy other human rights and freedoms, but its purpose extends beyond elections in that it establishes each citizen as a person legally entitled to demand information, freely express his or her ideas, and, at times, help shape public opinion. It must not be forgotten that observance of the right to freedom of expression and the equitable exercise of that right are what guarantees democracy, understood as a way of life, not just as a representative form of government.

The organs of the Inter-American system have established that guarantees of the right to freedom of expression apply also in a digital environment.⁴⁸ The right to freedom of expression,

⁴⁷ American Declaration of the Rights and Duties of Man. Art. 6. 1948; American Convention on Human Rights "Pact of San José". Art. 13. 1969; Inter-American Democratic Charter. Art. 3, 4. 2001.

⁴⁸ Democracia en la Era Digital: Libertad de Expresión en las Américas y el "Derecho al Olvido" Europeo. Catalina Botero Marino, Michael J. Camilleri and Carlos Cortés. 2017. Available at: https://www.thedialogue.org/wp-content/uploads/2017/11/Democracia-en-la-Era-Digital_FINAL-1.pdf.

in particular, needs to be fully recognized in communications, ideas, and information transmitted and accessed through the internet, digital media, new technologies, and social networks.⁴⁹

Nevertheless, subject to stringent conditions, freedom of expression may have certain limits. Article 19.3 of the International Covenant on Civil and Political Rights acknowledges that special duties and responsibilities may be attached to the right to freedom of expression. It further points out that this right may be subject to certain restrictions that must, however, be expressly established by law and be necessary in order to: a) ensure respect for the rights or reputation of others; and b) safeguard national security, public order, or public health or morals.

Article 13.2 of the American Convention on Human Rights “Pact of San José” states that exercise of the right to freedom of expression shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a) respect for the rights or reputations of others; or b) the protection of national security, public order, public health or public morals.⁵⁰

▶ RIGHT TO INFORMATION

Like other fundamental rights, the right to information is cross-cutting in scope and therefore has repercussions for the exercise of any act of authority (as well as others required to respect it), regardless of the subject of its competence. Likewise, it facilitates or makes possible the exercise of other rights, such as those relating to political/electoral matters, and also guarantees transparency in the organizational structure and operations of any democratic regime.

For that reason, the right to information is a prerequisite for regular participation in a democratic system. It provides inputs for taking decisions and for being a party to public debate, in addition to facilitating constant oversight by society of the way its institutions are being managed.⁵¹ The right to information provides tools for citizens that connect them directly with the political sphere and the day-to-day institutional life of each country.

⁴⁹ Cf. Special Rapporteur (OAS). 2016 Annual Report, Chapter III: Standards for a Free, Open, and Inclusive Internet, OEA/Ser.L/V/II. Doc. 22/17, par. 4. Available at: http://www.oas.org/en/iachr/expression/docs/publications/internet_2016_eng.pdf

⁵⁰ American Convention on Human Rights “Pact of San José”. Art. 13.5. 1969.

⁵¹ American Declaration of the Rights and Duties of Man. Art. 4. 1948; American Convention on Human Rights “Pact of San José”. Art. 13. 1969; Inter-American Democratic Charter. Art. 4. 2001.

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Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

Article 13.1, American Convention on Human Rights "Pact of San José"

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In order for citizens to be able to exercise the right to information in the political arena, it is best to foster the existence and development of media that fulfill their mission to disseminate political information. For media to genuinely fulfill their democratic purpose, they need to have legal and financial autonomy. Then citizens can demand that the authorities or courts guarantee their right to true and honest information.

Furthermore, access to reliable information is needed to be able to exercise freedom of opinion as well as for the observance of other human rights and all democratic practices, including deliberation, elections, decision-making, and accountability.

Rights are violated if citizens lack sufficient information to be able to freely exercise their right to vote on election day. Voters are entitled to information as to how they must exercise that right and about the work of the electoral authorities.

C. Elections

According to the observation criteria set forth in the OAS Manual for Electoral Observation Missions, “for elections to be considered democratic, they need to meet four basic conditions.”⁵² Those conditions are:

ATTRIBUTE	INCLUSIVE ELECTIONS	FAIR ELECTIONS	COMPETITIVE ELECTIONS	EFFECTIVE PUBLIC OFFICES
Meaning that:	All citizens can exercise their political/electoral rights.	Voter preference is respected and reliably recorded.	The electorate must be impartially allowed to choose between options.	Elections are held periodically, and outcomes are respected.
Key aspect	Legal recognition of the right to universal and secret suffrage, and allowing the free exercise of that right	Reliable guarantees that voter preferences are fully respected.	Ensuring the right of candidates to stand for office, to compete on an equal footing, and in a context in which their rights are freely exercised (a free press, freedom of expression, association, assembly, and movement).	Access to public office via elections and respect for the will of the people (observance of the principle of alternation).

Source: The authors, based on the contents of the OAS Manual for Electoral Observation Missions.

⁵² Organization of American States. Manual for Electoral Observation Missions. Pg. 7. 2008.

► 1. PARTICIPANTS IN THE ELECTORAL PROCESS

This section describes the importance of the effective exercise and observance of principles and rights by the main actors in the electoral process, namely: electoral bodies, political parties and organizations, traditional and digital media and social networks, and civil society.

Electoral bodies

According to the OAS Manual for Electoral Observation Missions, “the electoral authority is the institution, or set of institutions, responsible for organizing and administering electoral processes, and for exercising jurisdiction.”⁵³ That is to say, those bodies manage electoral processes and resolve, where necessary, any electoral and post-electoral disputes that may arise.

Therefore, the electoral organs may be either a single body or a set of bodies and institutions responsible for elective processes of any kind and related activities, including, where applicable, jurisdictional activities and others promoting civic education.

Ideally, they are public, autonomous, independent, permanent, specialized, inclusive, and impartial bodies, acting within the national or a subnational territory, and employing qualified professionals. They should have effective mechanisms to ensure transparency and accountability vis-à-vis the population as whole and all political actors involved in the election.

It is important for electoral bodies to be independent as regards their ability to decide and act, without their performance being subject to any governmental, political, or other influence. They specialize in the organization and management of electoral processes and in administering electoral justice. They should also have their own budget for executing their activities.

As arbiters in electoral competitions, independent electoral bodies are one way to ensure open, clean, and fair electoral processes, and to generate or enhance trust in elections. Trust in electoral processes is often a prerequisite for trust in other democratic institutions.⁵⁴

⁵³ Organization of American States. Manual for Electoral Observation Missions. Pg. 16. 2008.

⁵⁴ *Electoral Management Design*. International IDEA. Available at: <https://www.idea.int/data-tools/data/electoral-management-design>

The principal functions of electoral bodies include, *inter alia*: i) safeguarding and guaranteeing the exercise of citizens' political rights; ii) organizing, monitoring, and managing electoral processes; iii) registering, monitoring, supervising, and supporting political organizations; iv) providing civic-electoral education and training for citizens and political organizations; v) regulating electoral processes; and vi) administering electoral justice within their sphere of jurisdiction.

