



# **Improving Electoral Practices:**

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Case Studies and Practical Approaches

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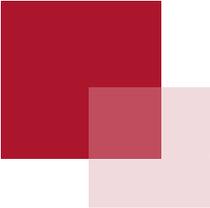
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## Foreword

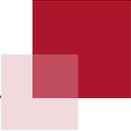
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“Elections are the essential root of democracy. They are now almost universal.” As Kofi Annan indicates in *Deepening Democracy: A Strategy for Improving the Integrity of Election Worldwide*, nowadays, electoral processes are a reality in almost all the countries of the world. The development of an equitable, transparent and fair electoral process is the foundation for the strengthening of a healthy democracy. Given the multiplication of democratic electoral processes around the world, however, new challenges and needs have emerged. To meet these needs, the electoral process must be undergirded by two fundamental standards: credibility and integrity.

In order to ensure that these two crucial elements are present and visible, other features, such as respect for the rule of law, political plurality, transparency, accountability and the professionalization of electoral management bodies, among others, are necessary. Obviously though, theory is easier than practice, and, in that light, the publication *Improving Electoral Practices: Case Studies and Practical Approaches* provides practical direction through eight case studies, in accordance with three recommendations made by the *Report of the Global Commission on Election, Democracy and Security*.

The text was developed within the framework of the Working Group on Elections of the Community of Democracies, together with International IDEA, and supported by the Republic of Korea. The Community of Democracies is a global intergovernmental coalition of states committed to the development of democracy around the world. Its members pledge to uphold the democratic values expressed in the Warsaw Declaration and to support them through a variety of initiatives. One of these initiatives is the Working Group on Elections.

The Working Group on Elections supports one of the main tenets of the Community of Democracies: *promoting democratic rules and strengthening democratic norms and institutions around the world*. The Group urges the protection of human rights and the reinforcement of democratic institutions



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in order to respond to new societal challenges. Members of the Group identify not only elections, but also the rightful exercise of power as essential elements to strengthen democracy. Both of them are sources of democratic legitimacy.

Recognizing the imperatives of democratic elections throughout the world, the Working Group defines its mission as encouraging democratic and electoral practices through the promotion of international horizontal exchange and cooperation. The Group's mandate addresses three principal areas:

- 1) Reinforcement of capacities of the EMB and strategic electoral stakeholders;
- 2) Promotion of electoral accessibility and participation; and
- 3) Improvement of electoral processes.

In order to achieve its mandate, the Group organizes capacity reinforcement programmes, democratic reflection forums and comparative research and publications. All of these are instruments that promote thinking and debate on the current state of world democracy.

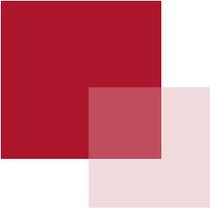
The Working Group recognizes the importance of learning through the exchange of experiences. *Improving Electoral Practices: Case Studies and Practical Approaches* promotes knowledge through the realities and lessons learned from different countries, and allows us to recognize the challenges and their solutions to strengthen democratic institutions. It is a study that falls within the mandate of the Group, highlighting best practices in these areas of electoral reform.

Moreover, the three issues within this document, the professionalization of electoral management bodies, political financing and plural participation, are integral to an electoral process that is based on credibility and integrity. When these items are instituted, the election's authority is strengthened by providing transparency and legitimacy.

This publication is a platform for reflection on the current state of the democratic system. The lessons and experiences expressed within it show where new challenges have emerged and how they are overcome. It is a vision that reveals eight particular cases, yet illustrates the reality of many others.

Finally, I want to finish with Kofi Annan's reflection, 'I believe the time is ripe to underscore the rule of law, democratic governance and citizen empowerment as integral elements to achieving sustainable development, security and a durable peace'. We, the Working Group, fully agree.

Manuel Carrillo  
Co-Chair of the Working Group on Elections  
for the Community of Democracies



## Preface

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Introducing reforms to improve the conduct of democratic elections is not a straightforward process. First, we need to assess the soundness and effectiveness of existing policy. We need to determine the gaps and shortcomings, and evaluate whether policy reforms are the best way of addressing them. Furthermore, we have to consult with all relevant stakeholders, particularly women and marginalized groups. The outcomes of the assessment and consultations will indicate the direction of the reforms. They can also inform a plan that will guide the reform process.

Second, and crucially, there must be political will to reform. A dedicated group of stakeholders can help ensure this by actively lobbying for reforms, engaging policymakers and civil servants, and contending with those who oppose reforms because it will impact their vested interests. Ideally, a political champion who can watch over the reform process will come forward.

This publication, *Improving Electoral Practices: Case Studies and Practical Approaches*, follows up on the recommendations put forward by the Global Commission on Elections, Democracy and Security to promote the integrity of elections. In particular, it shares experiences and lessons learned from eight countries that have undertaken electoral reforms to improve the professionalism and independence of action of their electoral management bodies, the regulation of political finance and the removal of barriers to universal and equal participation.

The publication presents real-life accounts of how the recommendations are implemented, and allows for a pragmatic perspective on reform and its impact on electoral life in the eight countries. Moreover, it highlights ideas and lessons that are relevant to policymakers and implementers, including those from countries in transition that are considering these electoral reforms.

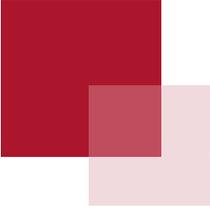


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Made possible by the support of the Ministry of Foreign Affairs of the Republic of Korea, this publication is the first joint project of the Community of Democracies and International IDEA. It is our hope that this publication will help inform, as well as inspire, policymakers and advocates interested in successful electoral reform.

Yves Leterme  
Secretary-General  
International IDEA

Maria Leissner  
Secretary-General  
Community of Democracies



## Acknowledgements

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The production of this book would not have been possible without the kind support and contributions of a number of individuals, organizations and states.

First, we would like to acknowledge the administrative oversight and contributions of the Permanent Secretariat of the Community of Democracies, particularly Francesco Lembo, as well as the financial support provided by the Ministry of Foreign Affairs of the Republic of Korea.

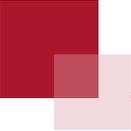
We also would like to express our gratitude to the Community of Democracies Working Group on Elections, which supported the realization of this book and validated its country cases and findings. The Working Group is co-chaired by Mexico and the Philippines and its members include the Republic of Korea, the elections management bodies of Romania, India and Mexico, International IDEA, the Open Society Foundation, the National Democratic Institute, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights and the International Foundation for Electoral Systems.

For their insights and kind assistance, our sincere thanks also go to Eleonora Mura, Annette Fath-Lihic, Vasil Vashchanka, Rumbidzai Kandawasvika-Nhundu, Nana Kalandadze, Sam Van der Staak, Sam Jones, Andrea Milla, Leena Rikkila Tamang, Andrew Ellis, Nadia Handal Zander, Suzanne Trochesset and Bridget O'Sullivan.

## Abbreviations

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<b>AEC</b>	Australian Electoral Commission
<b>AG</b>	Action Group (Party)
<b>ALP</b>	Australian Labor Party
<b>ATSIEEIS</b>	Aboriginal and Torres Strait Islander Election Education and Information Service
<b>CABER</b>	Commissioner's Advisory Board for Electoral Research
<b>CEDAW</b>	Convention for the Elimination of All Forms of Discrimination against Women
<b>COFIPE</b>	<i>Codigo Federal de Insitucionces y Procedimientos Electorales</i> (Federal Code of Electoral Institutions and Procedures)
<b>CPEUM</b>	<i>Constitución Política de los Estados Unidos Mexicanos</i> (Political Constitution of the United Mexican States)
<b>CPI</b>	Consumer Price Index
<b>CSOs</b>	Civil society organizations
<b>DGD</b>	Democratic Governance for Development
<b>DLP</b>	Democratic Labor Party
<b>DPD</b>	<i>Dewan Perwakilan Daerah</i> (Regional Representatives Council)
<b>DPR</b>	<i>Dewan Perwakilan Rakyat</i> (People's Representative Council or House of Representatives)
<b>ECANZ</b>	Electoral Council of Australia and New Zealand
<b>ECN</b>	Electoral Commission of Nigeria
<b>ECOWAS</b>	Economic Community of West African States
<b>EMB</b>	Electoral management body
<b>EVT</b>	Electronic voting trial
<b>FCT</b>	Federal Capital Territory
<b>FEDECO</b>	Federal Electoral Commission
<b>FPTP</b>	First past the post
<b>ICCES</b>	Inter-Agency Consultative Committee on Election Security
<b>ICT</b>	Information and communication technology
<b>IFE</b>	<i>Instituto Nacional Electoral</i> (Federal Electoral Institute)
<b>INE</b>	<i>Instituto Federal Electoral</i> (National Electoral Institute)

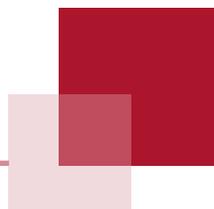



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<b>INEC</b>	Independent National Electoral Commission
<b>IPA</b>	Institute of Public Affairs
<b>IPAC</b>	Inter-Party Advisory Committee
<b>ISIE</b>	<i>Instance Supérieure Indépendante pour les Elections</i> (High Independent Authority for Elections)
<b>IU</b>	<i>Izquierda Unida</i> (United Left)
<b>JSCEM</b>	Joint Standing Committee on Electoral Matters
<b>KPU</b>	<i>Komisi Pemilihan Umum</i> (Election Commission)
<b>MP</b>	Member of parliament
<b>NASRDA</b>	National Space Research and Development Agency
<b>NEC</b>	National Election Commission
<b>NEO</b>	National Election Office
<b>NCA</b>	National Constituent Assembly
<b>NOA</b>	National Orientation Agency
<b>NIDD</b>	National Identity Cards Database
<b>NSW</b>	New South Wales
<b>NYSC</b>	National Youth Service Corps
<b>PIANZEA</b>	Pacific Islands, Australia and New Zealand Electoral Administrators' Network
<b>PP</b>	<i>Partido Popular</i> (Popular Party)
<b>PR</b>	Proportional representation
<b>PSOE</b>	<i>Partido Socialista Obrero Español</i> (Congress of the Spanish Socialist Workers Party)
<b>PDP</b>	People's Democratic Party
<b>PUP</b>	Palmer United Party
<b>RERC</b>	Registration and Election Review Committee
<b>RCD</b>	<i>Rassemblement constitutionnel démocratique</i> (Democratic Rally Party)
<b>SBF</b>	Stefan Batory Foundation
<b>TEPJF</b>	Electoral Tribunal of the Federal Judiciary
<b>UNDP</b>	United Nations Development Programme

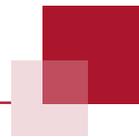
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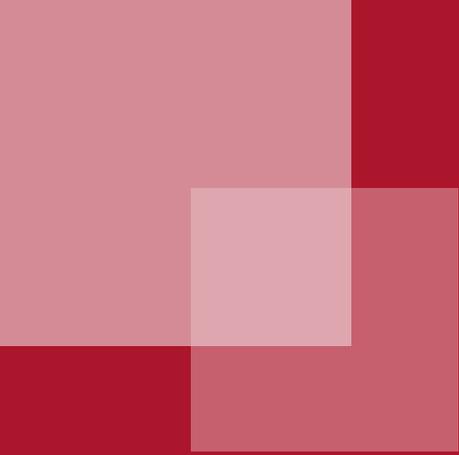
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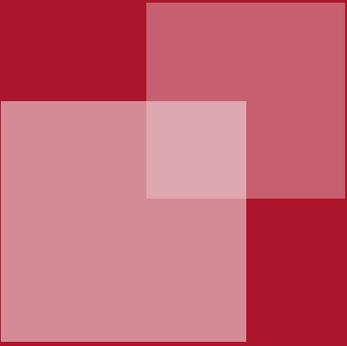
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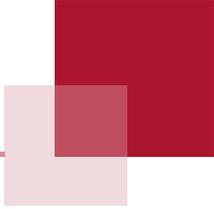
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# Introduction



# Introduction



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Raul Cordenillo

Holding regular elections is an integral part of any functioning democracy. Elections give citizens the opportunity to participate in the political process by allowing them to identify and select their political representatives. These representatives, in turn, consult citizens, aggregate their political preferences and ensure that they are heard in democratic institutions and processes.

In anticipation of elections, citizens—through various forums, including their respective political parties—acquaint themselves with the candidates for election and discuss and debate the burgeoning issues related to governance, the economy and the overall state of their country. After elections, citizens hold their elected representatives accountable to ensure that their political interests are heard and appropriately addressed. Failing to do so might make citizens rethink their choice of representatives for the next elections.

## On the integrity of elections

If elections lack integrity, there is no opportunity for citizens to participate and advance their interests in the political process. In such cases, officials and election management bodies (EMBs) are also not accountable to the citizens, and the results of elections are not transparent. Thus, citizens may lose confidence in the election process.

The Global Commission on Elections, Democracy and Security (which was established jointly by International IDEA and the Kofi Annan Foundation and chaired by Kofi Annan), in its September 2012 report, *Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide*, highlighted the importance of the integrity of elections. In particular, it stressed that elections can further democracy, development, human rights, and security, or undermine them, and for this reason alone they should command attention and priority. Elections that are conducted with integrity uphold human rights and democratic principles, and are more likely to produce elected officials

who represent their citizens' interests. As such, democratic governments serve their strategic interests by supporting elections with integrity.

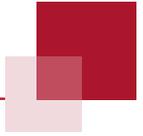
The report identified five major challenges to conducting elections with integrity: (1) the implementation of the rule of law and electoral justice; (2) the professionalism and independence of EMB actions; (3) the establishment of institutions and norms of multiparty competition; (4) the removal of barriers to universal and equal participation; and (5) the regulation of political finance. The report then made recommendations to match these challenges and encourages governments, international organizations and various other sectors to implement them.

## **The project, case selection and case studies**

The Community of Democracies Working Group on Elections, the Permanent Secretariat of the Community of Democracies and International IDEA, with the support of the Republic of Korea, undertook a project to look closely at the Global Commission's recommendations, particularly the creation of professional and competent EMBs with full independence of action; oversight over political finance; and the removal barriers to the participation of women, youth and traditionally marginalized groups. The objective was to look at practical approaches to their implementation, as well as to identify good practices and lessons learned that could benefit democracies in transition.

Case studies were commissioned on eight countries, which comprise the chapters of this book. These include Australia, Indonesia, the Republic of Korea, Mexico, Nigeria, Poland, Spain and Tunisia. They were selected to include participating states of the Community of Democracies from all continents and at different levels of political and economic development. Together, they represent different models of democracy, forms of government and electoral systems. While the eight countries do not necessarily constitute a representative sample of all democracies worldwide, they possess experiences that are relevant to the project.

Written by local contributors, each chapter highlights one of the three Global Commission recommendations that are the focus of the project. The choice of focus was proposed by the contributors themselves, and was based on the relevance of the recommendation to that country. For example, the chapters on Australia and Nigeria focus on the creation of professional and competent EMBs with full independence of action, while the chapter on Poland focuses on oversight over political finance. The chapters on the Republic of Korea and Tunisia focus broadly on removing barriers to political participation, and the



chapters on Indonesia, Mexico and Spain focus on removing barriers to the participation of women.

Each chapter presents the country's constitutional and legal framework, as well as current practices in the conduct and management of elections. It then identifies the electoral reform processes that were aimed at implementing the relevant Global Commission recommendation and highlights achievements, challenges and lessons learned by that country.

The chapters conclude with a set of recommendations that could help electoral authorities and electoral stakeholders initiate locally owned and inclusive processes leading to change and improvement in electoral processes, particularly for countries in transition. In so doing, this book, and the project as a whole, fulfils the objectives of the Community of Democracies Working Group on Elections and the mandate of International IDEA.

## **On reforming electoral processes**

Since this book tackles electoral systems and their reform, it is important to highlight their key characteristics. According to *Electoral System Design: The New International IDEA Handbook*, the choice of electoral system is one of the most important institutional decisions of any democracy. While electoral systems have a significant impact on the political life of the country concerned, it is only recently that there has been a conscious effort to select and design such systems. Traditionally, they have been the result of circumstance, colonial experience or even the influence of neighbouring countries.

Moreover, electoral systems, once chosen, often remain fairly constant as political interests solidify around them and respond to the incentives presented by them. As such, reform of electoral systems is not an easy venture. It is often piecemeal, requiring political will, time, resources, national advocates and, at times, even external developments that impact the country. The interplay among these factors could vary from country to country.

In recognition of these challenges to electoral reform, the chapters in this book highlight the reform processes that have been taking place in each country. As such, they allow for a clear and pragmatic presentation of how reforms aimed at the professionalization of EMBs, the regulation of finance or the removal of barriers to inclusive political participation have been undertaken in these countries.

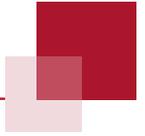
## Overview of the chapters

Chapter 1, ‘Professionalism of Electoral Management Bodies: The Australian Case’, presents the experience of a professional electoral administration operating in a long-established, well-resourced democracy. In particular, it highlights the strengths of the Australian system, which include a non-partisan, professional, public-sector work ethic, career-path opportunities for officials and a relatively substantial budget. It also discusses areas for improvement, which relate to the lack of oversight over key aspects of the budget and limits on the independence and oversight of the EMB. It concludes with lessons that may be relevant to countries in transition.

Chapter 2, ‘Toward Institutionalizing Credible Elections in Nigeria: A Review of Reform Measures by the Independent National Electoral Commission’, focuses on the ongoing reforms since the 2007 elections in Nigeria. It presents the political context of election administration in the country and its institutional mandate and organization. It then discusses why electoral reform was necessary and how this was undertaken, including its core elements. This is followed by a discussion of the challenges faced and how these were addressed and could be managed better. The important lessons learned in the Nigerian electoral reform process are outlined in the concluding section.

Poland’s experience of shaping and applying political finance regulations is discussed in Chapter 3, ‘Political Finance: The Case of Poland’. It focuses on four areas of this rather broad topic, including the evolution of the legal basis for the transparency of political financing in Poland, the obligations and procedures for disclosure for both political parties and electoral committees, provisions of the Election Code that regulate electoral campaigns and institutional supervision by the National Election Commission. The chapter describes the reform process undertaken in Poland to regulate political finance and highlights lessons that may be relevant to other countries, including those in transition.

Chapter 4, ‘Institutional Reform to Broaden Representation in Korea: The Cases of Minor Parties and Women’, explains how political reform—through a series of amendments to the National Party Law and the National Election Law—was crucial for Korea’s democratic consolidation, increasing the representation of minor parties and women. The chapter uses election data to assess the impact of institutional changes as a result of the above-mentioned reforms. It concludes that while the reforms were successful, further measures could be considered to make representation in the Republic of Korea even more inclusive.



The experience of Tunisia, particularly during the transitional elections held on 23 October 2011, is presented in Chapter 5, 'Inclusiveness Policies in the Transitional Elections in Tunisia'. The chapter examines the policies of inclusiveness carried out in the framework of the democratic transition process in Tunisia and evaluates their contribution to the inclusion of individuals and groups that had been victims of deliberate political exclusion under the old regime. The lessons that can be learned from the experience of Tunisia's transitional elections could help increase inclusiveness in post-transition electoral processes elsewhere as well.

Chapter 6, 'Electoral Reforms and Female Representation in Indonesia: Successes, Challenges and the Way Forward', discusses the improvement in female representation in the Indonesian Parliament as a result of recent reforms in the electoral system, in particular the use of open candidate lists and the zipper system. It also highlights gaps in policy that could be considered to further improve the system and suggests policy recommendations for policymakers in Indonesia and beyond.

Chapter 7, 'Lessons Learned in Removing Barriers to Women's Participation in the Mexican Federal Congress', describes almost two decades of legal efforts to dismantle obstacles to women's participation in democratic processes and, more specifically, to improve the descriptive and substantive representation of women in Congress at the national level in Mexico. In particular, it highlights the use of gender quotas and the role of the Electoral Tribunal of the federal judiciary, which have both contributed to reinforcing legal certainty and strengthening the rule of law. It concludes with lessons learned from the reform process that may be useful for improving electoral processes elsewhere.

The Spanish experience with regard to fostering equal opportunities for men and women is presented in Chapter 8, 'Equal Representation in Spain: Lessons Learned from Balanced Electoral Lists'. In particular, it highlights the reform process following the introduction of Law 3/2007 on Effective Equality between Women and Men and the impact of balanced electoral lists on the electoral system as a whole. It highlights the role played by electoral commissions, courts of law and the Constitutional Court as principal custodians of equal representation. The chapter concludes with lessons learned that can be helpful as a guide for electoral reforms aimed at fostering women's equal representation.

The countries covered by the eight chapters tackle issues that stem from different contexts. As such, the ways of addressing them vary considerably.

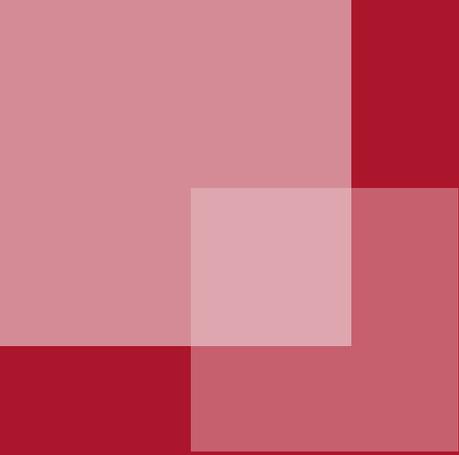
Yet there are also commonalities among them, particularly in terms of challenges to electoral reform and how to address them. These differences and commonalities, as well as the findings and recommendations of the chapters, are summarized in the conclusion of this book.

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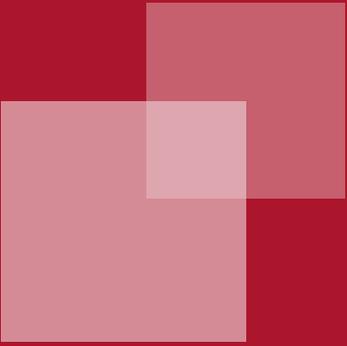
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# **Chapter 1**

## **Professionalism of Electoral Management Bodies: The Australian Case**



# Chapter 1

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Norm Kelly

## Professionalism of Electoral Management Bodies: The Australian Case

### Introduction

Australia provides a compelling case study of a professional electoral administration operating in a long-established, well-resourced democracy. Its electoral management bodies (EMBs) at the national and sub-national levels have many strengths, including a long-established culture of a non-partisan, professional public-sector work ethic; career opportunities for EMB staff; and the competent management of boundary redistributions, party registration and public funding regimes. The budgets of Australian EMBs are quite substantial compared to those of many other countries, which corresponds to a public expectation of high performance from electoral administrators. However, there are also several areas of concern, including limited control over key aspects of an EMB's budget, limits to their independence in administering elections, legislation designed to provide a partisan advantage and the lack of non-partisan oversight of EMB performance.

This chapter commences with an explanation of the origins and roles of electoral administration, which helps explain the current high regard for the Australian administration. Next, the level of independence exhibited by EMBs is considered in relation to the EMBs' various responsibilities. The role of parliamentary oversight of EMBs is assessed, and the issue of postal voting is used as an example of the conflicts that can occur between independent and partisan interests, with partisan interests winning in this case. The chapter then looks at the transfer of administrative expertise, both within Australia and regionally, before detailing the relatively poor historical levels

of indigenous and women's representation in Australia. Then, the chapter considers the implications of an election failure, as it occurred in 2013 in Western Australia. It concludes with a summary of Australia's successes and lessons learned, and how they are relevant to countries in transition.

### ***Origins and roles***

The origins of Australia's professionalized electoral administration lie in pre-federation colonial society, when electoral administration was primarily the responsibility of public servants working in existing government departments. When the federation was established in 1901, legislative responsibilities were split between the national (federal) parliament and state legislatures;<sup>1</sup> the powers of each, including the jurisdictions responsible for conducting elections, were defined in the constitution. Electoral administrations continued to be part of the public service, but, over time, they achieved greater independence from government by establishing statutory offices; however, these remained subject to ministerial direction. At the national level, the Australian Electoral Commission (AEC) was established by the Commonwealth Electoral Legislation Amendment Act of 1983.<sup>2</sup> Although the AEC is regarded as an independent EMB, the government has retained control over budgetary and legislative matters (Hughes 2001).

At Australia's sub-national state and territory levels, each jurisdiction has experienced a similar evolution in electoral administration and governmental influence: all states and mainland territories established electoral commissions from 1987 through 2009 (see Table 1.1). Australia has three tiers of government (national, state and territory, local), and local government elections are typically administered by (or with the assistance of) the relevant state or territory commission. In 2008, there were more than 550 local government bodies across Australia (Sawer, Abjorensen and Larkin 2009: 262).

**Table 1.1. Establishment of electoral commissions**

<b>Jurisdiction</b>	<b>Electoral management body</b>	<b>Date established</b>
<b>National</b>		
Commonwealth	Australian Electoral Commission	1984
<b>States</b>		
New South Wales	New South Wales Electoral Commission	2006
Victoria	Victorian Electoral Commission	1995

Queensland	Electoral Commission of Queensland	1992
Western Australia	Western Australian Electoral Commission	1987
South Australia	Electoral Commission of South Australia	2009
Tasmania	Tasmanian Electoral Commission	2005
<b>Territories</b>		
Australian Capital Territory	Australian Capital Territory Electoral Commission	1992
Northern Territory	Northern Territory Electoral Commission	2004

*Source:* Author

The AEC is headed by three commissioners: a full-time chief executive, a senior judge as the part-time chairman and a part-time commissioner, who usually has statistical skills (currently the Australian statistician) due to the importance of boundary redistributions. Commissioners are appointed by the governor-general on the recommendation of the government of the day. The government is not required to consult with opposition parties or to vet potential appointees through an independent mechanism. Although there is the potential for partisan appointments to be made, which would diminish the organization's independence, to date this has not been done. The chief executive commissioners appointed since 1983 have been officials with a strong background in electoral administration or public-sector management roles.

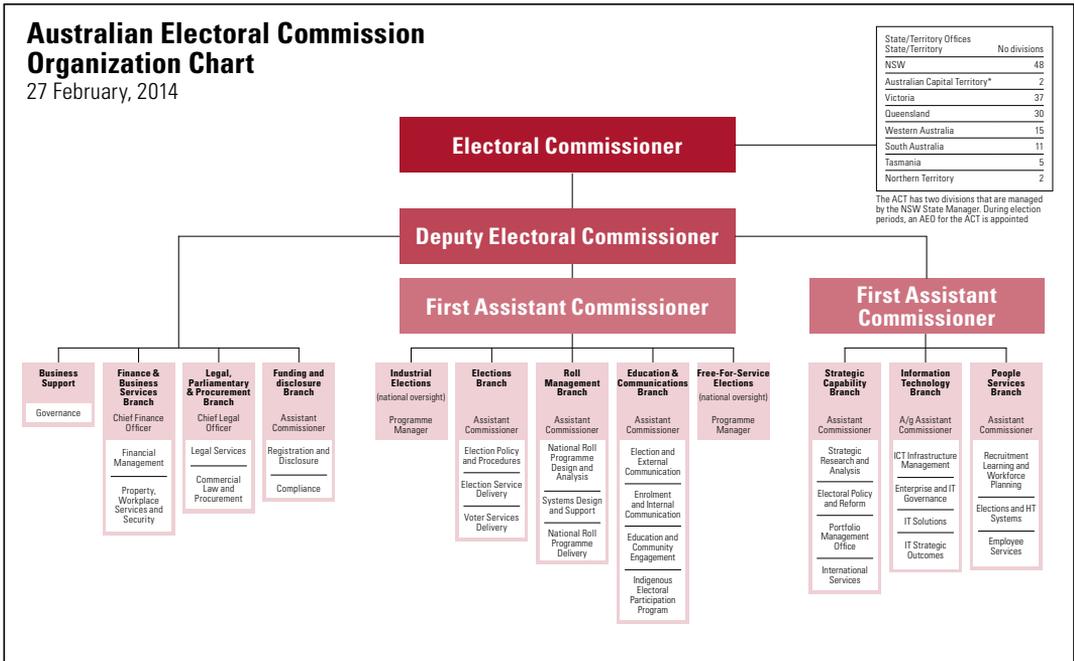
At the sub-national level, wider consultation is sometimes required before appointing an electoral commissioner, to strengthen the likelihood and perception of non-partisan appointments. For example, Queensland and South Australia require consultation with a parliamentary committee prior to the ratification of an appointment. The South Australian legislation also requires a resolution from both houses of parliament before the governor can appoint the electoral commissioner. Most Australian jurisdictions prohibit appointments of people with political affiliations; however, if a government tried to make a political appointment, it would likely be a person whose partisan allegiance was less well known or obvious. Although there may occasionally be private concerns that a particular commissioner supports one political party over another, these concerns have rarely been supported with solid evidence.

The independence of electoral commissioners has not been a significant issue in Australia, but other factors, in addition to the appointment process, that can affect commissioners' independence include the length and security of their tenure. If a commissioner lacks long-term security, then his or her actions may be (or perceived to be) related to a desire for reappointment. When the timing of a potential reappointment coincides with an election, this may also have an impact, regardless of the length of appointment. It can be expected that the longer the length of an appointment, the more confidence a commissioner will have to act independently. However, other issues, such as being innovative and having the ability to replace an underperforming commissioner, also need to be considered.

AEC commissioners are appointed for up to seven years. The 'up to' provision gives governments some flexibility to determine the length of an appointment, and, in reality, AEC commissioners are typically appointed for five years, which is consistent with government policy on senior appointments. Shorter-term appointments could be associated with weaker independence, especially if the commissioner is seeking reappointment. In sub-national jurisdictions, the length of tenure ranges from 'up to five years' for the Australian Capital Territory (ACT) and Northern Territory through to appointments to the age of 65 for South Australian commissioners (Kelly 2012: 41). All jurisdictions prescribe the circumstances under which a commissioner may be dismissed, such as bankruptcy and mental or physical incapacity, and all jurisdictions except for the national and Queensland commissions require a parliamentary resolution in order for a dismissal to take effect.

The AEC has a permanent staff of around 850 to service an electoral population of almost 15 million people (AEC 2013: 106). It has a national office, seven regional offices and divisional offices to service each of the 150 House of Representatives electorates. Australia is possibly the only country in which a permanent, full-time divisional returning officer is appointed for every lower-house electorate. Additional casual staff are employed during election periods. Two-thirds of the AEC's staff are women, and while women are far more numerous at the lower administrative levels, the executive levels currently have an equal gender balance (AEC 2013: 103–6). However, all commissioners, including those currently in position, have been male.

Figure 1.1. AEC organizational structure<sup>3</sup>



Source: <[http://www.aec.gov.au/About\\_AEC/files/aec-org-chart.pdf](http://www.aec.gov.au/About_AEC/files/aec-org-chart.pdf)>.

In between conducting federal elections, which are due every three years, the AEC’s work includes management of the electoral roll (enrolling new electors and updating the details of existing electors), community education, legislative review and staff training for election events. The AEC also conducts industrial elections (such as trade union elections) on a fee-for-service basis, and AEC staff provide assistance in overseas elections as part of Australia’s aid programme. The AEC also provides administrative and technical support for electoral-boundary redistributions, which are conducted according to part IV of the Commonwealth Electoral Act of 1918 by committees made up of AEC and state officials. Redistributions are conducted on a state-by-state basis, and the timing is specified by section 59 of the act.

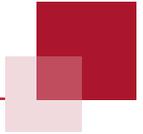
The AEC is also responsible for maintaining the register of political parties, according to part XI of the act. This work includes processing new applications and reviewing whether parties remain eligible for registration. For the 2013 election, 54 parties were registered, including 22 that were registered in the nine months before the election. This can create a heavy

administrative load on the commission to verify that submitted membership names are eligible to meet the minimum 500-member threshold to register. There is also an appeals process through which people can lodge objections to the registration (for example, on the grounds that the party name could be confused with that of another party). The AEC is responsible for deciding whether an application to register a party should be allowed. If it is rejected, the party can appeal the decision to the Administrative Appeals Tribunal, a separate agency that independently reviews decisions made under the power of national legislation.<sup>4</sup>

The AEC is also responsible for administering party and candidate funding and disclosure schemes and conducting compliance reviews. By international standards, Australia's political finance laws are relatively weak. Disclosure returns are required from political parties, donors and associated entities, but may be submitted more than a year after an election, thus negating their value in identifying sources of influence in elections. Political parties and candidates have few limitations on who they can accept money from, and there are no limits on how much can be raised from private donations or spent on election campaigns. The threshold for disclosing donations is also quite high—it was raised from \$1,500 to \$10,000 in 2006 (and is now \$12,400, due to mandatory Consumer Price Index (CPI) increases)—which exempts many donations from disclosure.<sup>5</sup>

A public funding system based on an amount per vote has been in place since 1983. Candidates and parties that achieve a minimum of 4 per cent of the vote receive a specified amount for each vote received. At its inception, the average amount received was \$0.45 per vote,<sup>6</sup> which has steadily risen to \$2.53 per vote with CPI increases. This equates to more than \$5.00 per vote for each election if a voter supports the same party for both houses. Unlike many countries, where public funding is used to replace, minimize or restrict the influence of private donations, the Australian system allows public funding in addition to private donations.

One of the significant benefits of the provision of public funding in Australia is that its introduction has been accompanied by financial reporting and disclosure regimes. Parties and donors are required to lodge annual returns, while candidates must lodge election disclosure returns. These are published on the AEC website,<sup>7</sup> which provides a database of disclosures since 1998. Candidate returns contain details of donations received and campaign expenditures, which are categorized by type (e.g. electronic and newspaper advertising, printing, mailing and opinion polling). Party returns list donors and totals for receipts, expenditures and debts. Donors' returns are used to



match information provided by parties and candidates in order to maximize the possibility of identifying any non-disclosures (by the party, candidate or donor).

All electoral commissions at the Australian sub-national level have similar responsibilities and structures as the AEC. One exception is New South Wales (NSW), where the NSW Election Funding Authority administers party registration, public funding and financial disclosure. Although the authority is legally separate from the NSW Electoral Commission, this separation is largely symbolic, as the NSW electoral commissioner is also the authority chair, and the commission provides staffing and support to the authority. The significant difference is that the other two members of the authority are nominated by the government and opposition, which makes it the only EMB in Australia with partisan-based appointments. This creates a perception of political bias, and can jeopardize the perceived independence of the electoral commissioners. This is particularly important, as the authority has the power to initiate legal proceedings against candidates who do not comply with the requirements of the Election Funding, Expenditure and Disclosures Act of 1981. This creates a clear conflict of interest, as the two nominated members are in a position to decide whether legal action should be commenced against their own party colleagues. Although having an independent chair holding the deciding vote may prevent blatantly partisan decisions that favour one party over the other, it does not prevent the two partisan appointees from colluding against other parties and candidates (Kelly 2012: 10–1).

### ***Independence of EMBs***

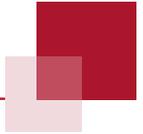
It is widely accepted that, in order to ensure free and fair elections, EMBs should be impartial and independent, both of the government of the day and of any political partisan connections (see Dacey 2005; Wall et al. 2006; ACE 2007). There are different strategies to achieve this independence. In some countries, such as in the strongly two-party US system, partisan balance is achieved by providing political appointments to EMBs from the Democratic and Republican parties. In other countries, responsibility for electoral management can be delegated to a non-partisan body. In both cases, ‘structures of mutual constraint’ are established to achieve a neutral bureaucracy (Mozaffar and Schedler 2002). While Australia has a US-style two-party system, it addresses this neutrality problem by delegating responsibility for the administrative aspects of electoral administration to a non-partisan body that has achieved a degree of bipartisanship. The governing party maintains control over electoral legislation, which heavily prescribes how elections are conducted.

International IDEA classifies the Australian system as an example of the Independent model of electoral administration. However, there are three important criteria for independence that the AEC does not meet: powers, *formal accountability* and budgetary control. In these three respects, the AEC conforms more to IDEA's Government or Mixed models. With regard to the power criterion, the AEC does not have the authority to independently develop its regulatory framework. This power resides with the parliament and government of the day, which, critically, limits the AEC's ability to operate independently. While it can easily be argued that a democratically elected parliament should be allowed to legislate for its EMBs, the partisan influence and level of detail in the Australian legislation appears excessive.

One example of the extent to which legislation, driven by partisan objectives, dictates electoral administration can be seen in the ten pages of detail in section 90B of the Commonwealth Electoral Act of 1918. This section requires the AEC to provide electoral-roll information to political parties for campaigning purposes, to the exclusion of other electoral competitors. Such privileged access to electoral information would not be possible in a truly independent system. Another example of partisan influence is legislation passed in 2004 to amend section 48 of the act, in relation to the boundary-redistribution processes. The amendment was developed by the coalition government and Labor opposition to require the AEC to ignore previously established rules for boundary redistributions for Northern Territory seats. This example of party cartel behaviour had a clear partisan impact on representation.<sup>8</sup>

For the second criterion, the AEC's formal accountability mechanism, and that of most sub-national commissions, requires it to report directly to the responsible government minister prior to reports being tabled in parliament. This is contrary to reporting directly to parliament, which is a condition of International IDEA's Independent model. By reporting to government in the first instance, political parties in government have the advantage of earlier access to information on sensitive issues, which allows the government to prepare its response prior to the public release of information. Conversely, reporting directly to parliament provides a transparent process that is accessible to all political stakeholders at the same time. Importantly, it creates a stronger perception that the EMB is dealing with all political actors equally.

The third criterion, whereby the AEC does not fit the Independent model, is the *budgetary* process. The AEC is reliant on the government of the day for its budget, and occasionally the government will use this form of control to limit or direct the performance of a commission. One example of this occurred in 1996, when the coalition government withdrew funding for



an electoral education programme for indigenous voters. The Aboriginal and Torres Strait Islander Election Education and Information Service (ATSIEEIS) programme was centred in electorates with large populations of indigenous citizens, a demographic with traditionally low levels of voter enrolment and turnout. ATSIEEIS had operated for almost 20 years, and was considered instrumental in improving enrolment and turnout rates. The abolition of the programme was seen to advantage right-of-centre coalition parties, as indigenous people are seen to be predominantly left-of-centre voters. Importantly, it prevented the AEC from being able to independently decide on where its education programmes would be best targeted (Kelly 2012). In 2009, the Labor Government used its budgetary powers to force the closure of two AEC electoral education centres (Kelly 2011). Although this action did not have the same partisan implications as the ATSIEEIS cut, it is a similar example of limiting the AEC's control over its own budget.

### ***Parliamentary oversight of electoral administration***

In a healthy democracy, there will most often be tension between the independent operation of a fair electoral system and political players who want to maximize their results within the system. It can be argued that there should be ongoing tension between the electoral system and political parties, where each is attempting to exert dominance, or at least influence, over the other.<sup>9</sup> To prevent political parties from dominating the electoral system through the actions of their parliamentary representatives, ideally an independent watchdog will oversee the actions and performance of both the administrator of the system—in this case, the AEC—and the political participants in elections.

Australia does not have such an independent body. The primary vehicle for oversight over the AEC's activities is the Joint Standing Committee on Electoral Matters (JSCEM), which was established in 1983.<sup>10</sup> This committee conducts an inquiry into the conduct of each general election, as well as inquiries into other electoral matters, such as public funding, voting systems and boundary redistributions. Inquiries invite public submissions, hold public hearings and then report to parliament with recommendations. Over the past 30 years, the JSCEM has been effective in raising the profile of electoral administration issues and encouraging public debate on these matters.

However, parliaments and parliamentary committees are made up of election winners—members and senators—who are the beneficiaries of the existing electoral system and thus have a vested interest in maintaining it or even changing it to give them an even greater advantage. Most Australian voters

support a political party rather than individual candidates. MPs' loyalty to their party is very strong, as they rely on their party affiliation to be elected. To reciprocate, the party expects elected representatives to act in its interests. Therefore, parliamentary activity, and the work of the JSCEM, requires close scrutiny to determine whether MPs' actions are based on principles of electoral fairness or on the MPs' own self-interest and partisan considerations. JSCEM recommendations have often been made for political advantage rather than electoral best practice.

JSCEM committee members are appointed by their respective parties, so it should be no surprise that they act in their party's interest. As a result, because the committee's activities relate so closely to the future success of the parties, the JSCEM can be the most partisan parliamentary committee. The governing party is permitted a majority on the JSCEM, followed by representation from the opposition party, and typically one or two members representing other parties. By reflecting the make-up of the parliaments, the committee can be perceived as simply reinforcing the status quo. In so doing, it creates a significant incumbency advantage, primarily for the incumbent government over the opposition and minor parties, but also for parties with parliamentary representation over non-parliamentary parties.

The provisions for postal voting provide a good example of partisan interests overriding independent electoral administration over the past couple of decades. The use of postal voting, where voters receive their ballot papers in the mail and then post them back to the AEC, has steadily increased during this period—from 2.8 per cent of all voters in the 1993 election to 8.3 per cent in 2013. The circumstances for when postal voting can be used have also expanded, and now include when a voter is outside their electorate on polling day; when a voter's residence is not within 8 kilometres of a polling booth; illness, infirmity or approaching maternity; religious beliefs precluding attendance at a polling booth; when a voter is in prison; and work conditions that prevent attendance.

As a result of several amendments to the act since the 1980s, political parties are able to actively encourage electors to lodge postal votes. Parties can mail applications for a postal vote to electors, accompanied by party campaign material. The major parties also encourage intending voters to return their applications to the party rather than directly to the AEC. Before forwarding the applications to the AEC, the parties enter details from the applications into their databases, including information such as voters' names and addresses, to be used for campaigning purposes (for example, sending further campaign material to coincide with the expected arrival of the ballot papers).

This growth in postal voting raises several questions regarding the integrity of elections, for example: are safeguards in place to ensure that postal voting is conducted without coercion or undue influence, can election officials be confident that a postal vote has been cast by the person stated on the electoral roll, and does the involvement of political parties in the distribution and collection of postal-voting application forms corrupt the process? The AEC has consistently made submissions to the JSCEM, criticizing this practice as politicizing the independent administration of elections. The AEC's concerns include:

- the potential for voter confusion (thinking that the parties are responsible for postal voting rather than the AEC);
- the intention to disenfranchise voters (by delays in returning ballots to the AEC);
- the unnecessary use of postal voting increases costs and delays the finalization of results;
- political parties stockpile applications before sending them to the AEC, despite this being an offence under section 197 of the act;
- the secrecy and integrity of the ballot may be compromised;
- parties attempting to obscure the fact that the application is returned to a party by using terms such as 'returning officer'; and
- party officials 'correcting' details on applications before sending them to the AEC (Kelly 2012).

Despite these criticisms, the JSCEM and successive governments have chosen not to recommend ending this practice. AEC concerns in recent submissions have concentrated on the administrative delays in processing applications rather than the inherently partisan distribution of application forms.