Composition and formation of electoral bodies

The composition and formation of a country's electoral bodies will depend on its constitution and electoral laws, sovereignty, and self-determination. Those bodies may consist of a single person or several people and may comprise representatives of political organizations, or ordinary citizens, or a combination of both. It is recommended that they be chosen in accordance with democratic principles, such as transparency, justice, equality, and certainty, and that their actions be guided by the principle that it is individuals that count most (*principio pro persona*). The selection process or mechanism will be defined by local laws, but ideally it should be based on public and inclusive competitive procedures. Institutionally, electoral bodies will be more robust if they are permanent and established nationwide. If membership of those bodies is renewed on a rotating or staggered basis, they tend to be more stable, professional, and accountable.

Organs for resolving electoral disputes

The chief purpose of electoral dispute resolution bodies is to provide genuine protection or effective safeguards for the right to elect or be elected to perform public office through a set of guarantees for participants (political parties or, as the case may be, citizens and candidates). They prevent violation of the will of the people and help ensure legality, certainty, objectivity, impartiality, authenticity, transparency, and, in general, justice in electoral acts and procedures. The existence of electoral dispute resolution bodies has become a major factor in democratic transition and consolidation processes.

However, access to justice and to the bodies that each State needs to establish to resolve electoral disputes needs to go beyond just the resolution of those disputes.

While political rights are linked to a collective notion of the sovereignty of the people, they are individual human rights inherent to the dignity of each human being. For that reason, it is best for such bodies to specialize in protecting political rights as human rights and, at

the same time, that there be mechanisms for protecting individuals and restoring rights that are breached.

It is advisable that those bodies adopt measures geared to optimal achievement of representative democracy, such as the holding of periodic, free, and genuine elections based on universal, free, secret, and direct suffrage.⁵⁵ That includes establishing appropriate membership of political representation bodies; unrestricted freedom of association, assembly, and political expression; equitable access by political parties to public funding; strict observance of political pluralism; and a level playing field for those competing in elections.

Ideally, the bodies responsible for resolving electoral disputes should adopt an intercultural approach, which is a tool needed for the interpretation of human rights in pluricultural societies and one that is indispensable for understanding and assessing the complexity of electoral disputes in indigenous communities.⁵⁶ For that reason, traditionally conservative judicial proceedings need to open up and develop new procedural strategies.

Adopting an intercultural perspective entails engaging in a respectful dialogue between cultures and accepting the equal validity of their points of view and visions of the world. It also involves recognizing indigenous status based on a person's self-identification, equal treatment, and insight into the need to adopt the special measures required to reduce or eliminate conditions conducive to discrimination. It also means prioritizing autonomy and non-interference in indigenous peoples' decisions, provided that those practices respect equality of individuals and the federal covenant.

The political party system

The political party/organization system is a core feature of representative democracy. The formation of political parties guarantees plurality and competition on an equal footing for people's votes. It facilitates the exercise of the right of citizens to form associations to express the diversity of ideas and ideologies within a democratic society, competition for political power in electoral processes (political representation), and the exercise of political opposition. This system needs to be rooted in plurality and tolerance.

The political party system also calls for specific legislation. Laws must provide legal certainty and establish clear processes for ensuring that political rights are also upheld within those political organizations, as well as provide effective options enabling their members to

⁵⁵ Universal Declaration of Human Rights. Art. 21. 1948; American Declaration of the Rights and Duties of Man. Art. 20. 1948; International Covenant on Civil and Political Rights. Art. 25. 1966; American Convention on Human Rights "Pact of San José". Art. 23. 1969.

⁵⁶ American Convention on the Rights of Indigenous Peoples. Art. II. 2016.

take part in electoral processes, while abiding by the laws issued for that purpose. Laws governing political parties need to define the criteria governing their constitution, specify the prerequisites needed for their legal recognition, and even establish procedures for their eventual dissolution, all with a view to providing certainty to both their members and voters.

A robust political party system strengthens democracy, while a society's trust in its political system not only boosts the legitimacy of the leaders elected; it also helps raise the status of democratic governance.

Democratic methods and a gender perspective should guide the appointment of members of the governing bodies of political parties and their choice of candidates to take part in democratic processes. Embodying those precepts in a regulatory instrument or charter of the political organization and compliance with the general rules governing the exercise of political rights will provide certainty and avoid conflict within the organization.

Electoral bodies may lend technical assistance to help political organizations develop and implement in-house democratic mechanisms as a contribution to the strengthening of the political party system.

Political financing of political parties / organizations

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The strengthening of political parties and other political organizations is a priority for democracy. Special attention will be paid to the problems associated with the high cost of election campaigns and the establishment of a balanced and transparent system for their financing.

Article 5, Inter-American Democratic Charter

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Based on Article 5 of the Inter-American Democratic Charter, the OAS developed a specific methodology for monitoring parties' political-electoral funding. In it, the political financing system is defined as “the set of practical rules regulating the flow of funds to political parties and organizations.”⁵⁷

⁵⁷ Organization of American States. Observing Political-Electoral Financing Systems: A Manual for OAS Electoral Observation Missions. Pg. 9. 2012.

As models vary, political financing may be public, private, or mixed; direct, indirect, or both. Political organizations and electoral campaigns may be financed with contributions by the State, as well as by members and supporters.

In this area, equity is fundamental. Financing arrangements based on that principle are essential for strengthening the party system and thereby also electoral competition.

In the same vein, “an equitable political financing system is one that seeks to guarantee equal conditions for exercising the rights to elect and be elected by regulating campaign financing. Regulation entails encouraging resources that enhance equal conditions and curtailing those that impair it, as well as limiting campaign expenditures.”⁵⁸

Accountability and transparency in the form of suitable oversight and audit arrangements should be core components of the system for financing political parties, organizations, associations, and independent candidacies. Transparency in political financing is fundamental for increasing trust in the electoral system.

Setting ceilings on both expenditure and contributions is one measure that enhances competition and reduces imbalances. It also fosters transparency and facilitates accountability. In that regard, Member States have agreed on the need to establish and maintain a “balanced and transparent systems for financing the activities of political parties.”⁵⁹

According to the OAS methodology for observing political-electoral financing systems, pre-requisites for a transparent system are “party reporting, government oversight, a penalty system, and access to information.”⁶⁰

It is best for political party financing mechanisms to be established in electoral regulations. Here, the principles of proportionality, transparency, and accountability are inalienable and necessary to win the trust of the electorate. In addition, these practices help to prevent the use of illicit money in campaigns or improper use of State resources, both of which end up distorting the democratic nature of the electoral process.

Having effective schemes for financing political activity bolsters democracy.

⁵⁸ Organization of American States. Observing Political-Electoral Financing Systems: A Manual for OAS Electoral Observation Missions. Pg. 13. 2012.

⁵⁹ Inter-American Democratic Charter. Art. 5. 2001.

⁶⁰ Organization of American States. Observing Political-Electoral Financing Systems: A Manual for OAS Electoral Observation Missions. Pg. 19. 2012.