Although committee inquiries may be influenced by partisan interests, the JSCEM has facilitated a worthwhile relationship between the legislators and administrators of the electoral system. It conducts private briefings for the AEC twice a year, in which many politically non-contentious issues can be resolved. The AEC can raise administrative issues with the committee that may be resolved through minor amendments to legislation. Given the level of detail contained in the act, it is important that amendments can be readily made when required, and the JSCEM hearings process has become an effective mechanism to achieve this.

At the sub-national level, the most populous states—New South Wales, Victoria and Queensland—have replicated the JSCEM model. Smaller states refer electoral administration issues to existing legislative or justice-type

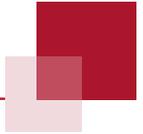
committees on an issue-by-issue basis. At both the national and state levels, these committee inquiries have given community and other representative organizations a voice and a forum to discuss the needs of their members.

A good example of a committee inquiry process leading to positive reform is the introduction of an electronic voting trial (EVT) for blind and vision-impaired voters in the 2007 national election. The trial was implemented after the introduction of similar technology in earlier ACT territory elections, and submissions made to the 2004 national election inquiry from at least four organizations representing the interests of blind and vision-impaired citizens. The primary motivation for introducing the EVT was to allow all voters to vote in secret instead of having to tell an assistant how they wanted to vote.

The EVT proved quite costly, since it was only used by 850 voters at 29 locations. Rather than persisting with the EVT for future elections, the JSCEM recommended that it be replaced by a telephone-based system, which was used for the 2010 and 2013 elections (JSCEM 2009: 13). Although the ETV was deemed a failure, the JSCEM process provided a mechanism for groups representing the disabled to lobby for changes to assist their constituents. Because of the regularity of election inquiries, the facilitation of opportunities for blind and vision-impaired citizens to vote in secret remains an issue that the AEC and JSCEM will continue to address and work on improving. For example, the JSCEM's report on the 2010 election dedicated six pages to the issue (JSCEM 2011: 67–72), whereas it was not mentioned a decade earlier in the reports on the 1998 and 2001 elections.

### ***Transfer of expertise***

In a democracy, it is desirable to have adequate professional electoral administration expertise. In Australia's federal system—which has one national, six state and two territorial parliaments—there are nine separate electoral commissions, each with permanent, full-time administrations. With the addition of local-level government elections, it can sometimes appear that there is always an election being held somewhere in Australia. Thus, AEC staff have regular opportunities to assist in the conduct of sub-national elections. Likewise, state administrators play a role in national and local elections, as well as each other's sub-national elections. For example, commissions provide pre-polling facilities for out-of-state voters, specialist staff, and share information and resources. There are strong collegial relationships between electoral administrations, and innovations in the management of electoral systems are regularly disseminated between the jurisdictions—for example, developments in electronic voting and the management of electoral-roll information.



In addition to conducting industrial elections and the occasional referendum, the federal nature of Australia's democracy provides a professional career path for electoral administrators and opportunities to transfer to (and be promoted between) state and national administrations. For example, of the nine chief executive commissioners in Australia in 2011, seven had previously held senior positions in another Australian electoral administration (Kelly 2012). This transfer of expertise and experience flows through the organizations, and encourages innovation and best practice. When an election is held, commissioners from the various jurisdictions meet to observe the conduct of the election, giving them practical, factual experience and an understanding of each other's election environment and issues to address. Using the earlier issue of providing opportunities for blind and vision-impaired electors to vote in secret, EVT's have been held in recent years in federal, ACT, NSW and Victorian elections. This has enabled the testing of different systems, the results of which have been disseminated among, and analysed by, the various commissions.

As all Australian jurisdictions operate on either a three- or four-year electoral cycle, on average, two or three elections are held in the country each year (plus local government elections). Therefore, administrators can observe trials regularly between their own elections. This encourages healthy competition between jurisdictions, with commissioners and administrators wanting to exhibit best-practice conduct to their colleagues. The Electoral Council of Australia and New Zealand (ECANZ)<sup>11</sup>—which consists of the chief electoral administrator of each of the nine Australian jurisdictions and New Zealand's chief electoral officer—was established to provide cross-jurisdictional support: cooperation and coordination between electoral authorities is one of its key goals. There is a research element to ECANZ's work, but the AEC also recently established its own research body, the Commissioner's Advisory Board for Electoral Research (CABER),<sup>12</sup> which is made up of academics and other electoral experts. CABER's role is to provide independent expert advice to the AEC on strategic research directions.

An important area of cross-jurisdictional cooperation in Australia has been the management of the various jurisdictions' electoral rolls. The AEC manages and maintains the rolls on behalf of the state and territory commissions, and citizens only need to enrol once for both national and state or territory elections, which avoids some confusion. However, quite often the states and territories will have different enrolment requirements than the national regime, so a citizen may enrol for one jurisdiction but not the other. This is particularly the case with some jurisdictions (such as nationally and for NSW) that are moving to direct enrolment and updating, where data on

citizens held by the government, such as driver's licence information, is used to automatically enrol people, without the need to fill out an application. Unfortunately, this type of data cannot be used in all jurisdictions.

The transfer of expertise also has an international perspective: the AEC has a legislated responsibility to provide international electoral assistance where requested when it is approved by the Australian Government. For example, in 2012–3 assistance was provided to Bhutan, Indonesia, Nepal, Papua New Guinea, Timor-Leste and several Pacific countries. To assist in the development of professional electoral administration in the Pacific, the AEC provides support to the Pacific Islands, Australia and New Zealand Electoral Administrators' Network (PIANZEA),<sup>13</sup> whose forerunner was established in the late 1990s. The benefits of PIANZEA include the provision of a cross-jurisdictional dialogue and support structure, in a similar way to that taking place at the Australia-New Zealand level. Another aspect of the AEC's international assistance is its work in BRIDGE—Building Resources in Democracy, Governance and Elections—a framework of workshops, training modules and accreditation that focuses on developing electoral administrators and improving education and awareness among election stakeholders.<sup>14</sup>

### ***Marginalized groups and women***

Despite Australia's strong record of electoral administration, its performance in fostering the adequate representation of marginalized groups and women is less positive. The country's electoral legislation does not provide any guarantees or incentives to encourage representation despite poor levels of representation for these groups. Indigenous peoples make up about 2.5 per cent of the country's total population (Australian Bureau of Statistics 2011), and indigenous representation in the Australian Parliament has historically been very low, and often non-existent. During the first 70 years of the national parliament's existence (1901–70), there were no indigenous members, and there have been only four indigenous members of parliament (MPs) elected in the 44 years since (in a current parliament of 150 MPs and 76 senators). Two of these parliamentarians, including the first indigenous woman, Senator Nova Peris, have been elected since 2010. The situation is similar in sub-national parliaments. This under-representation has led to regular debates in recent decades about introducing reserved seats for indigenous peoples, but to date no firm proposal has been put before parliament (Lloyd 2009). Indigenous political activism tends to be channelled through existing broad-based political parties, particularly the Australian Labor Party (ALP), rather than through the establishment of a specific indigenous-rights party.

Although Australia was the first country in the world to provide women with the right to vote and stand for parliament (in 1902, see Sawer, Abjorensen and Larkin 2009: 119), the first women were not elected to the national parliament until 1943 (McCann and Wilson 2012: 10). Women comprised under 10 per cent of all members of parliament until the 1980s. Women make up 31 per cent of the current parliament. Although this is a clear improvement, Australia continues to slip in the Inter-Parliamentary Union's international rankings for women's representation in lower or single houses—from 15<sup>th</sup> in 1999 to 43<sup>rd</sup> in 2013.<sup>15</sup> This issue has been defused to a degree, and the greatest focus is now on the number of female MPs from individual parties. Typically in Australia, women's representation is greater in left-of-centre parties, such as the Greens (60 per cent) and ALP (43 per cent), than in the right-of-centre Liberal (21 per cent) and National (16 per cent) parties.

Many argue that proportional electoral systems are more conducive to electing women than majoritarian systems, and this appears to be the case in Australia (for example, Clark and Rodrigues 2009; Sawer, Abjorensen and Larkin 2009: 120; Reynolds and Reilly 2002). Women have consistently achieved greater representation in the Senate (currently 41 per cent), which is elected by proportional representation, than in the House of Representatives (26 per cent), where the alternative vote, single-member voting system is used. For Senate elections, it is now almost standard practice for major parties to put forward a mixed-gender candidate list for winnable positions on their party tickets.

The most significant factor in increasing women's representation in recent years has been the affirmative-action policy adopted by the ALP, one of the two main parties in Australia. In the mid-1990s, the ALP introduced a requirement that women constitute at least 35 per cent of the party's candidates in winnable seats. In 2012, this minimum was increased to 40 per cent (McCann and Wilson 2012), with the stipulation that at least 40 per cent of candidates are to be women, at least 40 per cent men, and the remaining 20 per cent either men or women. This requirement therefore promotes gender equality rather than being seen as a pro-women initiative. Despite this, it was still seen as threatening to some male groups in the party. As a result of these actions, the ALP's level of female representation for both houses has increased from 12 per cent in 1993 to 43 per cent. By comparison, the other major Australian party, the Liberal Party, argues that candidate selection should not be dictated by quotas, and follows what the party calls a merit-based approach. As a result, the Liberal Party's level of female representation has never been higher than 25 per cent (in the late 1990s), while the rural-based National Party (the junior partner of the Liberal-National coalition) has even fewer women, always less than 20 per cent to date.

### ***When systems fail***

The AEC's integrity was seriously questioned after the September 2013 national election in relation to the Western Australian half-Senate election ballot count. In half-Senate elections, six senators are elected from each state, using the single transferable vote counting system, which is a form of proportional representation. Using this system, voters indicate a full list of preferences: in the Western Australian case, 62 candidates contested, so voters were required to indicate preferences for all candidates, from 1 to 62 (or, as most voters do for convenience, vote for a party ticket with pre-determined preferences). The lowest-polling candidate is eliminated, and his/her votes are transferred to the next-preferred candidate on the ballot paper. After the initial count, the final two Senate positions were won by the ALP and the Palmer United Party (PUP). Due to the closeness of the result—fewer than ten votes separated the two lowest-polling candidates in one elimination round—the AEC ordered a recount, following petitions from two losing candidates.

The recount resulted in the election of the two petitioning candidates, from the Greens and the Sports Party, at the expense of the ALP and PUP candidates. However, during the recount it was discovered that 1,370 ballot papers from the original count had gone missing. This resulted in the losing candidates and the AEC petitioning the High Court (sitting as the Court of Disputed Returns).<sup>16</sup> The AEC also instigated an inquiry into what happened to the missing ballot papers, and the inquiry report highlighted several failures in AEC counting processes, storage and transport procedures, use of external contractors and short-term staff, and tracking systems (Keelty 2013), but did not locate the missing ballots. In February 2014, the High Court ruled that the Western Australian Senate election was void, and that a fresh election was required.<sup>17</sup>

Because of these system failures and the voiding of the election, the AEC suffered a serious blow to its reputation. As a result, the AEC commissioner and the Australian electoral officer for Western Australia resigned from their positions. There were several important lessons from this event in relation to the professionalism of Australian EMBs:

- The legislation contained adequate and timely appeal mechanisms with which to resolve the issue.
- The aggrieved parties had confidence in these mechanisms, and engaged in the legal process.
- The AEC instigated an independent inquiry into the failure, led by a respected former commissioner of the Australian Federal Police.

- The resignation of the senior AEC officers conveyed the seriousness of the failure and the regard they held for the integrity of the AEC.

## Conclusions

Australia has a strong, established democracy, yet its electoral administration could be made more professional. First, the provision of public funding in Australia has been complemented by greater transparency mechanisms to monitor the flow of political money, but it is a relatively weak form of transparency, as disclosures occur well after an election, when the value of exposure is limited. In addition, public funding has not been accompanied by restrictions on private donations or campaign expenditures, meaning that public money is used to top up political parties' other sources of funding rather than as a replacement for private money. A benefit of public funding, however, has been the growth of smaller parties, which can rely on this source of funding if they perform credibly at an election. Many countries now have some form of public funding for elections and political parties. There can be several benefits for democracies in transition to introduce public funding, including diminishing the influence of private money and promoting multiparty democracy. Public funding can also be used as leverage for implementing other reforms, such as disclosure and reporting regimes, party registration and recognition on ballot papers.

To promote good governance, EMBs must be provided with an adequate budget that is not controlled by partisan interests. One way of making an EMB's budget less political is to have it reviewed by an independent authority or at least by a parliamentary committee. Although parliamentary committees are made up of partisan interests, they can provide a forum for cross-party support. Such a process has been proposed for the Victorian Electoral Commission (PAEC 2006: 80–2) in order to open up the commission's budget to the scrutiny of non-government parties and help strengthen its independence.

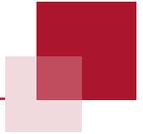
The use of a parliamentary oversight committee provides a reasonable public accountability mechanism—for both the actions and performance of an EMB and for the government's response to issues raised by the EMB and the public. In Australia, one of the most successful aspects of the parliamentary oversight process has been the involvement of the public, through public hearings and submissions. This area of electoral management can be readily replicated in other democracies by a parliamentary committee or independent agency that has the authority and confidence of the government and the

public—such as an auditor-general or ombudsman’s office. Ideally, inquiries should be held soon after an election has taken place. Although a government and/or parliament may not necessarily adopt the recommendations from a public inquiry, the process creates an important public record of the issues and relevant positions of policymakers, and, through public exposure and debate, can create an impetus for reform.

The interaction between EMBs in Australia is very strong, and often leads successful innovations from one jurisdiction to be quickly adopted by other jurisdictions. The AEC’s international linkages with EMBs allow this experience and expertise to spread, and provide opportunities for Australian electoral administrators to gain experience and awareness of other countries’ systems. Quite often in democracies in transition, there will not necessarily be a culture of independent public service or a long-term career path for those wanting to become full-time electoral administrators. It therefore becomes more important to establish networks with EMBs in other jurisdictions to develop a sense of collegiality with other administrators in the region. The exchange of ideas and innovations, and the development of networks, can be invaluable. This is often done by observing each other’s elections, but it is also worthwhile to develop a regional network of electoral administrators, if one does not already exist, to facilitate ongoing support and exchanges.

The administration of party registration and political finance regimes is a distinct regulatory responsibility of an EMB, but one that is clearly related to its operational role of conducting elections. In some democracies, the regulatory and operational roles will be split into separate agencies. The most appropriate structure will depend on the size of the jurisdiction, the extent of the electoral law (for example, not all democracies regulate political parties and/or campaign finance) and the role of other government agencies (in some cases, returning officers will be employed as government officials with other responsibilities between elections). It is important that an EMB employ staff with the appropriate skills for the various tasks, as regulatory administration can be quite different from the logistical challenges of conducting an election.

Australia has a poor record in terms of representing marginalized groups and women. Without the ALP’s affirmative-action policy, women’s representation in Australia would likely linger around 20 to 25 per cent. In all democracies, political parties are pragmatic in their approach to winning elections, and will only support more women standing for election if they see an electoral advantage of doing so, or if there is a statutory requirement. In many emerging democracies, temporary special measures are seen as the best way to accelerate the involvement of women in political decision-making. Such measures



can take the form of guaranteed seats in parliament or requiring parties to field a specified number of female candidates. These measures have proven successful in many developing democracies, and are seen as an effective way for signatory countries to meet their obligations under the Convention on the Elimination of All Forms of Discrimination against Women.<sup>18</sup>

Finally, the failure of the 2013 Western Australian Senate election provides a salutary lesson that EMBs cannot afford to be complacent in managing their performance. While the AEC's reputation has been seriously damaged by this failure, other processes, such as the JSCEM inquiry into the election, should enable new measures to be considered and implemented, to minimize the chances of such a failure occurring again.

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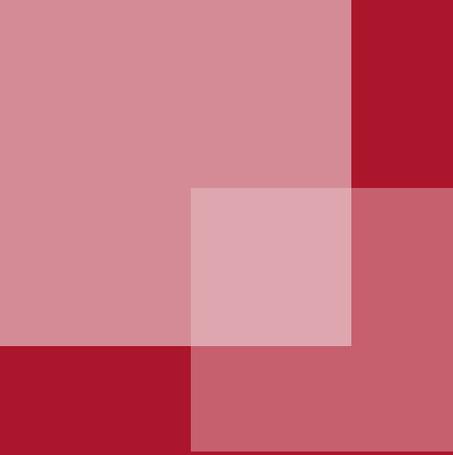
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## Notes

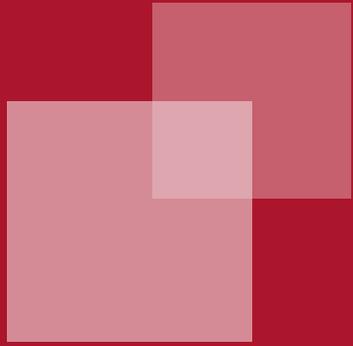
- <sup>1</sup> Territories, such as the Northern Territory and Australian Capital Territory, were given legislative powers later.
- <sup>2</sup> The principal legislation governing the AEC and Australian elections is the Commonwealth Electoral Act of 1918, which has been amended many times over the past century. The consolidated version of the act can be found at <[http://www.austlii.edu.au/au/legis/cth/consol\\_act/cea1918233/](http://www.austlii.edu.au/au/legis/cth/consol_act/cea1918233/)>.
- <sup>3</sup> From the AEC's website, <[http://www.aec.gov.au/About\\_AEC/files/aec-org-chart.pdf](http://www.aec.gov.au/About_AEC/files/aec-org-chart.pdf)>.
- <sup>4</sup> Information on the Administrative Appeals Tribunal can be found at <<http://www.aat.gov.au/>>.
- <sup>5</sup> For more information on financial disclosures, see <[http://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/index.htm](http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/index.htm)>.
- <sup>6</sup> \$0.60 for House of Representatives votes, and \$0.30 for Senate votes.
- <sup>7</sup> The AEC's website can be found at <<http://electiondisclosures.aec.gov.au/>>.
- <sup>8</sup> Commonwealth Electoral Amendment (Representation in the House of Representatives) Act 2004.
- <sup>9</sup> Benoit (2004) describes this tension as the mechanical functioning of voting systems against parties' psychological behaviour.
- <sup>10</sup> Originally the Joint Select Committee on Electoral Reform, from 1983 to 1987.
- <sup>11</sup> The ECANZ website can be found at <<http://www.eca.gov.au/>>.
- <sup>12</sup> Information on CABER can be found at <[http://www.aec.gov.au/About\\_AEC/research/caber/](http://www.aec.gov.au/About_AEC/research/caber/)>.
- <sup>13</sup> Information on PIANZEA can be found at <[http://www.aec.gov.au/About\\_AEC/AEC\\_Services/International\\_Services/PIANZEA/](http://www.aec.gov.au/About_AEC/AEC_Services/International_Services/PIANZEA/)>.
- <sup>14</sup> The BRIDGE website can be found at <<http://www.bridge-project.org/>>.
- <sup>15</sup> See the website of the Inter-Parliamentary Union at <<http://www.ipu.org/iss-e/women.htm>>.
- <sup>16</sup> The process for disputing election results is detailed in the Commonwealth Electoral Act of 1918, part XXII.
- <sup>17</sup> A transcript is available at <<http://www.austlii.edu.au/au/other/HCATrans/2014/32.html>>.
- <sup>18</sup> For a full discussion of various temporary special measures, see Clark and Rodrigues (2009).





# **Chapter 2**

## **Toward Institutionalizing Credible Elections in Nigeria: A Review of Reform Measures by the Independent National Electoral Commission**



## Chapter 2

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Kehinde Bolaji

# Toward Institutionalizing Credible Elections in Nigeria: A Review of Reform Measures by the Independent National Electoral Commission

## Introduction

Elections are essential in a democracy, and they are at the core of citizens' democratic rights. Since the end of the Cold War, the reintroduction of multiparty democracy and the gradual reopening of the political space have ensured that holding elections is now the main acceptable means of political change in African countries.<sup>1</sup> In addition, 'credible competitive elections have become a necessary, albeit sufficient, source of behavioural, if not attitudinal, legitimacy in Africa's emerging democracies' (Mozaffar 2002: 86).

In West Africa, elections serve more purposes than simply being the means by which leaders are elected to govern the state: they are also gradually emerging as instruments of structural conflict prevention. Indeed, in many West African states, increasing attention is being paid to the establishment of conditions conducive to the holding of credible and peaceful elections. In this process, election management bodies (EMBs) constitute the cornerstone of the democratization process. In the last two decades, EMBs in Africa have been resuscitated, redesigned and reorganized in order to align them with the principles of operational and financial independence, professionalism, transparency and impartiality, and to ensure that they contribute to the integrity of elections.

In the Nigerian context, elections have always been contested with a zero-sum-game mindset by political gladiators, a situation that made one observer describe rigging as synonymous with Nigerian elections (Kurfi 2005: 101). This point has been made in some of the seminal works of analysts and scholars of Nigerian government and politics (Jinadu 1997; Adejumo 2000; Ajayi 2006; Nwosu 2008; Sklar 2004). Desperate measures taken by parties and candidates to win elections, at all costs, often lead to the perpetration of a wide variety of electoral fraud. The country's successive EMBs have been complicit in the perpetration of this fraud, and, in some cases, political elites have capitalized on the EMBs' weaknesses to manipulate the electoral process. In spite of some setbacks, the government of the late President Umaru Musa Yar'Adua, in an unprecedented expression of candour, acknowledged the fraudulent nature of the 2007 general elections and set up a panel to advise the government on ways to strengthen the country's electoral processes. The Goodluck Jonathan administration that succeeded Yar'Adua's government commenced the process of implementing parts of the reform, which led to some improvements in the quality of the 2011 general elections.

This chapter critically analyses ongoing reforms since the 2007 elections that are aimed at adhering to international best practices in election management and ensuring that the 2015 general elections are indeed fair, credible and transparent. It is divided into seven parts. First, it reviews the history of election administration in Nigeria by analysing the designs of the EMBs from the pre-independence era Electoral Commission of Nigeria (ECN) to the current Independent National Electoral Commission (INEC). It also describes the political context of election administration and the major historical challenges that have undermined the EMBs' efficiency and effectiveness over the years. Second, it analyses the INEC's institutional mandate and organizational design, including the extent of its institutional autonomy, legal and normative frameworks and its functions as encapsulated in the country's 1999 Constitution (as amended) and the Electoral Act. Third, the chapter examines the imperatives of electoral reform, analysing factors such as leadership, erosion of governance legitimacy, threat of the collapse of democratic institutions, civil society activism and pressure by the international community, among others. It summarizes the major findings of the report by the Uwais Panel on Electoral Reform, which played a pivotal role in aggregating issues relating to electoral reform.

Fourth, the chapter undertakes a critical analysis of the core elements of electoral reform in Nigeria, including institutional design/restructuring, recruitment/right-sizing, capacity building, procurement and logistics reform, strategic planning, enhanced public relations through a citizens' contact

centre, and election management infrastructure to manage election-day contingencies. These reforms are aimed at professionalizing the INEC, which is critical for the effective and efficient coordination of the more strategic and comprehensive electoral process reform, which involves: operational and financial autonomy of the INEC; elaboration and implementation of a strategic plan to guide election management; clean-up of the voters register and continuous voter registration; constituency delimitation; continuous consultations and synergized planning with other election stakeholders (e.g. the Inter-Party Advisory Committee (IPAC), media, security agencies, civil society organizations (CSOs)); and institutionalization of a process for election securitization. Fifth, it discusses the challenges confronting the reform, such as a weak capacity to address the issue of corruption within the INEC; insufficient actions by the INEC on regulation of political party financing and women's representation; the INEC's insufficient operational autonomy; inadequate human capacity within the commission; the scope of reform; lack of sufficient robust punitive measures against electoral offenders and saboteurs; insecurity in parts of Nigeria; infrastructural decay; non-complementarity in reforms from other critical election stakeholders; and undemocratic conduct and behaviour among political stakeholders.

Sixth, the chapter outlines the prospects for success in institutionalizing the reform, examining factors such as: continuous and systematic professionalization of the INEC; strengthening the institutional autonomy and security of tenure of the INEC's leadership; enacting and implementing a robust law-enforcement and justice-administration system capable of deterring and/or punishing electoral offenders; replacing a winner-takes-all electoral system with a more equitable system; reorienting the political class; and mobilizing the citizenry through major CSOs, as well as the sustained support of international partners, including ECOWAS, the African Union (AU) and other networks on election management. The chapter concludes by identifying important lessons learned from Nigerian electoral reform.

## **Historical overview of elections in Nigeria**

In Nigeria, the issue of electoral integrity has been central to the restructuring, reform and reorganization of the several EMBs the country has established since 1959. Electoral principles were introduced in 1923 under the Clifford Constitution, but suffrage was restricted to Lagos and Calabar. Subsequent reforms in the 1947 Richards Constitution ensured the expansion of suffrage and representation to other regions of Nigeria (Jinadu 2011: 110). The first EMB, the ECN, was established to conduct the first federal elections

in 1959 as part of the preparations for Nigeria's independence. The first Federal Electoral Commission emerged in 1963, which was proscribed by the military upon its assumption of power in 1966. Since then, the Nigerian EMB has been variously known as the Federal Electoral Commission (1976–83), the National Electoral Commission (1986–93), the National Electoral Commission of Nigeria (1993–8) and the INEC (1999 to date). In between these name changes, it was reconstituted in 1958, twice in 1963, 1964, 1977, 1981, 1987, 1989, 1993, 1994, 1998, 2000, and 2004 (Omotola 2010: 540); all of these have been substantially deficient in autonomy and capacity.

Successive elections in the country have been marred by allegations of violence and malpractices. The 1959 general election witnessed the mobilization of citizens along ethnic lines, and the use of traditional and religious institutions to foment violence and intimidate citizens in the exercise of their franchise. The election heralded the advent of the First Republic and the formation of the central government by the Northern People's Congress and its allies, the National Council of Nigeria and the Cameroons (later known as the National Council of Nigerian Citizens). The 1964–5 federal elections, which were called partly due to frictions in the alliance between the parties at the federal level, witnessed the outbreak of large-scale violence, particularly in the opposition stronghold Western Region, hitherto led by the Action Group (AG) Party. This was compounded by the use of law-enforcement agents to intimidate voters and facilitate election malpractices in parts of the Midwestern, Western and Eastern Regions, which led to the boycott of the election in parts of the Eastern Region. However, political negotiation during this difficult moment ensured that a broad-based government was formed to accommodate all the major political parties except the AG. The 1966 *coup d'état* was an aftermath of the election-related crisis, and led to 14 years of military rule, which ended with the transfer of power to the civilian administration of Alhaji Shehu Shagari in 1979.

In line with the transition to civilian rule, a Federal Electoral Commission (FEDECO) was established in 1976 to conduct elections to states' Houses of Assembly, the National Assembly, offices of the state governors and the office of the president. The body is made up of a chairperson and 25 members appointed by the president (subject to the confirmation of the Senate) on the basis of one representative per state and an additional five special appointees; thus, it is unwieldy and split along state lines. The presidential election it conducted in 1979 was characterized by allegations of impropriety in the determination of the winner, thus necessitating litigation in the national Supreme Court. The court's judgement was seen by some analysts as falling short of the requirements of the law and as part of the conspiracy by the

departing military regime to foist a preferred candidate on the nation. Election administration during the Second Republic was characterized by several malaises, in particular sharp divisions among FEDECO commissioners over the conduct of the elections and confusion over who was responsible for conducting elections between the electoral commissioners and administrative secretaries, who were civil servants. The military coup of December 1983 resulted in military rule, which lasted until 1999. During this period, Nigeria twice attempted a transition to democratic rule between 1986 and 1999 in what has been termed 'transition without end', which ironically ended with the advent of the Fourth Republic in 1999. During the Third Republic, under the state-sanctioned two-party system, the June 1993 presidential election, which produced Chief M.K.O. Abiola as the president-elect, arguably stands out as the best-organized and most acceptable election in Nigeria's history, notwithstanding allegations of bribery, corruption and malpractices levelled against the election by the regime of General Ibrahim Babangida, which provided the excuse for its annulment. However, revelations by the participants during the transition programme showed that the election was not only transparent and credible, but that the result represents a watershed in employing an election as an instrument of social engineering and national unity (Nwosu 2008; Jinadu, Olagunju and Oyovbaire 1993). In his analysis of election administration during the Third Republic, Jinadu (2011) observed that the National Electoral Commission (NEC) was more compact, as its membership was based on ethno-regional zonal representation rather than on state-by-state nomination. It also offered clarity on the issue of responsibility, making the chairman the chief executive officer and the secretary the chief accounting officer, but these measures were insufficient to prevent internal squabbles within the commission.

The election years of 1999, 2003 and 2007 could arguably be described as bad, worse and the worst, respectively, in the annals of election administration in Nigeria. The credibility of these elections was further marred by a serious depreciation in civic culture by the political class, the militarization of politics with the use of violence as a means of gaining and maintaining political power, the unbridled influence of money in politics, an unprecedented level of corruption in the public and private sectors, and the weakness of the justice-administration system's response to the challenges, instrumentalized through badly flawed elections. Indeed, by 2007, 1,475 petitions (the highest in the country to date) were filed to litigate against the results declared by the INEC. The main beneficiary of the election, incoming President Umaru Musa Yar'Adua, concurred with observers' views that the elections did not meet international standards and expressed a desire for electoral reform (*National Mirror* 2007).

Though the elections conducted between 1959 and 1965 contributed immensely to the collapse of Nigeria's First Republic in 1966, it was not until the 1970s that electoral reform started taking centre stage in the country's body politic, with the modifications introduced to the institutional design of FEDECO. The highlight of reform at the beginning of the Second Republic included the strengthening of the consultation and appointment processes for the chairman and members of the EMB. Unlike during the First Republic, the president was stripped of his power to unilaterally appoint the EMB chair and members, and was mandated to consult with the Nigerian Council of State (a statutory body made up of elected state governors and former presidents) and to subject the approval of such appointments to the Senate of the Federal Republic. In addition, given the fact that Nigeria is a federal state, the 1979 Constitution recognized the establishment of state electoral commissions to conduct local elections, unlike in the First Republic, when regional elections were conducted by the Regional Electoral Commission. This provision was also featured in the 1999 Constitution, under which the country is currently operating.

The lessons learned from the collapse of the Second Republic in 1983 also informed the enhanced reform of the successor NEC. Jinadu (2011: 115–6) summarized the reforms as:

- providing for internal democracy and accountability within the political parties, through requirements like party nomination primaries, and the establishment of party bureaucracy, involving a distinction between career politicians and party technocrats;
- ensuring their nationwide presence and spread in membership and leadership composition at all levels;
- granting the Electoral Commission the power and function of registering political associations as political parties, and regulating and supervising their activities;
- funding party activities through the disbursement of state-appropriated conditional grants and the audit of party finances; and
- decrees that banned some discredited politicians from contesting elections (after 1983).

Most profoundly, the post-1983 era marked the beginning of the INEC's march to institutional autonomy, starting with the legal recognition of the INEC as a semi-autonomous body. In underscoring this point, Jinadu (2011: 125) stated:

The need for the National Electoral Commission (NEC), established in August 1987 to have its own self-recruited bureaucracy, whose loyalty it could command, deploy operationally as it liked and over whom it would exercise disciplinary powers, led to a successful request from the commission in 1989 to be recognised as a ‘scheduled organisation’ under the country’s Pensions Act. This was a significant development in that it involved making a distinction between the commission as a corporate entity with its own legal status, and the Electoral Commissioners who are political appointees with fixed term tenure. This status continues under the present INEC.

In subsequent reforms in the 1985–93 period, two other institutions—the Agency for Mass Mobilization for Economic Recovery, Self-Reliance and Social Justice and the Centre for Democratic Studies—were established to enhance value reorientation congruent with a democratic political culture for the political class.

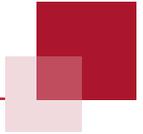
Although these reforms have contributed to the strengthening of the EMB in Nigeria, they did not lead to the achievement of profound electoral integrity due largely to insufficient policies and measures on core issues such as institutional and financial autonomy, election campaigns, a non-zero-sum political system and issues relating to representation and the sanctity of the ballot box. This caused some critical analysts of the Nigerian Government and politics to refer to the history of election administration during the period before 2011 as that of ‘progressive degeneration of outcomes in electoral management’ (Sagay 2010: 1) and ‘electoral fraud and competitive rigging’ (Ibrahim 2007: 2). To them, the EMBs during the first 40 years of Nigeria’s independence had been characterized by a lack of autonomy and weak professional capacity and funding. They underscored their criticism with a number of indicators. For example, in terms of operational independence, the successive chairmen, commissioners and state chief executives (also known as resident electoral commissioners) of the body had always been appointees of the president, who also had the power to remove them from office. Legislative oversight was also weak, because the ruling party has always produced the majority in parliament, thus making the EMB do the bidding of the ruling party. The problem of the EMB’s lack of autonomy worsened under the military, which was illustrated by the sacking of Professors Eme Awa and Humphrey Nwosu for refusing to compromise on election standards and integrity. The professional weakness of the EMB was occasioned by the cross-posting of civil servants in and out of the EMB, particularly during the long military interregnum. This slowed the pace of developing a core professional cadre of officials who were proficient in critical areas of election management. This problem, worsened by the high degree of mobility of officials, would later lead to an overt reliance on ad hoc staff, who could neither be effectively

disciplined nor called to account for atrocities perpetrated during the conduct of elections. Due to professional deficits, the EMBs' capacity to implement policies to encourage gender equality, accountability, internal democracy, and the promotion of national cohesion by political parties was significantly curtailed despite the existence of such mandates in their statutes.

The EMB's independence was compromised further by its dependence on the executive branch of government for funding. As noted by Agbaje and Adejumo (2006: 32), 'the funding of the electoral commission assumes a seasonal affair in which shortly before the election period that the ruling party needs the commission, the government appropriates a large chunk of resources for it, and when the election is over, the commission is de-prioritised, and its budget allocation shrinks. Planning for elections is therefore not a systematic and continuous process.' Thus, due to the factors discussed above, the INEC and its predecessors have been independent in name only, which has contributed significantly to their inability to enhance electoral integrity in previous elections. Perhaps the most damaging factor that stifled the growth of the EMB was military rule. Nigeria was ruled for most of the first 40 years of its independence by the military, which disbanded and reconstituted the EMB several times, and did not allow it to develop in line with globally acceptable standards. The Uwais Panel, which analysed the EMBs' chequered search for effectiveness, noted in its report that, in the past 50 years, Nigerian EMBs have functioned for only 30 years and have been reconstituted five times with 11 different chief executives, who had an average 2.7-year tenure, which made it difficult to elaborate and implement medium- and long-term strategic objectives to reposition the institutions. The deep scope and content of the current INEC reforms may be due to the 15-year stretch of democratic governance (the longest in the country's history), which has permitted robust learning, experimentation and convergence of ideas from several introspective reviews.

## **Institutional mandate and organizational design of the INEC**

The INEC was established by section 153 of Nigeria's 1999 Constitution. It is responsible for organizing referendums and elections for president, vice president, state governors and deputy governors, and the Nigerian Senate and House of Representatives. This section discusses the organizational structure of the INEC, the extent of its institutional autonomy, legal and normative frameworks, as well as its functions as stipulated in the 1999 Constitution (as amended) and Electoral Act.



The INEC also has power to register political parties and monitor their organization and operations, including auditing their finances and publishing reports for public consumption. It also has power to conduct voter registration, monitor political campaigns and undertake other functions that may be assigned by the National Assembly. The commission is composed of a chairman, who serves as the chief executive officer, and 12 members known as national electoral commissioners; the secretary to the commission is selected from the rank of bureaucrats within the institution. The constitution also provides for a resident electoral commissioner for each state of the federation and the Federal Capital Territory (FCT); it maintains administrative offices in all 36 states, the FCT and in all the local governments in the country. The commission also has a training and research arm known as the Electoral Institute. While there are no special provisions for the physically impaired or quotas for women in the INEC's management, it currently has three female commissioners.

Though relatively autonomous in terms of operational and financial control, the INEC lacks the autonomy to act to ensure the integrity of the electoral process. A former chairman from 2000–5 observed that 'The [1999] constitution granted the commission power and independence over its employees but fell short of giving similar independence in the discharge of its functions', in contrast to the INEC Act No. 17 of 1998, which 'provided that the Commission shall not, in discharge of its functions, be subject to the control of any other authority or persons'. In 2010, the 1999 Constitution was amended to ensure that the INEC's power to regulate its own procedures would 'not be subject to the approval or control of the president', which, though not as broad as the previous wording, addressed some of these concerns (Jinadu 2011: 125).

However, the INEC faces some institutional challenges in the discharge of its responsibilities, including its dependence on (and inadequate control over) ad hoc staff, for which it lacks a nationwide database for recruitment; bureaucratic 'red-tapism' and staff attitude; poor delegation of responsibilities and overlapping functions (INEC 2012: 24). These problems often result in late preparations for elections, a lack of teamwork and low-level interdepartmental cooperation and communication gaps. Structural deficiencies, an absence of proper career progression, poor record management, inadequate communication between the commission headquarters and its state offices and the over-centralization of planning also negatively affect the commission's work (INEC 2012: 25).

## Imperatives of electoral reform

There is a plethora of literature on the manner in which elections have been manipulated in Nigeria. In particular, the 2003 and 2007 general elections have been exhaustively reviewed by scholars and analysts. The 2002 Electoral Act, which defined the parameters for the 2003 general elections, was allegedly motivated by considerations of partisanship, with weak provisions to address the party nomination processes, the prevalence of political violence (particularly political assassinations) and the delay in voter registration (International IDEA 2013: 1). With over 100 people killed between May and June 2003 in political violence (HRW 2004: 3) and a massive outcry against the INEC's perceived lack of preparation, the stage was set for a flawed election. On election day, different types of atrocities were allegedly perpetrated by all the major political parties, with the connivance of security agents and INEC officials (Ajayi 2006). These developments led to the strengthening and scaling up of advocacy programmes on electoral reform, a process that was led by CSOs and actively supported by foreign development partners. However, the movement gained little support from the government and opposition parties, which were very fractionalized and disorganized in the aftermath of the elections.

The 2007 elections exhibited the same patterns of violence and intimidation as earlier elections (Onwudiwe and Berwind-Dart 2010). Merely declaring oneself a candidate was enough to put one's life at risk. By 2007, electoral violence had become such a credible risk despite Nigeria's return to democracy that the mere threat of it was enough to keep large swathes of voters away from the polls, as in Rivers state, where absent ballot materials and violent threats contributed to low voter turnout. When statewide tallies nevertheless boasted vote casting in the millions, violence surged in the post-election period. Weapons and firearms still circulating from the 2003 election cycle not only increased the likelihood of violence but also afforded militias new leverage with which to influence the very powers that had armed them in the first place (Onwudiwe and Berwind-Dart 2010).

According to the International Crisis Group, the elections were the most poorly organized and rigged in the country's history. In a bitterly contentious environment, 'outgoing President Olusegun Obasanjo and his People's Democratic Party (PDP) acted with unbridled desperation to ensure sweeping, winner-takes-all victories, not only in the presidency and federal legislature but also in state governorships and assemblies' (ICG 2007: 3). Vigorously manipulated by the presidency, the INEC virtually abdicated its responsibility as impartial umpire. Inefficient and non-transparent in its operations, it

became an accessory to active rigging. Similarly, the heavily deployed police and other security services helped curb violence but largely turned a blind eye to, and in some cases helped facilitate, the brazen falsification of results (ICG 2007: 4). According to the ICG, the malpractices in the 2007 elections included:

- intimidation of voters and, in some cases, election observers and monitors;
- underage voting;
- hoarding of election materials by INEC officials, including ballots and result sheets;
- ballot-box stuffing by dominant parties, often with the connivance of INEC and security officials;
- theft of ballot boxes and ballot papers;
- announcement of results where there was no voting, especially in the southeast, southwest and northeast;
- refusal to make result sheets available to party agents, thus denying aggrieved candidates the chance to use them in arguing their petitions at the election tribunal;
- diversion of ballots and result sheets so that powerful politicians could falsify results;
- deliberate refusal to give certain polling stations adequate voting materials; and
- various partisan acts by the INEC and security agents.

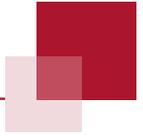
By the end of the 2007 elections, a consensus seemed to have emerged regarding the need to reform the electoral process, which is meant to help safeguard democracy in the country. It was widely perceived that the issues raised by the elections were capable of contributing to the collapse of the Nigerian state. These include a legitimacy crisis for a large number of public officials elected during the polls; the slide toward a one-party state, with the ruling PDP taking about 70 per cent of the vote and achieving 90 per cent domination of the National Assembly; diminishing confidence in the democratic process, which was given expression by the leading opposition candidate, General Muhammadu Buhari; and the perceived weakness of the judiciary to redress perceived electoral injustices (ICG 2007: 6–9). These challenges were further accentuated by the militancy in the Niger Delta, resurgent Biafra separatism, and pockets of clashes between nomads and pastoralists in the northern and central parts of Nigeria. Indeed, these factors increased calls from CSOs for the fundamental review and reform of the Nigerian electoral process. There were five principal drivers of reform.

The first was the political leadership. Alhaji Shehu Musa Yar'Adua, who emerged as president at the end of the election, openly acknowledged that the elections that brought him to power had enormous shortcomings and set up an Electoral Reform Panel headed by a highly respected former chief justice of the federation, Mohammed Lawal Uwais, to suggest ways of making future elections more credible. Though many of the panel's recommendations were watered down by the government White Paper Panel that reviewed its report, the implementation of certain aspects of the report, including those addressing the INEC's financial autonomy, helped create momentum for civil society advocacy of a more robust electoral reform process.

The second important driver of reform was the risk of de-legitimizing governance and the attendant anarchy this could generate. With about 1,475 petitions after the 2007 elections (the highest in the country's history) and the eventual judicial reversal of the results of several senatorial, house of representative and gubernatorial elections, officials' legitimacy was gradually being eroded. The situation was compounded by public officials being sworn in before litigation was resolved, thus generating a number of illegal occupants of public offices who utilized state resources to perpetuate themselves in office by manipulating the judicial process.

The third factor, which seized on the momentum created by the first two, was civil society activism. Most of the reports of local election observers had documented fraud perpetrated in the 2003 and 2007 elections. These mobilized citizens to demand comprehensive electoral reforms in specific areas such as voter registration, security of the electoral process, prosecution of election offenders, unlawful disqualification of candidates and ensuring the sanctity of votes through the prevention of ballot stuffing, etc.