Political organizations

Political organizations, be they parties, associations, or movements, are manifestations of political plurality in a society. Within the philosophical, political, and ideological concepts they espouse it is critical to embrace the principles of inclusion and nondiscrimination. These are indispensable mechanisms for electing a group of citizens to hold government positions, from which they can enact policies and programs in keeping with the party's or movement's philosophy and values.

Political organizations enable citizens to take part in a State's public life and in its electoral processes. The goals they pursue must embody respect for rights and freedoms and always adhere to democratic principles.

Ideally, they should serve to embody and articulate, mobilize, and share social (class, ethnic, regional, etc.) interests and identity. In that sense, there can be no democracy or development without political organizations that represent citizens.

Civil society

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It is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy.

Article 6, Inter-American Democratic Charter

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Participation in public affairs is an inalienable right of citizens. To exercise it they can organize themselves, either collectively or individually, and thus take part in electoral processes. That participation may take the form of fulfilling responsibilities as a polling table or station official; or a volunteer helping to organize an electoral process; or joining a group to support causes, candidacies, or parties; or advancing democracy by working as an election observer.

Article 6 of the Inter-American Democratic Charter establishes that: “It is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy.”

It is suggested that the electoral authority and the State provide citizens and civil society groups with the guarantees they need for the free exercise of their political rights. Civil society participation helps protect human rights and promote integral development and multidimensional security.

The media

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Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.

Article 4, Inter-American Democratic Charter

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The media performs a crucial role in democracy because it is through this means that citizens receive the information they need to take an informed decision during electoral processes and to evaluate the government's performance. Thus, the appraisal of democratic governments depends on the information that the media transmits to the population.

Democracy needs media that is unbiased and therefore capable of acting as a universal vehicle for information and as a political watchdog. All that presupposes the effective exercise of freedom of expression. Consequently, the media is essential for electoral processes because it makes it possible to access relevant and reliable information regarding political parties, candidacies, electoral platforms, and the activities of the electoral body charged with administering each stage of the electoral process. Throughout the process, the media must strive to develop more accessible, effective, and inclusive communication with society. When used responsibly and appropriately, the media will strengthen the democratic process and contribute to a more credible and inclusive election.

Preferably, the media should provide equitable coverage, allotting spots and spaces without stereotypes or any form of discrimination. It is also best to ensure that editorials are clearly distinguished from informative content and that the media echoes a variety of ideological stances.

It is recommended that the media always eschew gender stereotypes that foster inequality or discrimination against women, undermine their public image or limit their political/ electoral rights. The language used in all verbal, written, or visual media must be non-sexist and inclusive.

Equity in radio and television slots

Political party access to the media should be governed by two basic democratic principles, namely equity and the right to information. That, too, is echoed in the OAS methodology for observing the media in elections, which establishes that “the conditions of access to the media have a great influence on the conditions to compete in a level-playing field for electoral office. The freedom of the press and a pluralistic mass media system are key elements in order to guarantee free and fair electoral processes.”⁶¹

Equitable access is related to the political context and requires allocating slots on radio and television based on political parties’ status and position in the country. Thus, equity in the allocation of radio and television slots is to be construed as the quest for equality and justice for everyone and, in a campaign context, that translates into equal access to the media by the various candidates or campaigns. Accordingly, the aforementioned methodology states that: “electoral equity is defined as balanced coverage that allows candidates to present their political platforms, defend their visions and present their electoral campaigns, with news pieces that do not contain bias in the description of the information”, at all times in full respect of freedom of expression for all.”⁶²

For that reason, it is recommended that the institutions responsible for organizing elections be empowered to monitor the media and suspend any official propaganda that violates electoral equity and competitiveness. Ideally, they should act as an impartial and open forum for public debate and discussion and offer candidates and parties a fair platform for running their campaigns.⁶³

Internet and social networks

As the Inter-American Commission on Human Rights has stated, “the right to freedom of expression in the terms established by Article 13 of the American Convention on Human Rights “Pact of San José” equally protects both traditional media and speech disseminated via the internet.”⁶⁴

⁶¹ Organization of American States. Methodology for Media Observation during Elections: A Manual for OAS Electoral Observation Missions. Pg. 3. 2012

⁶² Organization of American States. Methodology for Media Observation during Elections: A Manual for OAS Electoral Observation Missions. Pg. 6. 2012

⁶³ Media and elections. A guide for electoral practitioners Available at: <https://www.undp.org/content/dam/undp/library/Democratic%20Governance/Electoral%20Systems%20and%20Processes/UNDP%20Media%20and%20Elections%20-%20Spanish.pdf>. 2013. [English: https://www.eods.eu/library/UNDP-Media_and_Elections_LR.pdf]

⁶⁴ Standards for a Free, Open, and Inclusive Internet, OEA/Ser.L/V/ II. Doc. 22/17. Available at: http://www.oas.org/en/iachr/expression/docs/publications/internet_2016_eng.pdf. 2017.

It is recommended that an effort be made to ensure that the use of these media in electoral contexts conforms to democratic principles and avoids any damaging uses that contravene human rights, are not upheld by freedom of expression, and are bent on inciting hatred, genocide, or any form of violence.

The organs of the Inter-American system have established that guarantees of the right to freedom of expression also apply in the digital sphere. As the Special Rapporteurship for Freedom of Expression has stated, 'the right to freedom of expression, in particular, is fully applicable to communications, ideas, and information that is disseminated and accessed through the internet.'⁶⁵

Social networks have become key tools in electoral processes and are a democratizing space. They should, therefore, complement democracy. It is suggested that each State should, in a democratic spirit, without intimidation or censorship, monitor possible abuses and excesses detected on social networks.

The spreading of disinformation during elections complicates the contribution that journalism can make to democracy. The falsehoods spread on social networks and messaging platforms are intended to influence people's votes and discredit the work of serious journalism, the purpose of which is to provide verifiable information and question political leaders with a view to guaranteeing the integrity, peaceful nature, and fairness of an election.

During elections, it is important that citizens participating in the political debate be aware of possible irregularities in the framework of the competition and seek verified information from the electoral authorities. Parties, political actors, and governments should not base their communication strategies, either directly or indirectly, on methods that misuse personal data, collected without voters' consent or through misleading privacy notifications. It is recommended that the use of any personal database as a tool for disseminating false news to targeted segments of the population be considered a serious offense within the framework of electoral competitions.

⁶⁵ Cf. Special Rapporteur (OAS). 2016 Annual Report, Chapter III: Standards for a Free, Open, and Inclusive Internet, OEA/Ser.L/V/II. Doc. 22/17, par. 4. Available at: http://www.oas.org/en/iachr/expression/docs/publications/internet_2016_eng.pdf (date of publication: March 15, 2017).

▶ 2. MINIMUM CONDITIONS FOR HOLDING DEMOCRATIC ELECTIONS

This section describes the essential features of a properly conducted electoral process, such as certainty, legal safeguards, re-election, electoral legislation, gender equality, inclusion, and the various stages that make up the process. It also addresses technical elements such as the voters' list, convening of elections and candidacies, among others.

Electoral process

The purpose of elections is to establish the will of the people with regard to its government. They are processes designed to legitimize the exercise of government, resolve political differences peacefully, and alternate governments. A genuine election is one that faithfully reflects the freely expressed preferences of the people.