The fourth factor was the change in leadership of the INEC. Professor Maurice Iwu (who superintended the 2003 and 2007 elections) was reluctant to agree on the need for holistic reform in the INEC, claiming that the body had discharged its responsibilities effectively and that the politicians were to blame for the electoral crisis (Aziken and Inalegwu 2009). For a country that had endured years of electoral crisis occasioned by the INEC's perceived incompetence—a perception that was supported by court judgements on the 2007 elections and evidence of persistent weaknesses during the by-elections conducted after the 2007 elections—it was little wonder that major CSOs organized a nationwide campaign for Professor Iwu's removal from office, a call that was rejected by the Nigerian presidency, which wanted to avoid setting a bad precedent (Benson 2010). However, just before the end of his tenure, he was asked to begin terminal leave, and a new chairman, Professor



Atahiru Jega, was appointed after the relevant statutory clearance and confirmations. Given his perceived pedigree as a reform-minded stakeholder in the electoral process, a notable academic, a member of the Uwais Panel on Electoral Reform (the work and recommendations of which were mainly applauded by Nigerians) and a morally upright individual, major stakeholders' confidence in the electoral process was restored. Stakeholders and political parties that were not happy that the government was not going to implement all of the Uwais Panel recommendations decided to give the INEC the benefit of the doubt.

The fifth critical factor was the relative calm, order and coherent advocacy from most of the opposition parties, which perceived themselves as being on the receiving end of electoral malpractices in the country. These parties welcomed the appointment of a new INEC chair who was largely perceived as reform-oriented (NBF News 2010). Boosted by the new optimism about the INEC's willingness to reform under this new leadership, they undertook bolder steps to strengthen their position as political actors. For example, the Action Congress Party became the Action Congress of Nigeria and the Congress for Progressive Change was established.

Former President Umaru Musa Yar'Adua established the Uwais Panel on Electoral Reform in the aftermath of the 2007 general elections to 'examine the entire electoral process with a view to ensuring that we raise the quality and standard of our general elections and thereby deepen our democracy' (Federal Republic of Nigeria 2008: ii). The 22-man committee, led by a retired chief justice of Nigeria, Mohammed Lawal Uwais, consulted widely with individuals, institutions and governments over a 16-month period and received a large number of memorandums in public hearings conducted in each of the country's six geopolitical regions and the FCT. It invited electoral experts from around the world to share their good practices and meet with INEC officials, political parties, CSOs, security agencies, women's organizations, the media and the general public. After exhaustive debates and analysis, the committee presented the government with a six-volume report with detailed analysis, recommendations and appendices.

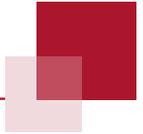
In addition to being led by a highly revered individual, its members were also men and women of high integrity, most of whom had expertise in elections and electoral processes. The panel was also given enormous support and free rein to operate. Its findings were comprehensive, and the recommendations attempted to introduce a number of radical measures that would rapidly address the INEC's lack of autonomy, which was perceived as the weakest link in the chain of electoral malfeasance. In this respect, the panel noted that

the 'INEC and [State Independent Electoral Commissions] have generally been adjudged as operating as appendages of the ruling party and the executive arms of government. This perception stems mainly from the mode of appointment of key officials of the EMBs and their funding which rest exclusively with the executive branch of government' (Federal Republic of Nigeria 2008: 5). With respect to the country's EMBs, the panel noted that several areas required reform: operational and financial autonomy from the executive branch of government, funding, logistics and staffing, the first-past-the-post (FPTP) electoral system, the challenge of automating the electoral system in the face of the ever-expanding population and enlargement of the electoral space, and the EMB's image crisis due to the alleged 'bungling' of the previous election, which made them appear to be disablers, rather than institutions upholding good practices.

The sore point was the White Paper Review Committee's rejection or recasting of some of the most critical recommendations of the Uwais Panel report, which were intended to enhance the institutional autonomy of the INEC and the integrity of the electoral process as a whole. This move by the committee, which was led by the then-attorney-general of the federation, Mr Michael Aondoakaa, invited the opprobrium of civil society and caused some analysts to start doubting the government's commitment to reforming the electoral process (Ikuomola 2009). Notwithstanding the controversy generated by this action, the government stated that it was ready to implement 80 per cent of the panel's recommendations.

It is therefore noteworthy that the reform of the INEC kicked off in the run-up to the 2011 general elections under the leadership of Professor Attahiru Jega, who revived citizens' hope of credible electoral reform. The eventual appointment of Professor Jega—a highly respected professor of political science, who was also a member of the Uwais Panel—was therefore seen by most analysts as a chance to implement the approved parts of the Uwais recommendations.

Reform measures undertaken in the pre-election stage included the open and transparent review of the voter register and the formalization of the appointment of ad hoc staff through a memorandum of understanding with the National Youth Service Corps (NYSC). With this, the INEC revised its procedures for the recruitment, training, retraining and deployment of regular and ad hoc staff. For the elections, it adopted a remodified open secret ballot system and deployed a direct data capture machine in each polling station (INEC 2012: v). It also ensured the adoption of new security measures for protecting ballot papers and ballot boxes, such as colour-coding and serial-



numbering. New result collation and transition systems were also adopted, while it developed a revised framework for the collation and return of results.

These measures resulted in a reduction in cases of election-related malpractices and a 50 per cent reduction in election-related litigation during the 2011 elections (INEC 2012: 7). These measures drastically reversed the decline in the quality of elections in the country. However, given the level of challenges faced by the INEC, the management braced itself in the post-election period to continue with, and indeed strengthen, reforms in order to ensure a more credible general election in 2015.

## **Phases and implementation mechanisms of electoral reform**

It is pertinent to note that the INEC's approach to reform is based on a holistic approach that seeks to build on the achievements of the 2011 elections and lessons learned to partner with stakeholders in the electoral process and other governmental institutions. The trajectory of the reform has been systematic, incremental and pragmatic.

Elkhit (2007: 83) identified four important institutional factors that influence electoral processes: (1) the party system; (2) the constitution; (3) the Electoral Law; and (4) election management. Of these four factors, the most pivotal to electoral integrity is the fourth one, the EMB. In this regard, the impartiality, credibility and competence of the implementing EMBs at all administrative levels are crucial for the acceptance of the legitimacy of an election. In particular, standards such as uniformity, reliability, consistency, accuracy and professionalism have to be upheld for the attainment of electoral integrity (International IDEA 2002). Building on its modest achievements in the 2011 elections, the INEC started to prepare early for the 2015 elections by undertaking reform measures, starting with the elaboration of a planning framework. The framework divides the task ahead into two segments: the review and planning phase, and the implementation phase. The review and planning phase took stock of the challenges of the 2011 election and articulated measures to address them.

### ***Review and planning phase***

#### *Strategic and operational focus*

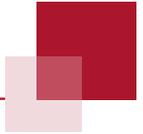
For the review process, the INEC inaugurated a committee of experts on election issues, called the Registration and Election Review Committee (RERC), in August 2011 to conduct an evaluation of voter registration and

the general elections in order to strengthen the commission's operations; enhance its organizational capacity through a better understanding of its strengths and weaknesses; revamp its planning, coordination and execution capabilities; and further deepen its relationships with critical stakeholders in the electoral process. The RERC recommended that the INEC should:

- ensure that political parties adhere to the provisions of the law regarding the conduct of primary elections by observing such primaries in order to strengthen internal party democracy;
- ensure the enforcement of the law on transparent and open party financing, including publishing political parties' audited financial reports in national newspapers;
- rationalize and consolidate INEC departments to make them more effective and enhance the division of labour;
- decentralize authority to reduce the over-delegation of responsibilities to ad hoc committees;
- articulate separate conditions of service for INEC employees, thus reinforcing autonomy and specialization (with concurrent responsibilities for discipline, welfare and promotion vested in the headquarters of the INEC rather than in the civil service);
- institutionalize the procedure for hiring ad hoc staff by collaborating with the NYSC;
- monitor the implementation of gender-sensitive provisions in political party manifestos;
- undertake constituency delimitation; and
- gradually broaden the use of Information and Communication Technology (ICT) tools in future elections (RERC 2012: 20–35).

The RERC's recommendations largely shaped the contents of the reform programme from 2012.

The planning phase was conducted in the form of retreats, brainstorming sessions and workshops, and it took place horizontally and vertically within the institution, as well as among stakeholders in the electoral process. This process led to the articulation of a strategic plan (2012–6). The plan's broad objectives include providing electoral operations, systems and infrastructure to support the conduct of free, fair and credible elections; improving voter education, training and research; registering political parties and monitoring their operations; interacting nationally and internationally with relevant stakeholders; and reorganizing and repositioning the INEC. The specific objectives of the strategic plan are to:



1. ensure a good constitutional framework for the conduct of credible, free and fair elections;
2. maintain a comprehensive and regularly updated register of voters;
3. improve ICT deployment and utilization;
4. undertake constituency delimitation in line with the constitution and the Electoral Law;
5. establish transparent election complaint- and dispute-resolution mechanisms;
6. improve electoral processes, procedures and systems;
7. provide infrastructure to support the delivery of credible elections;
8. formulate policies to ensure the participation of marginalized people in the electoral process and ensure the diaspora vote;
9. institutionalize the Inter-Agency Consultative Committee on Election Security (ICCES) through regular consultations and MOUs;
10. train INEC officials; and
11. improve human resources and budgeting.<sup>2</sup>

An election project plan (EPP) was also developed to focus on implementing specific activities related to the 2015 polls (INEC 2013b). For the purpose of clarity, however, the implementation of the reform measures that are currently in progress will be divided into two parts: operational and electoral process reform.

#### *Institutional reforms and reorganizations*

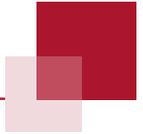
Immediately after the adoption of the commission's strategic plan, it embarked on the internal reorganization, rationalization and consolidation of its departments from 26 to nine (*Punch* 2013a). The rewards and sanctions regimes were also updated to motivate staff and optimize their efficiency. The commission recruited 1,500 new staff in 2012 (*Vanguard* 2013) and embarked on aggressive training for its existing personnel, including BRIDGE training for its staff in collaboration with the EU, International IDEA and the UN Development Programme's (UNDP's) Democratic Governance for Development (DGD) Programme. Though the number of staff at the commission is still deemed to be inadequate, recruitment is planned to continue in 2014. Some personnel retired, while others were transferred to other departments. These changes have helped enhance the professionalization of the INEC, reduced the high staff turnover due to interdepartmental problems, lessened redundancy and further insulated it from bureaucratic bottlenecks and political control by the larger civil service structure.

It also ensured adequate financial resources for its Electoral Institute to continue its training for staff while strengthening partnerships with local academic institutions and international organizations to leverage existing resources for capacity building and professional development. In order to make the institute competitive and effective, the INEC management openly advertised for senior positions, and qualified candidates were selected after a competitive process (*Premium Times* 2013a). The rejuvenated institute has outlined a number of operational training sessions for INEC staff as part of its preparations for the 2015 election, and plans to support the electoral commissions of other West African states through a planned capacity-building programme under the auspices of the ECOWAS Network for Election Management. It also put in place ‘modalities for on-line training and [a] certification programme for prospective ad hoc staff, who are drawn from the NYSC’ (*Premium Times* 2013b; Nwosu 2008; Jinadu, Olagunju and Oyovbaire 1993). This planned certification of ad hoc staff should enhance the professionalism of election management in future elections.

#### *Strengthening gender and communication strategies*

Within the reform programme, a new gender policy was developed for the commission to ensure equity and gender-sensitive decision-making. According to the INEC chairman, the commission’s existing gender desk has also been upgraded to a fully fledged Gender Unit, complete with the appropriate level of staffing. This unit has been tasked with the responsibility of driving the INEC’s gender-mainstreaming initiatives, chief among which is effective advocacy and collaboration with gender-focused CSOs and relevant government agencies—with a view to getting the National Assembly to pass the Affirmative Action Law. The unit is also working closely with registered political parties to secure their support in increasing women’s participation and ensuring strict compliance once the Affirmative Action Law becomes operational (Jega 2013a).

The INEC has also developed a new communications policy/strategy, which ensured the establishment of a Citizens Contact Centre, which is responsible for direct, real-time contact with citizens on issues regarding the commission’s work. Hotlines were established and well publicized, and social media platforms such as Twitter, Facebook and BlogSpot were also established to enhance seamless interaction with the public on the quality of the INEC’s performance and respond to issues and concerns deemed important by members of the public. It also provides platforms for interaction among members of the public and provides feedback to the commission on the efficacy of its policies and programmes. Its major advantage is its citizens’



mobilization, education and enlightenment roles. As a daily ‘situation room’, the centre offers the public an opportunity to receive real-time responses to enquiries, incident reports, complaints and queries about any aspect of the electoral process. The centre was utilized by the public during the continuous voter registration process that began in Anambra state in August 2013 for the state re-run election (INEC 2013b).

#### *Procurement reform*

The procurement and logistics reform entails the development of a procurement manual that provides clear rules and enhances transparency and accountability in the procurement process. It also guides the commission to undertake efficient procurement processes within the cycle in the areas of tendering, certification, advertisement, mobilization, performance measurement, administration, monitoring and evaluation and payment. The INEC Election Management Infrastructure is a one-stop project that aims to provide a basic planning framework for the conduct of some of the most critical election day activities such as tasks, timelines, resources and responsibilities (INEC 2013b).

In line with the recommendations of the RERC, the commission’s strategic plan and extant operational plans, the INEC embarked on a number of reforms to strengthen the electoral process in Nigeria. The second set of reform measures therefore focuses on activities aimed at enhancing the INEC’s outputs to strengthen electoral integrity.

#### **Implementation phase**

##### *Integrity of the voter register*

First, the INEC embarked on a continuous voter-education exercise that targeted existing and prospective voters, particularly secondary-school students, some of whom will become eligible to vote in the 2015 elections. This was in addition to current-affairs programmes in the media to enhance the familiarity of the people with the electoral process (Jega 2013b; Nwosu 2008). These programmes are being implemented in close cooperation with civil society, and comprise part of the proactive measures to ensure adequate citizen participation in the 2015 polls.

The commission also established a huge national asset of databases in each state of the federation and the FCT, as well as at the national level, with equally secure Disaster Recovery Centres for the existing 73.5 million registered voters. The INEC has improved the use of technology to ensure the credibility and transparency of the electoral process by developing biometric-

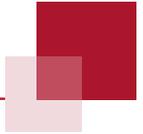
chip-based permanent voter cards that carry information on a microchip embedded in the cards, which will be required in future elections. There will be card readers at all polling stations to authenticate the cards after matching with the voters' fingerprint and photograph. This will help attain 100 per cent voter authentication at polling units, prevent multiple voting and drastically reduce incidents of card theft and vote buying (Jega 2013b).

#### *Securitization of the electoral process*

Given the importance of security to the conduct of credible elections, in a bid to proactively engage with security agents and circumvent constitutional and procedural weaknesses in the securitization of elections—and enhance the coordination of security agents' activities and improve their professionalism—the INEC facilitated the establishment of the ICCES in 2010. This body acted as the coordinating point for the INEC and all the security institutions involved in elections. In the run-up to the 2015 elections, the ICCES has been repositioned to address the shortcomings of the 2011 elections, particularly in areas of 'early and adequate deployment to polling units, provision of protection for electoral officials and sensitive election materials, prevention and reduction of electoral violence, and reducing the activities of militia groups' (Jega 2013c: xxiii).<sup>3</sup> Some of the revamped security measures were tested in the by-elections of 2012 and 2013, with varying degrees of success, while the lessons learned from those by-elections have informed planning for the 2015 elections. Together, the clean-up of the voter register and continuing registration, enhancement of the ICT features of voter cards and the effective securitization of elections can enhance the equal participation of Nigerian citizens in the electoral process.

#### *Robust consultation with electoral stakeholders*

The INEC considers CSOs as strategic partners in its effort to ensure credible elections in Nigeria and has organized several forums to get their feedback on the conduct of the 2011 elections in order to improve the 2015 elections. CSOs were represented in the RERC, which allowed them to make qualitative input into the reform roadmap. The INEC also holds quarterly meetings with political parties under the auspices of the IPAC (each focusing on a specific thematic issue), which addresses issues of mutual concern and enhances the transparency and credibility of the electoral process. IPAC meetings also enable the political parties to provide input into the INEC's policies and programmes and contribute to confidence building. Regular consultations have also been undertaken with representatives of political parties, the media, development partners and security agencies to ensuring the collective ownership of reform measures.



### *Credible and participatory constituency delimitation*

The Nigerian Constitution requires constituency delimitation every ten years, but this has not been undertaken since the advent of democratic government in 1999. Given the expansion in population and the migration of citizens across the country, the INEC, after an RERC report recommended constituency delimitation as a prerequisite for enhancing representation in decision-making, embarked on extensive consultations with stakeholders from 2012 in order to sensitize them to the objective of the exercise and enhance its transparency. Political parties provided useful input into the constituency-delimitation process, and the INEC is also working closely with the National Space Research and Development Agency (NASRDA). In order to enhance the credibility and thoroughness of the exercise, it constituted the National Committee on Constituency Delimitation made up of representatives of relevant government agencies such as NASRDA, the Office of the Surveyor-General of the Federation, the National Boundaries Commission and the National Population Commission. A technical committee headed by the INEC director of operations was also inaugurated, and is currently working to conclude the exercise in time for the 2015 election.

### *Political representation and inclusiveness*

While the INEC acknowledges the limited progress made in the 2011 elections toward increasing the representation of women and marginalized groups, it recognizes the need for enhanced reform to ensure that these issues are institutionalized. The current degree of female representation in Nigeria is still abysmally low, even by African standards. The average percentage of women in national parliaments in Africa is 18.2 per cent and for Nigeria, it is 7.2 per cent at the National Parliament level and 5 per cent at the state Houses of Assembly (Cole 2013: 5). Women's representation at the grass-roots level is worse, with only 4 per cent of female councillors in local governments (British Council 2013: vi). This persistently low female representation motivated the INEC to initiate gender reform and develop increased sensitization and training programmes for political stakeholders, in partnership with the UNDP's DGD Programme (*Daily Times* 2013). The INEC also organized joint sensitization training for female party leaders to enhance their mobilization skills. Indeed, at a 2012 retreat of INEC commissioners, the commission agreed on the need to encourage women's participation in governance and to initiate legislative measures capable of being enforced by the Electoral Commission. The retreat noted that some political parties waive fees for women in order to encourage their participation. However, it resolved to encourage parties to make provisions in their constitutions to reserve a

certain percentage of executive committee seats for women, in consonance with UN Women's affirmative-action measures.

In recent years, the INEC has improved its support of the IPAC, which is a forum for all political parties in Nigeria to articulate and link their interests to the commission's policy formulation and implementation processes. In this context, the INEC facilitated the development of the *Political Party Financial Reporting Manual*, which addresses issues of campaign financing and financial reporting, including methodology, modalities and procedures for reporting. The Electoral Law also establishes penalties for violating the provisions related to political financing. The INEC has not hesitated to wield a big stick in enforcing parties' compliance with the law. Among other disciplinary measures, it deregistered 28 political parties in 2012 and two more in 2013. It also refused to recognize the executive of the ruling PDP in 2011 due to its flouting of the Electoral Law until it organized a fresh convention to properly elect a new executive. The International Federation for Electoral Systems in Nigeria has also ensured the effective monitoring of political finance in the country through a collaborative effort with the INEC to publish newsletters on progress in the area of party financing. In addition, the INEC has utilized the IPAC as a strategic platform for encouraging political parties to respect gender equality. The INEC, in close cooperation with civil society, is also planning to operationalize an alternative dispute-resolution mechanism for elections that focuses on dispute prevention, resolution and management (IFES 2013).

#### *Enhanced institutional and financial autonomy for the INEC*

Perhaps the most important aspect of the INEC's reform platform is its operational and financial autonomy. The commission currently has financial autonomy and enjoys a comfortable degree of operational autonomy, but it lacks the power to ensure compliance with rules and take certain decisions in the electoral process. For instance, it lacks the authority to disqualify candidates from participating in elections, and it cannot cancel the result of elections. These responsibilities are vested in the judiciary, which is often slow and manipulated by politicians. In this respect, the INEC has requested that the National Assembly, as part of its ongoing review of the 1999 Constitution, approve certain reform measures aimed at enhancing its current operational and financial autonomy. These include the power to disqualify candidates (subject to judicial review), disqualification of convicted electoral offenders from voting for ten years, the power to determine political parties to be listed on ballot papers in line with global best practices, and the deregistration

of parties that do not gain a certain percentage of votes or have a specified number of representatives in the National Assembly (*Punch* 2013b; Nwosu 2008).

#### *Prosecution of electoral offenders*

As a result of the election-related malpractices in the 2003 and 2007 elections, observers assessed the elections as being below internationally acceptable standards (Omotola 2009; Abbas 2008). Prior to the post-2011 election period, the INEC was perceived as having a high tolerance for violations of the law, as political thugs and others who were indicted for violating the Electoral Law were let off the hook after the elections, as their offences were deemed 'political' rather than 'criminal'. The situation was compounded by a lack of robust judicial structures and law-enforcement frameworks, and inadequate resources to ensure the speedy trial and conviction of violators, as well as the influence of their political 'godfathers' in securing their release. Thus, political actors felt that they were increasingly able to engage in acts capable of disrupting elections without fear of prosecution. With each election, more cases of multiple registration, vote buying, ballot snatching, ballot stuffing, intimidation and violence were recorded. Compounding this issue was the weakness of the INEC and the police to provide enhanced security features for the balloting process and for the security of lives and property.

The current INEC set out to reverse this situation but was not prepared to have as many as 850,000 electoral offenders to deal with. It therefore decided to employ an incremental approach: as of late 2012, about 200 were being prosecuted (*Punch* 2012). This entailed strengthening the INEC's legal department with additional staff: it hired lawyers to represent it in some of the trials and enhanced collaboration with the Nigerian police within the framework of the ICCES programme. These measures are expected to serve as a deterrent to would-be offenders in future elections.

For the INEC to perform better in this area, however, the commission has proposed the creation of an Electoral Offences Commission with the authority to investigate and prosecute breaches of relevant electoral provisions (*Daily Independent* 2014). For the first time in the country's history, the EMB is expressing its intolerance for election-related malpractices and has taken concrete measures to address it.

## Challenges confronting electoral reform

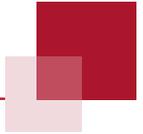
Perhaps the greatest obstacle to the INEC's autonomy is the issue of corruption. The INEC chairman confirmed the presence of corrupt staff at the commission but maintained that it had mechanisms to detect and prosecute such people (Jega 2013d). Yet the November 2013 election in Anambra state was marred by irregularities and sabotaged by electoral officials. Such cases significantly weaken the INEC's argument for enhanced power and jeopardize the confidence of some stakeholders in the reform process.

Beyond sensitization workshops and public enlightenment forums, the INEC seems not to have initiated any bold policy measures to ensure equality for women and marginalized groups in the political process. Also, while some political parties have been deregistered due to non-compliance with the Electoral Law, the INEC seems to lack the capacity to monitor party compliance with the provisions on election financing and to sanction violations. This is pertinent, as almost all the major political parties are perceived to be in serious breach of the extant law on party financing and of falsifying their statements of account/audited reports, without repercussions. Their ability to operate with impunity has further reinforced the impact of illicit funds on the criminalization of politics in Nigeria.

The INEC's recruitment and training programmes are like a drop in the ocean compared to years of neglect and dysfunction within the commission. For them to improve the integrity of elections in the near future, they must be implemented consistently, and their quality reinforced. Other challenges that threaten the reforms are:

- the scope of reform, which includes the establishment of centralized coordinating points, including the scrupulous implementation of its monitoring and evaluation mechanisms;
- a lack of robust and sufficient punitive measures against electoral offenders and saboteurs;
- insecurity in parts of Nigeria, which makes implementation difficult;
- infrastructural decay, which can adversely affect logistics and ICT-relevant projects; and
- non-complementarity in reforms by the State Independent Electoral Commissions (SIECs) and the National Orientation Agency (NOA).

Perhaps the two greatest factors militating against the implementation of reforms are (1) the lack of democratic attitude and conduct by most political party leaders and their followers and (2) the failure to integrate the SIECs



(which conduct local government elections) into the reform process. Given the poor quality of most local government elections in the country, coupled with the importance of democracy to grass-roots governance, any electoral reform measure that is not driven from below will not endure over the long term.

In this regard, reforms need to improve on initiatives to strengthen internal party democracy. Internal reforms have the capacity to substantially deepen democratic consolidation and have multiplier effects that can ameliorate challenges in the areas of gender equality, party financing, corruption, equal participation rights for the disabled and value reorientation. This could be done by strengthening the legal and institutional frameworks for ensuring that decisions are taken within political parties in line with internationally acceptable standards of representation, consensus, popular choice and equity. In this regard, the INEC's Political Party Department should be strengthened to make it more proactive and to enhance its monitoring and evaluation capabilities, and the legal regime for violating the principles of internal party democracy should be strengthened.

Impediments to reform in the run-up to the 2015 general elections include:

- delays in amending the Electoral Act and the amended 1999 Constitution, with the attendant uncertainty over the INEC's oversight over the electoral process during the election;
- delays in the delineation of constituency and polling units;
- delays in the prosecution of indicted electoral offenders for their roles in manipulating the 2011 general elections;
- inadequate financial resources; and
- threats to the lives of INEC staff occasioned by the insecurity in parts of Nigeria (Jega 2013c: 1–2).<sup>4</sup>

## **Prospects of institutionalizing reform**

This chapter analysed the background behind the current reforms in the INEC by underscoring the importance of Nigeria's political culture and environment. It also examined the historically entrenched weaknesses of the country's successive EMBs. It posited that though a plethora of reforms had been undertaken by EMBs in the past, they did not sufficiently take into account issues of the institutional and operational autonomy of the EMB, strategic planning and institutional restructuring, inclusiveness and enhanced coordination. The chapter found that the current process of reform of the electoral process in Nigeria was not accidental but was, rather, borne

out of a number of factors in the political system. These include the threat of the collapse of democracy and the unity of the Nigerian state occasioned by mass atrocities in the 2003 and 2007 elections. In this regard, the major factors driving the reform are strong and committed political leadership, sound leadership at the INEC, collective (though limited) support of the political class and civil society advocacy.

The chapter further posits that, unlike previous reforms in the country, the current reforms are pragmatic, holistic and seek to reform both the EMB and the electoral process simultaneously. It focuses on the development of a strategic agenda, which was elaborated by operational plans (including a holistic, medium-term training plan). It also involves the development of a gender policy and a communication policy, and strengthening the INEC's procurement and logistics regime.

Within a strengthened EMB, the reform further seeks to enhance the quality of the electoral process in preparation for the 2015 general election by enhancing the quality of the voter register and identification; strengthening consultative and joint planning platforms with stakeholders, mainly political parties, media, civil society and other governmental institutions; enhancing the legal and operational framework for election securitization; conducting inclusive and credible constituency delimitation; strengthening inclusiveness for women through advocacy and sensitization; and most importantly, further increasing the operational and financial autonomy of the INEC through the ongoing legislative process.

The chapter identified certain weaknesses capable of reducing the effectiveness of the ongoing reform, namely inadequate institutional and legal mechanisms to check corruption in the INEC; the lack of major legal frameworks for enhancing the inclusiveness of women and the physically impaired in party politics; inadequate numbers, quality and capacity of staff; and the absence of major programmes to promote internal party democracy, which could greatly enhance the effectiveness of reform and have a positive domino effect on electoral integrity in Nigeria. It concludes by identifying important lessons learned from the Nigerian electoral reform case study.

What are the prospects for the institutionalization of reform measures? Consistency and continuity is key to the medium- to long-term success of reform. Therefore, the INEC should strive to ensure continuous recruitment and training for its staff, as well as the periodic and participatory monitoring and evaluation of its strategic and operational plans to ensure optimum implementation. Furthermore, the commission needs to ensure the passage

of legislation to ensure inclusiveness for political actors (particularly women and the disabled) and to grant the EMB full autonomy to enable it to force political stakeholders to comply with the provisions of the Electoral Act and other laws guiding the electoral process. In this regard, there is a need to enhance the INEC's autonomy to disqualify political parties and candidates in elections, ensuring that commissioners maintain their offices until retirement and can only be appointed by a body other than the president of the country, as recommended by the Uwais Panel. It is therefore imperative for the EMB to take urgent measures to boost the reform process by strengthening its monitoring of political parties' internal democracy.

The INEC needs to continue its advocacy for the establishment of tribunals for election offenders to ensure the speedy and effective resolution of election disputes and prevent the evasion of the law by electoral offenders in the regular courts. The commission should also put in place an internal task force to detect and arraign corrupt elements within its fold, while prospective employees of the body should be subjected to a comprehensive security screening.

Indeed, for the reforms to lead to democratic consolidation, they need to be strengthened in the area of women's participation. For a start, the INEC should propose that the National Assembly enact a law to introduce a gender quota for elective and appointive positions at all levels of government, which the INEC would enforce. However, this should be complemented by the introduction of a gender quota in all departments of the INEC and a medium-term plan to implement it, which would give the body more moral power to implement gender-related policies.

As pointed out by Oromareghake (2013: 31), however, for institutional reform to work well: 'it must be pursued along with attitudinal and behavioural reform. From historical insight, the institutional foundations of elections in Nigeria fail not because they are inherently corruptible or incapable of doing the right thing, but because [the] main political actors design them to fail so that they can advance their self-interests.' Therefore, a continuous process of social mobilization and political re-engineering is important, which emphasizes value reorientation at all levels and would involve electoral stakeholders and agents of socialization from the local to the national levels. This task should be undertaken by the INEC in partnership with the NOA, which is responsible for coordinating national reorientation.

Beyond the INEC, there is a need to review the country's overall electoral processes in order to prevent a winner-takes-all situation in political competition. In this regard, stakeholders need to review the FPTP electoral

system. As observed earlier, the INEC needs to include the SIECs in the reform process and implement similar measures at the grass-roots level. The INEC should also sustain its partnership and collaborative programmes with regional and international organizations in order to leverage their resources and support in order to further sustain the reform. Finally, the INEC should continue to enhance its consultative framework to improve joint ownership of its policies and programmes by a wide array of political stakeholders, particularly political parties and civil society, to ensure that they take root and are sustained over time.

## **Conclusion: lessons learned from Nigerian electoral reform**

Based on the foregoing analysis of the Nigerian case, the following important lessons can be drawn to ensure that the electoral process is reformed in an effective and sustainable manner:

- Beginning reform by reviewing the legal and institutional framework serves as a good foundation for (and contributes to the success of) electoral reform.
- The support of the political elite is important to the successful implementation of reform measures.
- The integrity of the EMB leadership helps maintain the support and confidence of critical stakeholders in the reform process.
- The ownership of the reform process by a wide array of election stakeholders, made possible by a robust and institutionalized consultative decision-making process, enhances the success of reform measures.
- Reforms may not follow any conventional sequence. Activities should be prioritized according to the local context and the level of institutional autonomy and/or democratic consolidation. In most developing societies, such as Nigeria, reforms begin incrementally, and when the issue is considered politically ripe, more holistic reform measures are undertaken. Nevertheless, based on the success of ongoing reform in consolidating democracy, additional areas need to be included in future reform.
- A competent, professionally run and autonomous EMB is necessary to achieve the desired result of the reform process.
- Effective reform must transcend the review, planning and implementation stages, and progressively address issues like the EMB's capacity and operational deficiencies, institutional and financial autonomy, the inclusiveness and participation of marginalized stakeholders in the electoral process, and coordination with other electoral stakeholders.

- Reforms, however successful, may not be sustainable if they are not extended to other sub-national EMBs in a federal system with more than one EMB.
- The task of electoral reform, though led by the EMB, is a collective responsibility that can only be successful with complementary commitment and action by other electoral stakeholders. The EMB therefore has the task of mobilizing and coordinating these stakeholders to enhance the quality and scope of reform.

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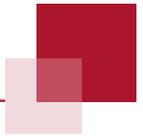
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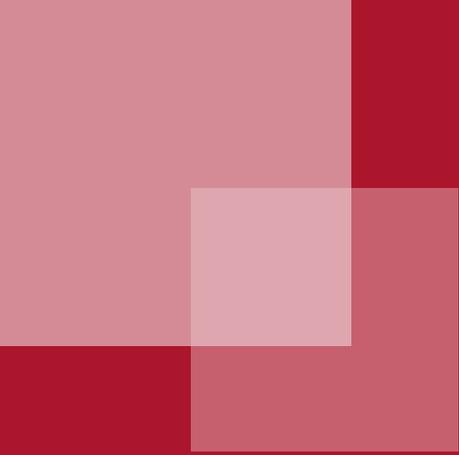
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## Notes

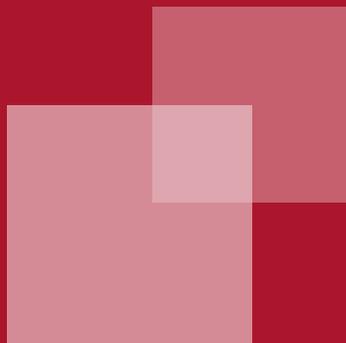
- <sup>1</sup> This is enshrined in the Economic Community of West African States (ECOWAS) Supplementary Protocol on Democracy and Good Governance and the African Union Charter on Democracy, Governance and Elections. ECOWAS in particular has implemented its 'zero tolerance for power obtained and maintained by unconstitutional means' in Guinea, Guinea Bissau, Niger, Togo and, lately, Mali.
- <sup>2</sup> Details can be found in the INEC Strategic Programme of Action (2012–6), unpublished.
- <sup>3</sup> Also see the amended constitution for detailed provisions.
- <sup>4</sup> See the amended Constitution of the Federal Republic of Nigeria for detailed provisions.





# **Chapter 3**

## **Political Finance: The Case of Poland**



## Chapter 3

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Slawomir Szyszka

# Political Finance: The Case of Poland

## Introduction

The year 2014 marks 25 years since the first democratic elections were held in Poland after the collapse of the previous political and social systems. During this period, the country also moved away from the liberal regulation of public funding for political parties and developed its first legal framework to oversee such funding. Importantly, the transparency of political financing became a key principle of the 1997 Constitution.

Subsequently, within the National Election Commission (NEC), the Unit for Controlling the Financing of Political Parties and Election Campaigns was established to oversee political financing. In 2011, Poland's five electoral laws—the Law on the Election of the President of the Republic of Poland; the Law on Elections to Local Government; the Law on Elections to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland; the Law on the Direct Election of Village Administrators and Town and City Mayors; and the Law on Elections to the European Parliament—were consolidated and harmonized into a single Election Code.

This chapter discusses four key areas of Poland's experience in shaping and applying regulations on political finance.<sup>1</sup> First, it examines the evolution of the legal basis for the transparency of political financing in Poland. Second, it discusses the obligations and procedures for disclosure for both political parties and electoral committees. Third, it presents the provisions of the Election Code that regulate electoral campaigns. Fourth, it discusses NEC supervision. The chapter concludes with a summary of the Polish experience

in these areas, which may be relevant to other countries (including those in transition) that are interested in the regulation of political finance.

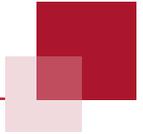
## Legal basis for transparency

Before reforms related to political finance were introduced in Poland beginning with the adoption of the 1997 Constitution, the regulation of the transparency of political finance was weak. The Political Parties Act of 1990 had eight articles, and only one on the public funding of political parties. It permitted donations from legal entities and allowed uncontrolled public collections. Political parties were exempted from paying income tax as long as profits were spent on statutory activities. While the act stipulated that ‘Sources of funding of political parties are public (transparent)’<sup>2</sup> (GOP 1990a: article 6.8), it did not specify how this could be realized. Observance was limited to the ‘good will of the parties’ (Rymarz 2004: 30).

The 1990 Law on the Election of the President of the Republic of Poland followed the same pattern by establishing that ‘Financing of election campaigns is public (transparent)’ (GOP 1990b: article 88.1). Importantly, the law introduced the obligation to report on sources of income and expenditures. These reports were to be submitted to the NEC two months after elections and subsequently made available to the public. The law did not specify sanctions for non-compliance.

More detailed regulations were included in the Electoral Law to the Sejm (lower house of parliament) that was adopted in 1991. In addition to earlier provisions, this new law also obliged the NEC to prepare a reporting form. Although limited to one page, this form required the electoral committee to specify various kinds of expenses. Such reports were to be published in the *Monitor Polski* (official journal) and could provide a basis for financial control (GOP 1991: article 135(1)-(2)).

This was reinforced in the Electoral Law to the Sejm of 1993. Financial reports, together with information on bank loans, had to be published in nationwide newspapers. Failure to comply with this requirement and providing false information were punishable by two years’ imprisonment (GOP 1993: article 158.1). These provisions are in line with the regulations on public funding that were initiated in this law (GOP 1993: article 155). For each seat won in the Sejm or the Senate (upper house), a political party or election committee had the right to a one-time subsidy,<sup>3</sup> which was intended to defray the rising costs of electoral campaigns.



The adoption of a new constitution in 1997 was very important for political financing for two reasons. First, the constitution established the principle of transparency, stipulating that ‘the financing of political parties shall be open to public inspection’ (GOP 1997a: article 11.2). The fact that transparency was included in the constitution among the provisions that defined the foundations of the state emphasizes its importance. Thus, all current and future laws and regulations must adhere to this principle.

Second, the constitution established the right to public information (GOP 1997a: article 61). This is implemented by the Law on Access to Public Information of 2001, which provides that ‘to make public information available is the obligation of...political parties’ (GOP 2001b: article 4.2). Notably, this is already in the Political Parties Act of 1997, which provides public funding to parties and sets the reporting obligation.

Application of the principle of transparency is evident in the 2001 Law on Elections to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland, as well as subsequent amendments to the Political Parties Act. Public fundraising is now prohibited,<sup>4</sup> and donations to electoral committees are only allowed through bank transfers (GOP 2001a: articles 112(2) and 113(1)-(2)).

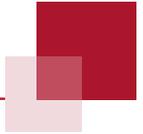
No less important for transparency was the 2003 Decree of the Finance Minister on the Accounting Rules for Political Parties, which made it obligatory to maintain accounting records in accordance with the 1994 Accounting Act (GOP 2003a: article 2).

The consolidated Election Code regulates the financing of electoral campaigns and provides another mechanism to enhance transparency: the disclosure of donations and bank loans during campaigns. Reporting arrangements include financial statements with exhaustive documentation, as well as auditors’ reports and opinions. A 2012 NEC resolution also describes the scope and method of making such information publicly available (NEC 2012a).

In the last 20 years, Poland has introduced a number of legal provisions to improve the transparency of political financing, including constitutional principles, laws, rules and regulations, and ministerial decrees (see Table 3.1). These laws are anchored in the constitution, which provides a strong legal basis by which Poland can safeguard and enforce transparency.

**Table 3.1. Current regulations concerning the transparency of political finance in Poland**

<b>Constitutional principles</b>	
Constitution, article 11, paragraph 2	'The financing of political parties shall be open to public inspection.'
Constitution, article 61, paragraph 1	'A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury.'
<b>Law on Access to Information/Political Parties Act/Election Code</b>	
Law on Access to Public Information article 1, paragraph 1 article 4, paragraph 2	'Information on public matters constitutes public information within the meaning of the Law and is subject to disclosure....' 'To make public information available is the obligation of representative trade unions and employees organizations... and political parties.'
Political Parties Act, article 23a	'Sources of funding of political parties are public (transparent).'
Election Code, article 125	'Financing of election campaigns is public (transparent).'
<b>Ministerial decrees and NEC resolutions</b>	
Decree of the Finance Minister on the Accounting Rules for Political Parties (23 January 2003)	
Decree of the Finance Minister on the Statement of Sources of Funds (18 February 2003)	
Decree of the Finance Minister on Financial Information Regarding Public Funding Received and Expenditures Incurred from Public Funding (18 February 2003)	
Decree of the Finance Minister on the Registration of Loans Taken and the Registration of Donations Kept by Election Committees (12 September 2011)	
Decree of the Finance Minister on Election Committees' Financial Statement (19 September 2011)	
Resolution of the National Election Commission on the Scope and Method for Making Information from the National Election Office Publicly Available (NEO) (2 April 2012)	



## **Obligations and procedures for the disclosure of political finance**

There are four types of disclosure reports that various political entities (namely, electoral committees and political parties) are obliged to submit.

### ***Electoral committees***

In Poland, the right to conduct electoral campaigns is reserved for electoral committees, which are special legal entities that can be formed prior to a particular election by a party or a coalition of parties, citizens or organizations. Thus, only committees can conduct activities related to raising and spending funds, organizing meetings and promoting candidates. They are required to submit statements on donations and bank credits that they receive, as well as revenues and expenditures.

The 2011 Election Code reporting regulations apply to the time periods both before and after elections.<sup>5</sup> Thus, committees are required to maintain a website and to publish registers of financial donations that exceed the amount of the monthly minimum wage. The registers must indicate the name and place of residence of each donor. The same applies to bank credits (acceptance of other forms of credit is prohibited), in which case all relevant information—such as the amount, interest and other costs, guarantees and terms of repayment—must be published. Committees must update these no later than one week after receiving a new donation or credit.<sup>6</sup>

After an election, each financial attorney must prepare a statement of all revenues and their sources, on expenditures and financial commitments and, if applicable, on credits or surpluses. The statement is in the form of a table, and the template is provided by way of a decree by the finance minister after consultation with the NEC (GOP 2011c). The decree also details the necessary information and types of source documents that must be attached to each financial statement. All contracts, invoices, receipts and bank account agreements are required, as well as agreements related to credits and guarantees (if applicable). In general, each expense must be strictly documented and the original documents supplied (GOP 2011a: article 142.7).

Importantly, a detailed history of the committee's bank account must also be attached to allow a comparison between the submitted documents and the bank records. It must be noted here that committees' revenues must come exclusively through bank transfers. All this must be submitted to the NEC together with a report and opinion from an external auditor within three months after a particular election .

Within 30 days, the NEC publishes all statements together with the auditor's reports and opinions in the *Biuletyn Informacji Publicznej* (Public Information Bulletin),<sup>7</sup> the *Monitor Polski*<sup>8</sup> and on its own website.<sup>9</sup> All other source documents (including bank account statements) are available for viewing (with the right to make copies) for 30 days at the NEC national office (or local NEC branch, in the case of local elections), which allows political parties, committees and civil society organizations to scrutinize the records and raise objections. After this period, anyone interested in these documents can access them on the basis of the Law on Access to Public Information. Access to lists of donations is provided in accordance with the rules of the 1997 Act on the Protection of Personal Data (GOP 2011a).

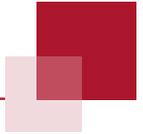
Failure to submit the required information within the prescribed time results in the loss of the above-mentioned budgetary subsidy and budgetary subvention. Moreover, financial attorneys responsible for failing to supply the information (or providing false information) can be subject to a fine or imprisonment for up to two years (GOP 2011a: article 509).

### **Political parties**

The Political Parties Act stipulates a similar reporting system for political parties. Each party must submit an annual statement of sources of funds, including bank credits, and expenditures incurred through the so-called Election Fund (see Table 3.2), which has to be kept in a separate account and is specifically for funds used to finance electoral campaigns. During elections and when a party, coalition of parties or presidential candidate committee is formed, money from this fund can be transferred to the committee's account (GOP 1997b: article 35.1-2).