It is recommended that electoral processes in the countries of the Americas legally establish a set of sequential acts to be performed over time with a view to periodically renewing members of the Legislative and Executive branches. Ideally, the electoral authorities should make sure that political parties, organizations, and citizens take part in those acts.

The electoral process is a set of orderly acts established in law to ensure that the electoral authorities, political parties and citizens of the countries of the Americas, periodically renew the public servants holding office at every level of the legislative and executive branches.

The certainty principle is vital at all stages of the electoral process. When it accompanies all the acts involved in the electoral process, certainty makes it possible to trust electoral outcomes. That means that the rules governing processes have to be clear, established and familiar to all in advance, and enforced equally and without distinctions. Steps taken by the authorities must abide by the law and their acts must be verifiable, thereby generating electoral legal security.

Electoral legal certainty

Legal security presupposes guarantees for the effective protection of the rights of all citizens.⁶⁶ As a result, each branch of government performs its functions efficiently. Legal certainty is also an excellent mechanism for forging social cohesion.

The laws and regulations governing elections need to be pre-established, clear, and public. The purpose of legal security is to ensure that the behavior of electoral authorities is predictable and conducive to certainty, and that it precludes arbitrariness in the performance of official functions. Stability is based on clear and certain rules that cannot be altered once the electoral process has started.

Electoral legal security means that the bodies responsible for settling disputes are obliged to interpret and enforce constitutional, legal, and regulatory provisions coherently and consistently. When the dynamics of new and changing circumstances and new reflections on the rules that apply appear to demand a change in the criteria underlying interpretations, special care needs to be taken to fully justify such changes and ensure that they are exceptional. Such an approach not only provides certainty. It also shows that a body is independent and impartial.

Certainty also ensures that, wherever possible, the actions of dispute settlement bodies are predictable, meaning that the authority concerned limits its discretionary scope of interpretation. That will avoid discretionary leeway, uncertainty among players, and contradictory criteria. The more closely judgments stick to rules and regulations, and the clearer they are for those involved, the more likely it is that they will be complied with, thereby ensuring that justice is more effectively imparted in democratic systems.

Electoral bodies have a duty to contribute to the rule of law in order to ensure that citizens, including political competitors and the opposition, are guaranteed legal security in exercising their electoral rights.⁶⁷

⁶⁶ American Declaration of the Rights and Duties of Man. Art. 1. 1948; American Convention on Human Rights "Pact of San José". Art. 7. 1969.

⁶⁷ Global Commission on Elections, Democracy and Security, *Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide* (2012), p. 62.

Electoral laws and regulations

Each nation's electoral laws and regulations need to be aligned with the country's constitution and should ideally include the contents of both national and international instruments and jurisprudence on political rights and electoral matters. They should be public, transparent, with reasonable enforcement deadlines, and free from discretionary modifications or interpretations by the authorities that could trigger legal uncertainty or insecurity.

Minimum stages in the electoral process

1. Preparatory steps in the run-up to an election
2. Election day
3. Outcomes and validity of the election

Preparatory steps shall encompass, at the very least, all acts, agreements, and the issuance of documents needed to organize and run elections. It is recommended that those activities in preparation for an election should include, but not be limited to, actions geared to ensuring the feasibility and legality of competitive arrangements, the selection of candidates, their registration with the authorities, the length of campaigns, ceilings on campaign expenditure, electoral propaganda, the appointment and training of polling booth officials, the preparation and distribution of ballot-boxes to voting sites, the planning of security measures, and so on.

Electoral test-runs are essential for evaluating the performance of electoral infrastructure and organizational arrangements and improving them prior to election day.

Preparatory steps include procedures and actions required under national electoral regulations regarding the preparation of ballots and tally sheets, how campaigns are run and monitored, electoral expenses, etc.

Election day begins and ends on the day established by law for citizens to issue their decision by voting.

The outcomes and validity stage includes the procedures and acts envisaged in a country's electoral rules and regulations for settling any electoral disputes or challenges. Once claims/challenges have been resolved, the electoral authority will be required to make a legal pronouncement on the validity of the election.

Electoral rolls and registration

Any genuine, trustworthy election will require credible and up-to-date voter registration records. Only an impartial citizen registry and electoral roll make it possible to exercise the legitimate right to vote and to stand for election.⁶⁸

The register of persons eligible to vote and elect their authorities must reflect the actual size of the population. The electoral roll must comprise all the women and men who meet the civic requirements for exercising their right to vote and to stand for election. Thus, electoral registers and rolls must protect the electoral rights of citizens and comply with international obligations guaranteeing the principles upholding the right to direct, universal, free, and secret suffrage, and striving at all times to protect personal data.

It is recommended that the authority responsible for registering, safeguarding, and updating electoral roll data ensures the ongoing validity, veracity, and continuity of the citizen registry through permanent purging mechanisms, that could include the limited and legally defined participation of political parties, particularly for the purpose of validating the records. It is also recommended that the electoral authority safeguard the information and data of those registered. Those voter records constitute a “live” system in constant flux.

The first step is to register those who meet the legal requirements for inclusion in the electoral roll, either “automatically” (based on age) or upon request. The second is to modify the roll due to such circumstances as changes of address, and so on. The third step has to do with either definitive or temporary removal or exclusion from the register.

The authorities in charge need to set reasonable, pre-established deadlines for registration and for altering or correcting the electoral roll, which should be reviewable and subject to audits so as to provide certainty and elicit the trust of the electorate, political parties, and candidates. It needs to be prepared and shaped by the principle of nondiscrimination.

Electoral districts or constituencies

Electoral districts or constituencies are territorial units within a nation designed to provide a geographically defined space for the political representation of citizens. The votes of the electorate in that area determine its level of representation. Geographically, electoral constituencies vary in size and in terms of the positions/seats elected in them, depending on the country concerned.

⁶⁸ American Convention on Human Rights “Pact of San José”. Art. 23. 1969.

In those systems in which representation is based on multiple districts or constituencies, the territorial demarcation process needs to ensure balanced (voter-representative) representation: a matter of the utmost importance, especially in parliamentary systems, in which the district is the basis for legitimacy.

It is recommended that districts or constituencies be pre-established and based on objective, clear, measurable, impartial, and technical criteria rooted in the principles of proportionality, the equality of each vote, territorial representation, and representation based on population density. The goal is to ensure that each vote's representation value is identical to that of a vote in another district or constituency. Ideally, the processes by which districts are constituted should be conducted periodically and constituencies should be based on the equity principle.

Convening of elections

The convening of elections is the official and valid act whereby the electoral authority makes a public pronouncement establishing the dates, requirements, conditions for participation, and procedures for an election. The convening of elections is especially important in countries with a parliamentary model or that use direct democracy mechanisms. It is the act spelling out and publicly announcing the requirements and major dates associated with the elections in which citizens and political parties are called upon to participate.

Elections should be convened by the competent body or branch of government empowered to that end.