The statement template, list of required documents and all the necessary details are provided in the relevant ministerial decree (2003b). Of particular importance are certified copies of bank account statements and a list of individual donors, with names, addresses and amounts donated. A political party that fails to submit such a statement on time is excluded from the party register upon a court decision, which effectively means the liquidation of the party (GOP 1997b: article 38c). Those responsible can be punished by a fine or restriction of liberty or imprisonment for up to two years (GOP 1997b: article 49f.2).

Parties with committees that obtained at least 3 per cent of the valid votes (6 per cent for coalitions) during elections to the Sejm are entitled to the budgetary subvention. Because the threshold to enter the Sejm is 5 per cent



(8 for coalitions), a party may be entitled to receive these funds without being represented in the Sejm (GOP 1997b: article 28.1; GOP 2011a: article 196).

The budgetary subvention is calculated in proportion to the number of valid votes, according to the formula specified in the Political Parties Act (GOP 1997b: article 29.1). Funds are disbursed quarterly for the duration of the parliamentary term. For example, in 2010, the four parliamentary parties collectively received PLN 114 million (approximately EUR 27 million). In 2013, due to changes in the formula, the five entitled parties received only PLN 54 million (EUR 12.8 million).<sup>10</sup> Despite this significant reduction, public funding remains among the main funding sources for political parties (Zbieranek 2010: 77–87).

All entitled parties are obliged to submit financial information on payments and expenditures from the Expert Fund<sup>11</sup> and payments to the above-mentioned Election Fund, as well as any expenses associated with the daily functioning of the party. While source documentation is not required for submission with these statements, all documents must be examined by auditors in the parties' headquarters, who since 2005 have been contractually obliged to flag any noticeable violations of accounting procedures or electoral laws. This mechanism was designed by the NEO's Unit for Controlling the Financing of Political Parties and Election Campaigns to enable the quicker identification of irregularities and to verify the reliability of the auditors.

If a party fails to submit the required information on time, it loses the right to a budgetary subvention for one year. Again, those responsible for this can face prosecution (GOP 1997b: articles 34c and 49d, respectively). The financial statements and information must be submitted to the NEC together with the auditor's report and opinion by 31 March each year. The commission publishes all of this in the *Monitor Polski*<sup>12</sup> and on its own website within 14 days.<sup>13</sup> Related source documents, including donor lists, are available for viewing at the NEC office according to the same rules as for electoral committees.

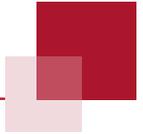
Based on these rules and regulations, transparency is adequately safeguarded. First, there is substantial access to political entities' finances. Moreover, the requirements of the 1994 Accounting Act and the ministerial decree on accountancy rules for political parties<sup>14</sup> are consistent with similar recommendations from the Council of Europe (CoE).<sup>15</sup> As such, every financial transaction is documented, and each donor and their donation (regardless of the amount) are accounted for.

**Table 3.2. Summary of reporting obligations**

Type of report	Deadline	Penalty for non-submission
Register of donations (for electoral committee)	Within one week of receipt	None
Register of loans (for electoral committee)	Within one week of borrowing	None
Statement on revenues, expenditures and financial commitments (for electoral committee)	Within three months after election	Loss of the right to budgetary subsidy and budgetary subvention; attorney or other responsible individual may be fined or imprisoned for up to two years.
Statement on sources of funds and expenditures from the Election Fund (for political party)	Annually by 31 March	Exclusion from the register of political parties upon a court decision. Those responsible may be fined or imprisoned for up to two years.
Information on expenditures from budgetary subvention (for political party)	Annually by 31 March	Loss of the right to a budgetary subvention for one year. Those responsible may be fined or imprisoned for up to two years.

Despite these strengths, a number of deficiencies must be pointed out. First, financial reports do not include party expenditures from sources other than the above-mentioned budgetary subvention. This problem was noted in the OSCE/ODIHR's 2011 Election Assessment Mission (EAM) and the Group of States against Corruption (GRECO) compliance reports on Poland. The Polish authorities explained that these data were available in attached bank statements, which led GRECO to conclude that this had 'been dealt with in a satisfactory manner' (GRECO 2012: recommendation IV). In addition, there is no requirement to submit any source documentation related to budgetary subventions to the NEC; instead, the documents are only viewed by auditors on the parties' premises. This severely limits access to this information by citizens and civil society organizations. It must be stressed that the information template is not very specific, which makes it very difficult to determine exactly how public money was spent.

Reporting on electoral committees' funding sources also has some shortcomings. Since a political party's committee may receive funds only from the party's Election Fund (GOP 2011a: article 132.1-2), this limits



reporting for these committees to a few transfers from the fund. To find out who donated (and how much) to the Election Fund, and in practice indirectly to the party committee, one must wait until the party submits its statements to the NEC. Furthermore, this information is not published, but rather is available only for viewing in the commission office.<sup>16</sup>

Finally, for the same reason, the publication of the registers of donations during electoral campaigns applies only to committees of organizations or voters. Even then, there is no penalty provided for non-compliance.<sup>17</sup> In effect, GRECO concluded that the recommendation to introduce a requirement for more frequent disclosures of donations remained ‘partly implemented’ (GRECO 2012: recommendation VI).

In sum, it can be said that the system guarantees disclosure that satisfies accountancy norms but does not entirely satisfy citizens’ right to information on how political parties spend public money. In fact, a survey conducted by the Institute of Public Affairs (IPA) points out that ‘it is difficult for citizens to find reliable materials on how political parties use subsidies from the state budget’ (Gałązka, Solon-Lipiński and Zbieranek 2012: 19).

Ordinary citizens can learn little about who provides financial support to a particular party or how exactly that party spends public money from officially published reports, which aggregate all revenues and expenditures into very general categories (see Kobylińska and Waszak 2012: 219). This information is only available at the Warsaw office of the NEC, and gaining access to it involves a detailed, time-consuming search of bank statements.<sup>18</sup> To be useful to the public, financial reporting requirements should consider the different needs of various participants in Poland’s democracy, and the information should be provided in a user-friendly format (Ohman 2012: 54). Otherwise, even the most advanced and meticulous arrangements will only serve the interests of accountants, electoral officials and researchers.

Yet excessive reporting requirements may not necessarily produce positive results. In some circumstances, they may contribute to undue interference by the state into the affairs of political parties. This may well be the rationale behind Poland’s policy, which focuses only on disclosure of party finance that includes all revenues but is limited to expenditures derived from budgetary subventions (Czaplicki 2013: 175–6).

In any case, a proper disclosure system should provide information that is also relevant for citizens, civil society organizations and the media. Only under such conditions can society exercise effective oversight over political

finance. In other words, social oversight is most effective ‘when citizens have knowledge of political finance’ (IPA 2012: 34). Therefore, state institutions should endeavour to increase transparency by shaping the disclosure system in a way that empowers social oversight over political finance—and not just bureaucratic oversight (as is often the case). This is a mistake that numerous states have not been able to avoid.

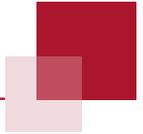
## **Electoral campaign finance regulations**

For a long time, nearly every type of election in Poland was regulated by a different legal act. Before they were combined into the current Election Code, there were five different electoral laws and two more on referendums. Thus, there were a number of confusing and contradictory provisions, including those related to campaign financing regulations. For example, certain sources of funds were allowed for one type of election but prohibited for another. This caused obvious difficulties for candidates, committees, electoral commissions and, of course, voters (Kolarska-Bobińska and Zbieranek 2009: 9–11).

The example that is often used in the literature is the Law on the Election of the President of the Republic of Poland adopted in 1990, which allowed public fundraising with no oversight mechanism and unlimited financial donations during the 2005 elections. This unfortunately undermined the principle of transparency (SBF/IPA 2007: 1–6). In this context, the OSCE/ODIHR EAM recommended in 2007 the ‘codification of the electoral legislation, which would further enhance its accessibility...and facilitate practical application’ (OSCE/ODIHR 2008: 3). A year later, GRECO also recommended that Poland ‘harmonize the provisions on political financing’ (GRECO 2008: 23).

The necessity for such codification was already widely understood in Poland in the 1990s when the first draft of the Election Code was elaborated in the Presidential Chancellery (Skrzydło 2011: 16–7) and a number of publications by electoral officials and academics addressed the issue (e.g. Rymarz 2007: 153–4). Many politicians advocated for codification, while many others noted that combining five electoral laws into one Election Code would not be an easy task.

Eventually, and due to persistent political will, in June 2008 another draft bill was submitted to the Sejm by the deputies of the Democratic Left Alliance.<sup>19</sup> This led to the creation of the Extraordinary Commission to Consider Certain Drafts in the Field of Election Law, composed of deputies from all political forces represented in the Sejm, to conduct further work on this issue.<sup>20</sup> The



commission held a total of 50 sessions<sup>21</sup> in which parliamentarians, electoral officials and external experts (e.g. from the Stefan Batory Foundation (SBF) and the IPA) took part. The SBF and IPA advocated for reforms and strengthening the system of oversight over political finance, and they also monitored campaign financing during the 2005 presidential election, the 2006 local elections and the 2009 European Parliament election.<sup>22</sup> The SBF persistently (and successfully) advocated for full access to documentation and for regular publication of donor lists (e.g. SBF 2010b). It was not successful, however, in advocating for the territorial (rather than only chronological) division of documentation submitted by committees across the country to the NEC (SBF 2010c). This would have allowed for the efficient comparison of disclosed expenditures with the actual activities carried out in particular towns or cities.

Ultimately, after more than two years, an Election Code was adopted in January 2011 that regulates all types of elections held in Poland. The code has a chapter on the financing of election campaigns, with 27 detailed articles,<sup>23</sup> which gives the right to conduct electoral campaigns exclusively to electoral committees. Indeed, after the president announces an election and a party committee formally registers with the NEC, the party itself cannot finance or conduct any sort of electoral campaigning (NEC 2012c: 12). The only exception is that parties can transfer funds from their dedicated Election Fund to their committee account.

Every committee must have a financial attorney, who has executive and supervisory powers but is also personally responsible for the administration of all of the committee's financial issues. If there are any outstanding obligations, the attorney is primarily personally liable, thereafter, the obligations are transferred to the party, organization or members, depending on the type of committee.

The attorney's task is certainly not an easy one, as there are a whole range of prohibitions and related penalties. For example, a committee cannot raise funds before the NEC accepts its notification of formation or, of course, after an election. It also cannot spend funds before its registration is accepted or after its financial statement has been submitted.<sup>24</sup>

The code leaves no doubt as to the permitted sources of funds. The main rule is that only donations in the form of money (as opposed to in-kind donations) are permitted, and only when transferred through the banking system to a specified bank account. Each committee can only use one account to collect and hold funds.<sup>25</sup> Moreover, the account agreement must include

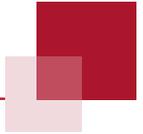
information on the required methods of payment, acceptable sources of funds and even the date on which payments are permitted. These provisions are aimed at identifying each donation and donor. For the same reasons, public fundraising and donations from legal entities are prohibited. So, for a party committee there is just one permitted source: the party's Election Fund.<sup>26</sup> For a committee of voters or organizations, only financial donations from Polish citizens residing permanently in the country and bank credits guaranteed by permanent residents are allowed.<sup>27</sup>

While only financial (rather than in-kind) donations are permitted, there are two exceptions: (1) the distribution of posters and leaflets by volunteers and (2) the use of premises and office equipment that belong to parties, organizations or members according to the type of committee (GOP 2011a: articles 132.5, 133).<sup>28</sup> Anything else is treated as an illegal donation that can be punished by a fine of PLN 1,000–100,000 (approximately EUR 250–25,000) and could result in the rejection of the committee's financial statement.

There are also other restrictions and limitations that go beyond the sources of funds. For example, every election employs a specific formula that determines the upper ceiling of permitted expenditures. In the 2011 parliamentary election, this was PLN 30.6 million (roughly EUR 7.3 million) per committee. Moreover, each committee is limited to spending a maximum of 80 per cent of all its funds on media advertising. Individual donations for committees of voters or organizations are also limited to a maximum of 15 minimum monthly wages per donor to each committee. The candidates themselves can donate funds to their campaign up to the equivalent of 45 minimum monthly wages.<sup>29</sup>

Guarantees of bank credits are regulated according to the same principle. They have similar limits and residency requirements as those for individual donations. This applies equally to voters, committee members and even to candidates. The guarantees cannot be transferred to any other private or legal person, and if the limit is exceeded, the committee's financial statement is rejected (GOP 2011a: articles 132.6, 144.2).

It is important to note that legislators have not forgotten about the need to ensure the greater participation of women in political life. For this reason, at least 35 per cent of each party's list of candidates for elections to the Sejm must be women and at least 35 per cent must be men (GOP 2011a: article 211.3).



A number of opinions and assessments were made by national and international institutions regarding the 2011 parliamentary elections. The NEC concluded that ‘in principle the provisions of the Election Code have been positively verified in practice’ (NEC 2012e: 2) and proposed only a few changes and clarifications. These limited suggestions were due to NEC concerns about undertaking frequent changes in the electoral law (NEC 2012d: 29–30), which had already been amended six times (OSCE/ODIHR 2012: 4).

The most substantive proposal refers to the scope of volunteering permitted. Currently, all volunteering with the exception of the unpaid distribution of posters and leaflets is forbidden. The NEC pointed out that this is far too restrictive, completely impractical and hinders citizen involvement.<sup>30</sup> Other suggestions included the establishment of ‘non-monetary’ penalties for failure to comply with the obligation to publish registers of donations or credits, and acceptance of statements if the violation were minor (NEC 2012e: 5–7).

In general, the Election Code regulations have been assessed positively by the NEC, OSCE/ODIHR and GRECO. While there remain deficiencies, the general consensus is that the law provides a comprehensive set of well-harmonized and complementary regulations. The OSCE/ODIHR 2011 EAM generally assessed the election and the code positively. It acknowledged the implementation of its previous recommendation to codify electoral legislation. It also praised the country’s political finance regulation, assessing it as ‘comprehensive, [enjoying] the overall trust of electoral stakeholders and [providing] for a high degree of transparency’ (OSCE/ODIHR 2012: 12). The report added, however, that deficiencies in the disclosure of donations to political parties during elections, which is covered by the 2001 Political Parties Act, negatively affected the transparency of campaign finance (OSCE/ODIHR 2012: 13–4).

GRECO welcomed ‘the adoption of the Election Code, in which the various provisions on election financing, previously contained in different laws, are harmonized’ (GRECO 2012: 12). However, it also reiterated the problems related to the disclosure of party and electoral finances mentioned above (GRECO 2012: recommendations IV and VI).

The Polish experience shows the long evolutionary process of reform. The Election Code itself mostly includes ‘provisions transferred from other laws that were repeatedly used and persisted in practice’ (NEC 2012d: 29). In Poland, changes in campaign finance regulations have usually been conservative, built on the continuity of previous measures and introduced gradually. New provisions are tested and evaluated, and then improved (Uliasz

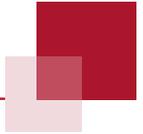
2011: 205). Until 2010, the legislature ‘laboriously amended the laws that regulated different types of elections to make electoral finance as transparent as possible and to increase the effectiveness of oversight procedures’ (Gałązka, Solon-Lipiński and Zbieranek 2012: 5). Finally, in the 2011 Election Code, the rules governing the financing of campaigns for all types of elections were consolidated. In general, the reforms evolved from very liberal to more strict provisions, sometimes even too strict.

The reforms that were introduced were not in accordance with a special plan or scheme; instead, they were mostly in response to identified deficiencies. Yet changes were introduced in a collaborative manner and took on board the views of a wide range of stakeholders, as described above. The fundamental role of the NEC, which was required to prepare an assessment after every election with ‘eventual proposals for changes’ (GOP 2001a: article 39.1.7), must be recognized. In this context, the importance of an evaluation mechanism that could suggest timely remedies for shortcomings should be acknowledged.

## **Institutional supervision of electoral finance**

There can truly only be effective oversight over political finance when non-state institutions are also involved: civil society organizations and political parties also have a role to play. Without institutions that are highly qualified and adequately empowered, however, this function cannot be exercised properly. In Poland, regulations on political finance for parties and electoral committees are ‘characterized by far-reaching symmetry’ (Czaplicki 2013: 172). For conciseness and clarity, this chapter focuses on electoral finances; regulations for both parties and committees also face the same dilemmas.

The main institution responsible for oversight over political finance is the NEC and its executive body, the NEO. Entrusting this task to the commission has proven to be a good decision for a number of reasons. First, the NEC is comprised of nine independent, apolitical and highly qualified judges who are selected from the most notable courts (three from each of the Constitutional Court, Supreme Court and Supreme Administrative Court) and appointed by the president (Jaworski 2007: 82). In practice, appointments are for life and usually end when a judge dies or turns 70 or due to resignation, candidacy in an election or revocation by the president (GOP 2011a: article 158.1). The judges select, from among themselves, the NEC chairman and determine their own statute, principles and means of working (GOP 2011a: article 160.4; NEC 2011b).



The administrative, financial and technical functions of the commission are run by the NEO. The office's mandate is defined in the Election Code, and its detailed statute is prepared and adopted by the NEC (GOP 2011a: articles 187–91; NEC 2011a). Its head is subordinate only to the NEC and can be appointed or dismissed only by an NEC decision. The NEO is permanent, separate and independent from government administration. The NEO meets all the requirements set out in the 2003 Venice Commission Code of Good Practice in Electoral Matters (Sokala and Szmyt 2013: 6–7): permanency,<sup>31</sup> political neutrality, independence from government and other administrative bodies, professionalism and adequate competence (Venice Commission 2003: 10, 26–8).

The NEC's almost purely judicial character is unique. Not only are NEC members judges, but they are also members of the District Election Commissions; even election commissioners<sup>32</sup> are chosen only from among judges. In this light, the NEC is deemed to be the 'best of the best', comprising judges with the greatest experience and authority (Solon-Lipiński 2012: 146). It has the necessary qualifications to interpret and apply complex laws, including those related to political finance. Judges, whose assessments and decisions often substantially affect the financial situation of political parties, are seen to be free from any suspicion of political motivation. Thus, in the Polish system of electoral administration, the impartiality and fairness of decisions is guaranteed by both the legal regulations and the composition of the administration (Czaplicki 2000: 115; Sokala and Szmyt 2013: 7).

Since 2003, the NEO structure has included the Unit for Controlling the Financing of Political Parties and Election Campaigns, which examines financial reports submitted by parties and committees.<sup>33</sup> During the last decade, it has examined 1,520 financial reports from political parties and electoral committees (see Tables 3.3–3.5).

The examination of revenues and expenditures begins during the election campaign. The NEC monitors committees' activities on the basis of publicly available information (Jaworski 2007: 90). Valuable materials can be obtained from the media, civil society organizations, or even the Post Office and other service providers. All this can be helpful later during the verification of statements.

Auditors then examine all the documentation after each election.<sup>34</sup> The auditors are selected from candidates proposed by the National Council of Statutory Auditors, but they are contracted, paid and assigned to the committees by the NEO (GOP 2011a: article 142(4)). Since the auditors are required to examine

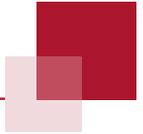
the documentation for violations, their report must contain an opinion on the financial management of the committee. If alleged violations are found, the committee's attorney has the right to raise documented objections, which should be considered by the auditor. If no resolution is found, both positions can be submitted to the NEC within three months after the election.

A further examination is then conducted by the Unit for Controlling the Financing of Political Parties and Election Campaigns. They first check the formal compliance of the statement with the template from the ministerial decree (GOP 2011c), the signature of the financial attorney and whether all sections have been filled out. They then check the arithmetic and whether the required attachments and documents were submitted. If any omissions or inaccuracies are noted at this stage, the NEC has the right to summon the responsible committee to fix the situation (GOP 2011a: article 144(3)).

Thereafter, all the documents are assigned to the individual controllers, who conduct a detailed examination starting with the auditor's report and opinion. The controller checks sources of revenue: whether funds were received only through bank transfer in the assigned account and in compliance with binding restrictions, and whether the funds were collected before the NEC accepted notification on the committee's formation (or after the election). The controller verifies this information on the basis of bank statements, account agreements and other documents. Additional safeguards to enforce transparency are also checked. For example, whether each account agreement includes provisions on the required methods of payment, acceptable sources of funds and even the date on which the payments are permitted (GOP 2011a: article 134(6)).

In relation to expenditures, the controller also checks whether the obtained funds were spent only on permitted electoral campaign activities, whether permitted limits were exceeded and whether the 80 per cent spending limit on media advertising was respected. In general, each expense bill, invoice and receipt must be strictly documented to allow verification of the limits on, and purposes of, each expenditure. These obligations also apply to the rental of premises, as well as travel, telephone and energy expenses.

The documents and data from various sources are cross-referenced and compared to search for any discrepancy (e.g. between purchase invoices and operations visible in bank statements). Sometimes, such comparisons highlight potential violations. If any inconsistency is noted, then the controller should investigate further. The aim is to better understand the discrepancy and, if a violation is confirmed, to indicate its nature, causes and, if possible, the responsible individuals.



In some cases, despite careful examination, there remain significant doubts that cannot be clarified on the basis of the available documents. In such cases, the NEC can summon the election committee to provide additional clarification. The committee may respond, though it is not required to do so. After this thorough process of examination, the controller prepares an opinion and draft resolution, based on the documents that it had access to, for the NEC's consideration. Many committees fail to pass this examination. During 2000–11, the NEC rejected 128 statements—23 per cent of those submitted (see Table 3.3).