Requirements associated with the convening of elections

At a minimum, the announcement needs to indicate: i) the date of the election; ii) the type of election; iii) electoral deadlines (for registration, enrollment, etc.); iv) the number and nature of the positions/offices to be filled by election or the issues to be decided; v) the legal grounds for convening the election and, preferably, the resources that will be used to conduct the process. The announcement convening the election must also: vi) be simple; vii) call for free participation, eschewing coercion, intimidation, or exclusions; and viii) determine who is eligible to participate.

It is also suggested that the convening of elections be in keeping with the need for genuine periodic elections, which shall be free and fair and by universal and equal suffrage and by secret ballot that guarantees the free expression of the sovereign will of the people.⁶⁹

⁶⁹ American Declaration of the Rights and Duties of Man. Art. 20. 1948; International Covenant on Civil and Political Rights. Art. 23. 1966; American Convention on Human Rights "Pact of San José". Art. 3, 23. 1969.

Candidacies

It is recommended that the electoral laws of the countries of the Americas contain rules governing the presentation of candidates by political parties and the registration of those candidacies by the electoral authority. They should also contain the full set of guidelines governing the actions of the electoral authority in this regard and the grounds on which candidacies put forward by parties may be deemed legally valid or invalid.

It is suggested that candidacies – be they submitted directly as a result of internal elections within parties (primaries) or independently – abide by the principles of inclusion, nondiscrimination, equality, gender parity, and certainty.

Neither establishing eligibility requirements for candidacies nor clearly establishing how many times a person may hold or stand for the same office or position contravenes political rights.

Independent candidacies

In countries in which electoral rules allow citizens to participate in elections without belonging to an organization or political party, or allow political organizations and parties to include persons who are not affiliated with them on their lists of candidates, it is best not impose excessive limits or restrictions that prevent the independent registration of candidacies.

Laws may also contain legal provisions allowing social and/or civic organizations to present candidates for certain electoral processes and for certain elective offices.⁷⁰ The particularities of each case should be regulated by specific laws.

Qualification of candidacies

It is recommended that the electoral laws of the countries of the Americas contain provisions regarding the registration of candidates put forward by parties and coalitions, or who come forward as independent candidates. These rules governing the registration of candidates must set deadlines and reasonable requirements and be based on equality and nondiscrimination criteria.

⁷⁰ In the *Castañeda Gutman* case, the Inter-American Court of Human Rights found that systems built exclusively on the basis of political parties and those that also allow independent candidacies may be compatible, and that therefore it was up to the State to decide which system to choose based on its constitutional norms.

It is suggested that the rules authorize registered candidates to take part in the electoral process and political campaign, and that they establish the identity and number of candidates who will appear on electoral documents. Finally, it is recommended that the candidate qualification phase be established both when elections are convened and in the electoral calendar. In this phase it is important to observe the principle of transparency and maximum publicity, and to allow enough time for review and, where applicable, appeals or challenges.

The technical regulations governing candidacies clearly impact the formation of preferences among the electorate and hence electoral outcomes as well.

Challenges to candidacies

Article 25.1 of the American Convention on Human Rights “Pact of San José” espouses the principle that everyone has the right to simple and prompt recourse, or any other effective recourse, for protection against acts that violate their fundamental rights. This suggests, inter alia, that the processing of challenges to candidacies must allow for timely settlement of the case and for effective reparation of any right impaired.

Ideally, citizens and any party or candidate affected should be able to file challenges or participate in proclamations and in the presentation of credentials, as well as in demands for elections to be annulled and in lawsuits to protect political-electoral rights.

It is recommended that procedural rules and practices ensure that completed stages and resolutions already issued be irreversible, if they were not questioned within the time allowed. There should also be deadlines for formulating demands relating to matters that have a major impact on the electoral schedule. The challenging of candidacies, in particular, is one of the stages in the electoral process in which the preclusion principle becomes especially important; for that reason, it is recommended that the conditions governing the eligibility of candidates be determined prior to the election. Subsequent challenges to the suitability of candidates who have been put forward should only be allowed on grounds in place on the date the candidacy was officially accepted.

The legal framework should grant ample access to judicial protection for anyone alleging impairment of their political rights. Citizens must be allowed to challenge any refusal to allow their or others’ candidacy and any violation of their political-electoral rights.⁷¹ Political groups and candidates must also be allowed to question the allocation or distribution of public funding or slots for electoral propaganda in the media.

⁷¹ Section 5, item 3.8 of the 1994 Declaration of the Interparliamentary Union on Criteria for Free and Fair Elections in 1994.

It is recommended that electoral regulations provide for the possibility of challenging candidacies put forward by political parties and coalitions or by citizens acting independently. The rules must guarantee the political rights referred to in the regulatory instrument, establish fixed deadlines, and allow candidates a chance to defend their rights, based on the justice principle that must always be paramount in electoral processes. The challenging of candidacies and settlement of disputes must be public and abide by due process rules.

Restriction or disqualification of the right to present a candidacy

Electoral laws need to establish in a clear, firm, and timely manner, based on reasonable, nondiscriminatory criteria, any restriction or disqualification of a candidacy.

Participation in the form of citizens exercising their right to be elected means that they can stand for office on an equal footing with others and can hold elective office if they manage to obtain the requisite number of votes.

Registration of political parties and cancellation of their registration

Each country's regulations need to contain clear and precise rules governing the registration or creation of new parties as well as their dissolution. As regards the forming of new parties, consideration needs to be given to at least the following factors: the time allowed for completing the procedures involved, the number of signatures or members to be accredited, the party's statutes, the scope of participation, the party's internal structure (governing bodies) and its composition, all of which must be in accordance with democratic principles. As for a party's dissolution or de-registration, the following should be taken into account: percentage of votes obtained in electoral processes (establishment of thresholds), the number of members, the number of electoral processes in which it participates or puts forward candidates, and whether or not the party is represented in representative bodies (congress, mayors' offices), in addition to clear rules governing the dissolution of the party and its assets.

Furthermore, the system needs to take care when establishing sanctions that envisage a party's disqualification or de-registration for acts or conduct during the electoral process. Such drastic sanctions should only be applied in exceptional cases.

Electoral coalitions

It is recommended that electoral regulations in the nations of the Americas allow parties and candidates to form electoral coalitions as a way to achieve shared political and social objectives. In this regard, the ways in which parties can form coalitions should be regulated in each nation's laws.

For electoral purposes, parties may form partnerships or coalitions that allow them to put forward and promote the same candidates for different levels or positions in government. In other words, coalitions should be regulated but those regulations should not impose such excessive or disproportionate restrictions on parties or candidates that they render coalitions impossible.

The fundamental attribute of electoral coalitions is that they are temporary in nature, which makes it reasonable that, apart from their joint representation before the electoral bodies for the specific election, the parties constituting the coalition should preserve their individuality, autonomy, legal status, and registration.

Re-election

Re-election is the possibility, permitted under the electoral system, of holding an elective office for more than one period. Re-election is a legal and democratic way of retaining power if that is the will of the electorate.

The purpose of placing restrictions on re-election is to preserve democracy and protect the human right to political participation. They help guarantee that periodic elections are genuine, as required under Article 25 of the Political Covenant on Civil and Political Rights and Article 23.1.b of the American Convention on Human Rights "Pact of San José", and thereby ensure that representatives are freely elected and accountable to citizens.⁷²

Indefinite re-election is not recognized as an automatic right either in the Inter-American system or under international law. Indefinite re-election also contravenes the American Convention on Human Rights "Pact of San José" because of its detrimental impact on representative democracy, which is a core concern of the OAS.⁷³

⁷² Report on term-limits Part I – Presidents. Adopted by the Venice Commission at its 114th Plenary Session, held in March 2018. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\[2018\]010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD[2018]010-e)

⁷³ Presentation at the public hearing of a request by Colombia for an Advisory Opinion of the Inter-American Court of Human Rights regarding rules governing presidential re-election that are not defined in the inter-American human rights system. 2020.

With respect to indefinite re-election, the OAS has consistently held that alternation in power is a sign of the strength of democratic systems.⁷⁴

The Inter-American Commission on Human Rights has established that restrictions on indefinite re-election are justified under the Convention, in light of the proportionality principle, and that States have an obligation to restrict it.

It is recommended that States whose laws provide for indefinite re-election establish a limited number of periods for re-election: in other words, that a term limit be set on the exercise of power. Alternation in power is at the heart of representative democracy.

Extension of mandate

In the same vein, another notion contravening alternation in power and democratic principles is the so-called: “continuation or extension of a mandate,” which involves an intention to continue holding an elective office, exceeding the set period for which was clearly established when the current holder was elected. Accordingly, it is important to consider that:

The Inter-American Juridical Committee (CJI) resolved⁷⁵ to reaffirm the content of the Declaration of Santiago de Chile, which refers to the essential elements and fundamental components spelled out in the Inter-American Democratic Charter and points out that “...[3] Perpetuation in power, or the exercise of power without a fixed term and with the manifest intent of perpetuation, is incompatible with the effective exercise of democracy.”

Advance planning for – or pre-established – institutional procedures, substitute measures, or temporary transition periods, based on democratic criteria, would ensure alternation by legally set deadlines and endow it with certainty, legitimacy, and transparency.

⁷⁴ Organization of American States. Electoral Observation Missions. 2019 and 2020 General Elections. Plurinational State of Bolivia. Final Report.

⁷⁵ Resolution CJI/RES. 159 (LXXV-0/09). 2009.

▶ 3. FAIR ELECTIONS

Equity is a quality that needs to permeate each and every electoral process. This section analyzes this principle and its application to the different stages of the process: campaigns, election day, and the official results. Mention is also made of other factors with a direct bearing on electoral equity, such as fake news, surveys, inclusive voting measures, voting abroad, electoral technology, options for challenging outcomes, and direct democracy mechanisms.

Election campaigns

An election campaign is the period allowed for promoting and disseminating information on candidacies, subject to oversight and monitoring by the electoral authority with respect to the public and private financing involved. The campaign shall be governed by a legal framework guaranteeing freedom and equal access to public and private media.

The chief purpose of electoral campaigns is to proactively share the platforms or plans for government of each of the competing political groups. Transparency as to the sources of financing and the uses made of those funds are vital factors in those campaigns. Equal access to the media is another factor to be taken into account.

It is recommended that the duration of campaigns and determination of those who can take part in them be established by law. The unregulated use of public and private funds, in cash or kind, is a source of inequity in electoral contests. How government officials act during campaigns also needs to be regulated by law.

Political discourse

Political speeches during elections must be as free as possible and never subject to prior censorship, with the exception of subject matter that, according to human rights standards, is not supported by freedom of speech, such as calls for genocide or any kind of violence. Deliberate deceit through the systematic dissemination of fake news must be subject to subsequent imposition of liabilities and effective sanctions that discourage distortions. Electoral regulations in the hemisphere need to contemplate legitimate sanctions and restrictions on propaganda inciting hate.

Fake news

It is recommended that parties and candidates that have systematically spread deliberate falsehoods (fake news) among voters should be punished. In cases in which there is only a narrow difference between first and second place, such conduct can be deemed to have produced outcome-altering distortions. The improper use of personal databases to spread fake news shall be regarded as a major aggravating factor.

Use and publication of polls

The use and/or publication of polls should be regulated by the electoral authority and bound by the principles of transparency, maximum publicity, and certainty that ought to govern all electoral processes. It is not recommended that such opinion polls be used as electoral propaganda tools. In electoral contexts, they should be used responsibly, and deliberate deceit must be regarded as fake news subject to the imposition of subsequent liabilities. Based on proportionality and mindful of the need for presumption of innocence, transparency requires showing which polling organizations have been deceitful, so as to alert the population and prevent the practice of propaganda surveys being regarded as normal and being allowed to degrade the conditions needed for democracy.

Election day

Election day is the day on which the electorate votes. The authority responsible for electoral processes must guarantee that all the activities envisaged are carried out correctly and in accordance with established legal principles. It is important to ensure that voting begins and ends on time. The distribution and collection of voting materials (the chain of custody) must be performed in accordance with duly approved security protocols. Information for the electorate regarding where and how to vote must be public and easy to access. Accessibility, security, and public order must be guaranteed, without disproportionate interventions that inhibit or intimidate voters exercising their right to vote.

It is suggested that the electoral authority take action to ensure the following:

- a. With respect to political parties, the presence of their observers, inspectors, or representatives at voting tables and polling stations to witness proceedings on election day and the public tabulation process, as well as access to a copy of the final tally sheet. Those representatives must be accredited and identified by the electoral authority.

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- b.** With respect to the voters, sufficient information as to where and how to vote, and the duration of election day. Elections centers must have adequate signage and enjoy the programs and resources that guarantee accessibility, inclusion, and the participation of both vulnerable groups and citizens living abroad.
 - c.** With respect to the electoral officials, training regarding electoral regulations, election day and voting procedures, security protocols, assistance for members of voting tables and polling stations, and procedures for transmitting data and outcomes.
 - d.** With respect to the national and international electoral observers, to be duly accredited by the electoral authorities, who must allow them to move freely around electoral centers to check election day proceedings and ballots.
 - e.** With respect to the electoral materials, to be at all times safeguarded and transported using strict security measures, if possible, using tracking devices. The ability to keep track of electoral materials helps build trust in the process. Ideally security measures should also be built into those materials.

Inclusive voting measures

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The elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation.

Article 9, Inter-American Democratic Charter

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Article 25 of the International Covenant on Civil and Political Right regulates the right to political participation of any citizen of a State party (direct or indirect participation in the management of the public affairs, the right to vote and to be elected, and to access—on an equal footing—public office in the country concerned.⁷⁶

⁷⁶ International Covenant on Civil and Political Rights. Art. 25. 1966.

The inclusion and participation of everyone is fundamental for democracy. A first step needed for including all citizens is accessibility, which provides the basis for the exercise of the rights of persons and social groups that have been systematically excluded from social life.

From an anti-discriminatory point of view, access and effective realization of political-electoral rights—especially the right to vote and compete for an elective office—may be as important as the right itself, because a right that cannot be exercised is a right denied.

For many people voting represents the only opportunity and a basic way to participate in political decision-making. For that reason, it is recommended that electoral processes provide all the human, material, organizational, and logistical conditions for the expression of organized political pluralism and for citizens to vote without discrimination.

Legal, administrative, and practical measures need to be established for the effective exercise of political-electoral rights by all persons and to ensure their full inclusion in elections and political processes regardless of ethnic origin, disability, gender identity or expression, age, or sexual or any other preference.

Voting by persons in vulnerable conditions

Based on the inclusion principle, it is recommended that, in all elections, guarantees are provided for the adoption of mechanisms and tools geared to asserting the right to vote based on the principles of nondiscrimination, material and formal equality, accessibility, and equal opportunity, in particular for vulnerable segments of the population, such as persons with disabilities, older adults, adolescences, pregnant women, the sick, and persons deprived of liberty.

In political inclusion processes it is necessary to bear in mind not just the diversity of groups that are discriminated against, but also the differences and diversity existing within different communities. For instance, persons with disabilities include people of different ages and from all ethnic and religious groups, women, and people with different sexual preferences.

It is recommended that States opt for measures that genuinely enable all persons in vulnerable conditions to take part in the political life of their country.

Voting by persons deprived of liberty

For the suspension of rights to be effective in a society, it must be justified in accordance with constitutional and international standards.

Thus, in accordance with Article 25 of the Covenant on Civil and Political Rights, guarantees must be provided for the effective exercise of the political right of anyone who has been deprived of liberty, but not yet convicted.

Voting by citizens living abroad

The ability to vote abroad is one of the guarantees that governments must provide to ensure the free exercise of political rights in accordance with international instruments. It expands and bolsters the political rights of the individuals and should, therefore be contemplated in electoral laws.

When legislation includes the possibility of voting abroad, it is recommended that electoral rolls be not, under any circumstances, shared with others for reasons other than the right to vote or be subject to scrutiny by migration or other authorities.

Voting abroad will require specific regulations and the crafting of plans, programs, and projects to facilitate such voting, schedules and deadlines guaranteeing that right, as well the preparation of electoral rolls. Consideration should also be given to the possibility of putting forward candidates and including citizens residing in other countries in electoral processes.

Another variant is allowing foreigners to vote in the country they have moved to. In these cases, that possibility is upheld in the International Convention on Migrant Workers adopted in 2003, Article 42.3 of which establishes that migrant workers may enjoy political rights in the State employing them, if that State, in the exercise of its sovereignty, decides to grant them such rights.

Vote counting at polling stations

Vote counting at polling stations needs to be expeditious, public, accessible, and witnessed by citizens, candidates, and representatives of political organizations, as well as by national and international observers. It is recommended that the electoral authority guarantee thorough

training for the members of polling stations and develop dissemination mechanisms to allow access to and observation of the content and results of the tallying conducted at each polling station. Guarantees also need to be provided for independence and autonomy during the vote counting process, without pressure, delays, or deliberate interruptions. Those manning polling stations should be granted enough authority to be able to perform their duties optimally.

By performing the functions assigned to them by law, the members of polling stations help legitimize the election through observing the conditions for suffrage and ensuring the transparency and credibility of the democratic process.

It is recommended that steps be taken to ensure that vote tallying hours enable the members of polling stations to take time to rest, while sticking to deadlines that give certainty to outcomes but also take into account the time and effort of the persons receiving and counting the votes.

Official results

Partial and final results of elections must be disseminated clearly, transparently, expeditiously, and without delay.

Tallying systems and the transmission and dissemination of results need to be technically sound, auditable, verifiable, and transparent. Their effectiveness and reliability must have been tested in trial runs. Ideally, audits of equipment, programs, and systems should be carried out before and after the election.

It is recommended that the electoral authority disseminate the preliminary outcomes of the election regularly and in a timely manner via information bulletins, so as to avoid confusion and prevent social conflicts caused by a lack of information regarding the electoral results. This practice boosts transparency and generates certainty and trust.

Rapid counts or sampling are valid ways to reveal preliminary outcomes, provided that they are based on transparent techniques established by the electoral authority in advance.

An effort should be made to ensure that at all times it is the electoral authority that is the source of information. Circulating information on results or trends via unofficial sources is a practice that contravenes the principle of certainty and reliability that all those involved in electoral processes need to follow and respect.

The use of unofficial preliminary results disclosure systems by electoral authorities is a common practice, despite not being regulated in most cases. Here, it is to be noted that in cases in which the electoral authority decides to use such systems, it should do so with the same technical rigor that it applies to the official results system. Procedures must be technically sound, auditable, and verifiable, and allow time for testing, test-runs, and audits.

Mechanisms for challenging outcomes

It is suggested that citizens, candidates, and political organizations have clear rules, shared early and publicly, establishing administrative challenge mechanisms or the possibilities for appealing electoral outcomes, and the electoral authorities who will hear and resolve such appeals.⁷⁷

It is likewise recommended that constitutional, legal, and regulatory provisions governing electoral challenges or appeals be framed in clear and simple language to ensure that they are easily understood by the interested parties and observers, and in particular by the bodies responsible for settling disputes.

The means and mechanisms provided for in electoral process regulations must be accessible in terms of the time needed to apply them, distance, and cost. It must also be possible to elicit a prompt resolution on the merits of the matter raised without unwarranted requirements or procedural obstacles.

Finally, it is recommended that the system for filing appeals or challenges possess expeditious, simple, swift, and effective procedures, with reasonable deadlines for both filing and settlement. Such appeals may be filed at any stage of the electoral process.

Electoral technology

The application of technology at any stage of the electoral process is welcome inasmuch as it serves to facilitate, expedite, and enhance security or lower costs, but it should be implemented gradually. Also, it should be accompanied by testing and test-runs and sensitization, awareness-raising, and information campaigns, together with training

⁷⁷ American Declaration of the Rights and Duties of Man. Art. 24. 1948; Inter-American Democratic Charter. Art. 8. 2001.

courses for users before they are applied. Should any flaws emerge, they will need to be supplemented with alternative protocols.

It is suggested that cyber-security and applicable protocols be a matter of priority concern in the introduction and use of technological tools. Thus, it is recommended that the electoral authority prioritize security and reliability when it comes to the benefits that the use of such tools could have for electoral processes.

The use of new technology should be a sovereign decision of the country concerned, after taking into account its particular needs, costs, and benefits, as well as other major factors such as their dissemination and the extent to which electoral officials, political parties, and citizens can become familiar with them.

Direct democracy

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Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.

Article 2, Inter-American Democratic Charter

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The effective exercise of representative democracy is essential to the rule of law and the constitutional regimes of Member States.

Participation at the polls involves more than just the election of governments or parliamentary representatives and it is logical that the countries of the hemisphere include direct democracy mechanisms in their constitutional and legal frameworks, such as referendums, popular consultations, or plebiscites.

The next are some considerations to keep in mind when carrying out these exercises:

- a. Under no circumstances, may the following be subject to any form of popular consultation, referendum, plebiscite, or other direct democracy mechanism: human rights, the effective exercise of democracy in a given territory, pardons for crimes against humanity, or the enforcement of justice under laws in effect.

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- b.** The issues consulted must be neutral in terms of the language used to draft them and it must be specified in advance whether or not their results will be binding. Voting must also be for a “yes” or “no”; never subject to additional interpretation.
 - c.** Popular consultations and other direct democracy exercises require equitable conditions for the dissemination in mass media of the position of both those in favor of a proposal and those who oppose it.
 - d.** The issues to be submitted to popular consultation or other direct democracy mechanisms ought not to entail exaggerated prohibitions or disproportionate requirements.
 - e.** Consultations should not be directly organized by those promoting proposals or by governments, but rather by autonomous electoral authorities. Government authorities must refrain from tipping the balance with illegitimate propaganda in favor of one or other of the positions up for consultation, unless their arguments in favor or against are expounded on a level playing field which also permits a balanced presentation of different views.

► 4. ELECTORAL OBSERVATION AND SOCIAL CONTROL MECHANISMS

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International election observation has the potential to enhance the integrity of election processes, by deterring and exposing irregularities and fraud and by providing recommendations for improving electoral processes.

Declaration of Principles for International Election Observation

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Electoral observation

International observation guidelines are mainly to be found in the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers, documents drawn up by the United Nations in 2005, and to which the Organization of American States is a party.

The Declaration of Principles for International Election Observation establishes that observation requires “credible methodologies and cooperation with national authorities, the national political competitors (political parties, candidates and supporters of positions on referenda), domestic election monitoring organizations and other credible international election observer organizations, among others.”⁷⁸ In addition, that instrument refers to observation as “express[ing] the interest of the international community in the achievement of democratic elections, as part of democratic development, including respect for human rights and the rule of law.”⁷⁹

The Code of Conduct for International Election Observers specifies the 12 principles that members of an international observation mission must abide by to guarantee their impartiality.

An international electoral observation mission is defined in the OAS Manual for Electoral Observation Missions as “a process whereby an organized group of individuals from outside the host country systematically carries out a series of complex actions and activities to observe an electoral process in a direct, complete, and precise manner. The subject of the

⁷⁸ Declaration of Principles for International Election Observation. 2005.

⁷⁹ Declaration of Principles for International Election Observation. 2005.

observation is the process,”⁶⁰ while Article 24 of the Inter-American Democratic Charter establishes that “they shall be conducted in an objective, impartial, and transparent manner and with the appropriate technical expertise.”

Accordingly, it is recommended that regulatory bodies in the nations of the Americas provide for the practice of national and international electoral observation, given that it contributes to the consolidation, advancement, enhancement, and generation of trust in electoral processes as the observation and monitoring carried out by such missions must always be impartial. It is suggested that reference be made in the corresponding law to the pertinence of observation of all stages of the electoral process performed by national and international electoral observation missions. Also, consulting and abiding by the provisions of the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers.

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The electoral observation missions shall be carried out at the request of the Member State concerned. To that end, the government of that State and the Secretary General shall enter into an agreement establishing the scope and coverage of the electoral observation mission in question. The Member State shall guarantee conditions of security, free access to information, and full cooperation with the electoral observation mission.

Article 24, Inter-American Democratic Charter

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The notion of a national and international electoral observer is in keeping with the political rights established in international instruments. At the national level, it is a form of participation in public affairs inherent to the right to freedom of association, both of which are political rights. At the international level it is a way to promote democracy in the hemisphere, to strengthen ties between countries and, above all, to share experiences and best practices so that progress is made towards the democratic development of nations in the hemisphere, based on solidarity.

Electoral observation missions

Electoral observation missions provide citizens, the authorities, candidates, and political organizations with added certainty, because observing actions by the authorities and the

⁶⁰ Organization of American States. Manual for Electoral Observation Missions. Pg. 10. 2008.

behavior of political stakeholders creates credibility, trust, security, and certainty that the process abides by the rules.

Missions of this kind, led by the Organization of American States (OAS/EOMs) are carried out in accordance with the Declaration of Principles for International Election Observation, the Code of Conduct for International Election Observers, and the Inter-American Democratic Charter and based on the principles of objectivity, impartiality, transparency, and appropriate technical skills. They are also autonomous and independent, unlike missions of accompaniment, which follow an agenda set by the electoral authority in the host country. For their observation work, the OAS/EOMs use specific methodologies and issue technical recommendations for improving and strengthening the electoral system they observe.

The OAS conducts extensive observation of electoral processes based on standards set forth in such documents as the Inter-American Democratic Charter, so that it implements methodologies for an exhaustive and in-depth analysis going beyond mere observation of election day and focusing on the whole electoral cycle.

National observation

The citizens of a country have a right to observation of their elections, and it is a form of participation in the public affairs of their country, which must be guaranteed, and never restricted, by the electoral authority. It is suggested that registration processes be expeditious, simple, and, where applicable, based on briefings and training. National observers should prepare reports on what they observe and thereby help improve the electoral system.

Ideally national observation would include and operate as follows:⁸¹

- a.** Work plan and structure. Have a detailed observation plan, which will include the location of the registration sites and voting precincts, the places where each observer will be deployed, the main topics on which information will be collected, the manner in which they must send their conclusions, persons responsible and deadline dates and times. It is desirable that they have a pre-established process based on minimum criteria to recruit, train and deploy observers.
- b.** Truthful. Be responsible for the information that is disclosed and transparent. Observation is making an objective and informed assessment of what was observed and verified during deployment. The analysis must be objective and truthful, supported by the reports generated with the information collected in the field.

⁸¹ Lecciones aprendidas en materia de observación electoral en América Latina [Acquired Lessons Concerning Observation of Electoral Matters]. Instituto Interamericano de Derechos Humanos, 2008. Available at: <https://www.iidh.ed.cr/capel2016/media/1216/cuaderno-53.pdf> and also the www.aceproject.com

c. Accurate and specific. Determine which of the universe of activities and components of the electoral process is going to be observed and under what criteria. It is important to be able to differentiate between verifiable facts and assumptions, it is essential to use only verified information and base reports on well-documented observations.

d. Objective and impartial. Independent observation is based on respect and observance of the current legal frameworks and regulations, if any, issued by the electoral authority. The coverage and its reports must be objective, attached to what has been observed and without ideological or partisan biases.

Duration of the observation

The duration of observation may vary and be either:

- **Short-term**, lasting from one day to one month at most.
- **Medium-term**, between one and three months.
- **Long-term**, covering the whole electoral cycle from the start through to the declaration of final results.

Type of observation

There are three types of observation based on the techniques used:

- **Qualitative**: measuring basic factors related to the observance of international rules or standards regarding electoral processes;
- **Quantitative**: focusing on the gathering and analysis of data and statistics;
- **Mixed**: using both techniques.

Purposes of electoral observation

The work of national and international electoral observation missions must help enhance the quality of the electoral processes observed and increase the transparency and

openness of acts and decisions associated with elections. In short, they must contribute to improvements in the electoral system, based on dialogue, and a forward looking and critical approach. That is where electoral observation is most useful. It should translate into the delivery of final reports to the authorities on the observation carried out, the method used, the coverage and representative nature of the findings.



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For strengthening electoral processes

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