The NEC must take a decision within six months after the submission of the statement. It can accept the statement without reservation, accept it while indicating shortcomings or reject in the case of documented violation(s) (GOP 2011a: article 144.1-2).

As explained by the directors of the Unit for Controlling the Financing of Political Parties and Election Campaigns, the evolution of electoral regulations led to an exhaustive list of violations that entail such an effect: “This means that the finding of a serious breach of the law entails an unforgiving consequence: its financial statement shall be rejected by the National Election Commission. The controlled entity’s compliance with these regulations, however, ensures the acceptance of its statement” (Ekiert and Lorentz 2007: 308). It can be concluded that the ‘elimination of discretionary criteria is one of the most important guarantees of the integrity of the oversight measures’ (Ekiert and Lorentz 2007: 308).

The violations listed in the Election Code include obtaining funds, credits and guarantees in violation of the regulations; spending funds in violation of the regulations; exceeding established limits; public fundraising; obtaining funds by a party committee from sources other than the party Election Fund and acceptance of non-monetary donations other than those allowed (GOP 2011a: articles 144.1.3 and 144.2).

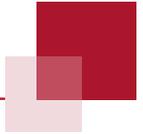
Another guarantee of the integrity of oversight measures is ensured by the possibility to appeal an NEC decision to the Supreme Court, and to appeal a decision of the election commissioner to the relevant district court (GOP 2011a: article 145). In practice, however, the Supreme Court usually, although not always, decides in favour of the NEC. For example, from 2000 through 2005, out of 46 appeals, only two committees were successful (Ekiert and Lorentz 2007: 312). In the 2011 parliamentary elections, of the four committees that appealed, two were successful (NEC 2013: 24–5).

Failure to submit the required documentation results in the loss of the right to a budgetary subsidy and a budgetary subvention. The financial attorney who failed to submit the statement (or who provided false information) may be punished by a fine or imprisoned for up to two years (GOP 2011a: article 509). Rejection of a statement results in a reduction of the budgetary subsidy and budgetary subvention (if the entity is entitled to such financing) equal to three times the amount that was illegally raised or spent.<sup>35</sup> Moreover, illegally obtained benefits must be forfeited to the state even if they have been used or lost. In such a case, the financial equivalent is forfeited. This rule also includes the value of consumed services. However, if the responsible committee, on its own initiative, returns such benefits within 30 days of receipt (or within 14 days of the decision on its statement), forfeiture is not applicable (GOP 2011a: article 149).

It is important to note that the Election Code includes a section on penal provisions for all possible violations. The penalties vary from a fine of up to PLN 1 million (approximately EUR 250,000), restriction of liberty or even imprisonment for up to two years (GOP 2011a: articles 494-516). In any case, the failure to submit a report, or a rejection of a statement by the NEC or election commissioner, does not end the matter; instead, it is forwarded to a prosecutor to follow up.

While it may appear that NEC oversight is exercised exceptionally well, there remain some deficiencies. The main one is structural: oversight is mostly limited to the study of the documentation that is submitted three months after an election,<sup>36</sup> which inevitably affects the ability to practise effective oversight. GRECO and OSCE/ODIHR have discussed this problem comprehensively (GRECO 2010 and 2012: recommendation VIII; OSCE/ODIHR 2012). The EAM recommended ‘shortening the deadlines for submission of financial reports’ and the introduction of ‘mechanisms for supervision of the accounts of electoral committees during the election period and shortly after election day’ (OSCE/ODIHR 2011: 14),<sup>37</sup> which can be considered a partial remedy.

Meanwhile, the NEC also has a limited ability to verify submitted statements on committees’ activities, given its lack of clear legal powers and obligations, as well as insufficient human resources (Solon-Lipiński 2012: 156; Kobylińska and Waszak 2012: 222). These shortcomings have been acknowledged by the directors of the Unit for Controlling the Financing of Political Parties and Election Campaigns (Ekiert and Lorentz 2007: 309) and by an expert from the Extraordinary Commission that worked on the Election Code (IPA 2012: 34).



Another matter is the ability (or inability) for proactive response during an election campaign. The commission may report violations to the competent authorities (i.e. the police or prosecutor) or may inform other state institutions or society in general, but it lacks the legal powers and tools to conduct an investigation.

These limitations may partly be due to respect for the independent position of political parties and electoral committees (Jaworski 2007: 91). As the Polish authorities explained in response to GRECO's 'Second Compliance Report on Poland', this is due to the adopted division of responsibilities in which the NEC is competent to 'supervise matters included in the financial reports, while actions related to activities beyond such matters, involving the infringement of criminal provisions...are assigned to the law enforcement authorities and courts' (GRECO 2012: point 64). These explanations did not, however, satisfy GRECO, which indicated that this model does not provide guarantees of efficiency, and that there is no exchange of information. It was also noted that the NEC, which has the necessary expertise and authority in political financing, is in the best position to investigate, for example, whether a particular rally has been financed from undisclosed sources (GRECO 2012: points 67–8).

In response to these deficiencies (and due to the persistence of non-governmental organizations), the Polish authorities in recent years have taken a number of steps to strengthen political finance regulations, including the creation of the Election Code, which contains a few provisions that strengthened the NEC's supervisory competence. For example, it gives the NEC the right to demand from the public administration all necessary assistance to examine committee statements. It also obliges the state institutions responsible for oversight, revision and inspection to cooperate with the NEC and to provide it with the results of completed oversight measures as requested. Regardless, the NEC may order an expert assessment or opinion (GOP 2011a: article 144.4-6). It is likely in relation to these provisions that the time given to the NEC to examine statements was doubled from three to six months.<sup>38</sup>

This may allow for a more meticulous comparison of the submitted documents with the actual activities of committees and the expected resulting costs. It may even give the NEC a chance to regularly question the content of statements on the basis of substantive compliance. The NEC has considered such a possibility (Grzelka 2012: 51). These improvements have been positively evaluated by non-governmental organizations and scholars. For example, a 2012 SBF report notes that the code 'enables real cooperation—for oversight purposes—between the NEC and other state bodies (such as tax offices and

the police)' (Sawicki 2012: 12). One academic emphasized that 'oversight mechanisms are becoming the most important element for ensuring the honest conduct of financial management by electoral committees' (Uziębło 2011: 17–8). While both of these opinions may be too optimistic, the NEC's greater ability to detect violations should at least cause greater caution and even more solid financial management.

The extent to which these reforms will permit better oversight of electoral campaign finance and what the impact of the increased opportunities for cooperation between the NEC and other state institutions will be will not be known until they are tested in forthcoming elections.

## Conclusions

As the Polish experience shows, there is no single solution that fits well in every context. The adjustment of regulations to local situations and proper harmonization with existing laws are important. However, caution must be exercised. Sometimes, legal provisions that look quite encouraging on paper do not work well in practice.

Political finance regulation can be significantly improved by constitutional principles that explicitly stipulate transparency as a rule and ensure disclosure. Thereafter, rules and regulations that are currently in use (or that will be adopted in the future) must comply with this principle or risk being unconstitutional. This can help gradually raise the quality of the whole electoral law, especially when public funding is provided for parties. Moreover, state institutions should endeavour to increase transparency by shaping the disclosure system in a way that empowers social oversight (as well as bureaucratic oversight) over political finance.

Political finance regulations are complex and almost always cause unwanted effects or reveal unexpected deficiencies over time. Thus, there is a need for an evaluation mechanism that allows for timely remedies. Such a mechanism can be formal and introduced into the legal system, or it should at least be well accommodated in practice. In so doing, the needed reforms and corrections will have a greater chance to succeed.

The state bodies that monitor or supervise (or have the right to sanction non-compliance) political finance regulations must be guaranteed impartiality, fairness and the necessary competence. This should not only be granted formally in legal regulations but can also result directly from the composition of said bodies. In the case of Poland, the purely judicial character of such

state bodies has made it possible to fill them with highly qualified, politically independent and impartial individuals.

**Table 3.3. Electoral statements (2001–11)**

Year	Election	Submitted	Accepted (unreservedly)	Accepted (with shortcomings)	Rejected
2011	Parliamentary	94	18	65	11
2010	Local*	32	10	7	15
2010	Presidential	16	4	3	9
2009	European Parliament	25	12	12	1
2007	Parliamentary	48	31	11	6
2006	Local*	26	14	5	7
2005	Parliamentary	126	99	13	14
2005	Presidential	25	14	0	11
2004	European Parliament	30	27	1	2
2002	Local*	30	6	12	12
2001	Parliamentary	93	35	39	19
2000	Presidential	21	0	0	21
<b>Total</b>		<b>566</b>	<b>270</b>	<b>168</b>	<b>128</b>

*Source:* Czaplicki 2013: 179–80; GRECO 2008: 32–3; NEC website, <<http://pkw.gov.pl/finansowanie-partii-politycznych-i-kampanii-wyborczych/finansowanie-nawigacja.html>>.

\* This figure includes only committees registered centrally whose reports were submitted to, and studied by, the NEO's Unit for Controlling the Financing of Political Parties and Election Campaigns.

**Table 3.4. Political parties' annual statements (2001–12)**

Year	Submitted	Accepted (unreservedly)	Accepted (with shortcomings)	Rejected	Requests for parties' removal from register
2012	75	36	34	5	11
2011	75	37	29	9	8
2010	80	35	29	16	4
2009	78	34	35	9	7
2008	79	59	15	5	4
2007	77	55	13	9	8
2006	72	53	12	7	12
2005	77	48	12	17	19

<b>2004</b>	79	64	8	7	13
<b>2003</b>	60	43	5	12	19
<b>2002</b>	65	38	13	14	13
<b>2001</b>	51	16	0	35	32
<b>Total</b>	<b>868</b>	<b>518</b>	<b>205</b>	<b>145</b>	<b>150</b>

*Source:* Czaplicki 2013: 179–80; GRECO 2008: 32–3; NEC website, <<http://pkw.gov.pl/finansowanie-partii-politycznych-i-kampanii-wyborczych/finansowanie-nawigacja.html>>.

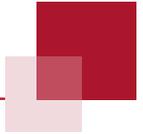
**Table 3.5. Political parties' annual information on expenditures from public funding (2001–12)**

<b>Year</b>	<b>Submitted</b>	<b>Accepted (unreservedly)</b>	<b>Accepted (with shortcomings)</b>	<b>Rejected</b>
<b>2012</b>	7	5	2	0
<b>2011</b>	7	4	3	0
<b>2010</b>	7	3	4	0
<b>2009</b>	7	5	2	0
<b>2008</b>	9	5	4	0
<b>2007</b>	7	2	4	1
<b>2006</b>	9	7	2	0
<b>2005</b>	6	4	2	0
<b>2004</b>	7	4	3	0
<b>2003</b>	10	6	4	0
<b>2002</b>	10	8	2	0
<b>Total</b>	<b>86</b>	<b>53</b>	<b>32</b>	<b>1</b>

*Source:* Czaplicki 2013: 179–80; GRECO 2008: 32–3; NEC website, <<http://pkw.gov.pl/finansowanie-partii-politycznych-i-kampanii-wyborczych/finansowanie-nawigacja.html>>.

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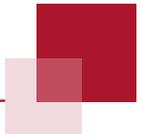
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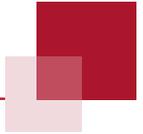
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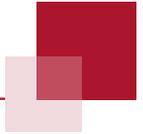
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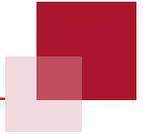
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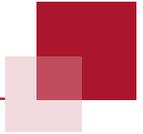
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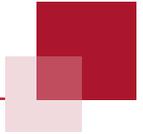
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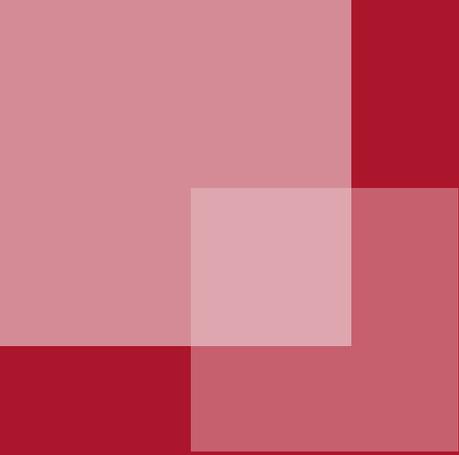
## Notes

- <sup>1</sup> For an overview of Poland's regulations on political finance, visit International IDEA's political finance database at <<http://www.idea.int/political-finance/>>.
- <sup>2</sup> Following the OSCE/ODIHR's unofficial translation of Poland's 2011 Election Code, this chapter uses 'public (transparent)' as the translation for the Polish term *sq jawne*. See article 125 in <[http://aceproject.org/ero-en/poland-2011-election-code/at\\_download/file](http://aceproject.org/ero-en/poland-2011-election-code/at_download/file)>.
- <sup>3</sup> Currently, this is regulated by article 150 of the 2011 Election Code, which provides a subsidy for each mandate to parties whose election committee participated in the elections, including elections to the European Parliament (article 151).
- <sup>4</sup> This refers to parliamentary elections. However, this was still allowed during the 2005 presidential election.
- <sup>5</sup> These reporting regulations were introduced for the first time for the 2010 presidential election.
- <sup>6</sup> Templates of the registers, the scope of the data, the methods for updating the data and all other necessary details are available in GOP (2011b).
- <sup>7</sup> This service is available at <<http://www.bip.gov.pl/>>.
- <sup>8</sup> For the 2011 parliamentary elections, for example, all 93 statements are available at <<http://monitorpolski.gov.pl/MP/2012/126/2>>.
- <sup>9</sup> All the statements submitted after the 2011 parliamentary elections are available at <<http://pkw.gov.pl/wybory-do-sejmu-rp-i-do-senatu-rp-2011/komunikat-panstwowej-komisji-wyborczej-z-dnia-13-lutego-2012-r.html>>.
- <sup>10</sup> Complete data on public funding for 2002–13 are available at <[http://www.sld.org.pl/aktualnosci/7539-jak-wyglada-finansowanie-partii-politycznych\\_w-praktyce.html](http://www.sld.org.pl/aktualnosci/7539-jak-wyglada-finansowanie-partii-politycznych_w-praktyce.html)>.
- <sup>11</sup> This is a special fund regulated by the Political Parties Act (1997b: article 30). It is kept in a separate sub-account that can be used to finance political, sociological, socio-economic and legal expert opinions, as well as publishing and educational activities related to a party's statutory activities. A party that receives a budgetary subvention must transfer from 5 to 15 per cent of the amount to its Expert Fund. NEC templates are available in GOP 2003c.
- <sup>12</sup> Statements on the sources of funds and expenditures from public funding for 2012 are available at <<http://monitorpolski.gov.pl/MP/2013/489/1>> and <<http://monitorpolski.gov.pl/MP/2013/488/1>>, respectively.
- <sup>13</sup> All 72 statements on the sources of funds for 2012 are available on the NEC website at <<http://pkw.gov.pl/sprawozdania-finansowe-partii-politycznych-za-rok-2012/komunikat-panstwowej-komisji-wyborczej-z-dnia-15-kwietnia-2013-r-sprawozdania.html>>. In 2012, seven parties were entitled to a budgetary subvention, all of which submitted the required information, together with auditors' reports and opinions. The documents can be viewed on the NEC website at <<http://pkw.gov.pl/sprawozdania-finansowe-partii-politycznych-za-rok-2012/komunikat-panstwowej-komisji-wyborczej-z-dnia-15-kwietnia-2013-r.html>>.
- <sup>14</sup> GOP 2011a: article 128 and for parties GOP 1997b: article 41; GOP 2003a.
- <sup>15</sup> CoE 2003: articles 11, 12. These recommendations include accepting funds only via bank transfer and collecting funds for campaigns only through a specified bank account; GOP 2011a: article 134.5 and 1 and for parties GOP 1997b: articles 25.5 and 24.8. The exception is membership fees, which are not to exceed the member's total minimum wage during the calendar year and intended to cover current expenditures. Such fees can be paid in cash and kept in the party cashbox (GOP 1997b: article 26a). These payments must also be registered and reported.

- <sup>16</sup> This problem was addressed in OSCE/ODIHR 2011: 14.
- <sup>17</sup> This problem was indicated by the NEC in its information on the implementation of the Election Code provisions that the commission is obliged to submit after each election (NEC 2012e: 6).
- <sup>18</sup> This problem is addressed in Solon-Lipiński 2012: 151; IPA 2012: 34; Żak and Niedośpiął 2010: 12–3.
- <sup>19</sup> The text of the draft bill can be seen here: <[http://orka.sejm.gov.pl/Druki6ka.nsf/0/1DFBE8AADCF863CC125753D002BF5A3/\\$file/1568.pdf](http://orka.sejm.gov.pl/Druki6ka.nsf/0/1DFBE8AADCF863CC125753D002BF5A3/$file/1568.pdf)>.
- <sup>20</sup> The commission's website can be found at <<http://orka.sejm.gov.pl/SQL.nsf/pracekom6?OpenAgent&NOW>>.
- <sup>21</sup> The commission held 36 sessions up to January 2011, when the code was adopted and 14 more during the next few months due to the five amendments to the code. Transcriptions of all 50 sessions are available at <<http://orka.sejm.gov.pl/SQL.nsf/Main6?OpenForm&NOW>>.
- <sup>22</sup> Information on the monitoring and all relevant materials can be found at: <<http://www.monitoringwyborow.pl>>. Also see SBF 2010a.
- <sup>23</sup> For a better understanding of the text of the code, see OSCE/ODIHR 2012. For campaign finance regulations, see chapter 15: <[http://aceproject.org/ero-en/poland-2011-election-code/at\\_download/file](http://aceproject.org/ero-en/poland-2011-election-code/at_download/file)>.
- <sup>24</sup> Again, there are some unavoidable exceptions, such as payment to the State Treasury due to the forfeiture of illegally obtained funds.
- <sup>25</sup> Sub-accounts are permitted, but external payments can only be accepted in the main account.
- <sup>26</sup> However, this situation has serious negative consequences. For example, the entire campaign of a presidential candidate or countrywide party committee can be financed by a few transfers from the party's Election Fund. This affects transparency, because party finance (including the Election Fund) is disclosed in a separate reporting scheme several months after the election.
- <sup>27</sup> Although this is not explicitly stated in the code, the bank must also be registered in Poland and must operate according to Polish laws.
- <sup>28</sup> Yet, according to the NEC, this does not include, for example, the costs of electricity, tap water, Internet access or office supplies. Otherwise, it would be legal to finance a large number of electoral activities outside this oversight system.
- <sup>29</sup> This is not allowed for candidates in local elections (GOP 2011a: article 134.3).
- <sup>30</sup> For an interesting discussion of this problem in the context of campaign finance monitoring during the 2010 local elections in Krakow, see Żak and Niedośpiął (2010: 26–9, 66).
- <sup>31</sup> Some 90 per cent of NEO employees have worked in electoral administration since the early 1990s, when the office was established. For more on this, see Solon-Lipiński (2012: 147).
- <sup>32</sup> Election commissioners are permanent, single-person electoral bodies and plenipotentiaries of the NEC within the area of the voivodeship (province) assigned to them. They are appointed by the NEC from among judges with relevant experience and on the request of the minister of justice for a five-year term, which can be extended. For more on the role and responsibilities of the commissioners, see GOP 2011a: articles 166–9.
- <sup>33</sup> Each committee must submit a financial statement to the electoral authority to which they submitted their notification on formation (GOP 2011a: article 142.1). Therefore, in the case of local elections, the committees that campaigned on the territory of only one voivodeship must submit a statement to the election commissioner responsible for that territory (GOP 2011a: article 403(3)(2)).

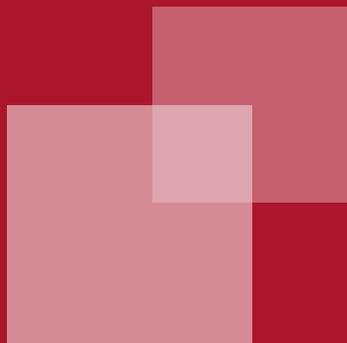


- <sup>34</sup> With one exception: if, within 30 days of an election, a financial attorney notifies the NEC or election commissioner that the committee had no revenues or expenses, said committee therefore does not have any financial reporting obligations (GOP 2011a: article 142(3)).
- <sup>35</sup> However, the code introduced a threshold whereby the penalty may not exceed 75 per cent of the subsidy and public funding (GOP 2011a: article 148(3)).
- <sup>36</sup> The three-month time frame itself is recognized as excessive. OSCE/ODIHR (2012: 14) recommended implementing the 30-day time frame recommended by the Venice Commission (Venice Commission 2003).
- <sup>37</sup> It is worth noting that the NEC welcomes all recommendations aimed at transparency in campaign finance, but indicates that it does not have the right to legislative initiative (NEC 2012c: 13).
- <sup>38</sup> Together with the deadline for submitting statements, which is within three months of an election, this results in a nine-month time frame (GOP 2011a: article 144.1). This problem was addressed by OSCE/ODIHR (2011: 14).



# **Chapter 4**

## **Institutional Reform to Broaden Representation in Korea: The Cases of Minor Parties and Women**



## Chapter 4

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Byoung Kwon Sohn

# Institutional Reform to Broaden Representation in Korea: The Cases of Minor Parties and Women

## Introduction

Since its democratization in 1987, Korea has consolidated its democracy; Korean citizens no longer fear the re-emergence of authoritarianism.<sup>1</sup> The primary challenge facing Korean democracy today is enhancing the quality of democratic politics and processes, which is often referred to as democratic deepening (Park et al. 2012). One of the tasks for deepening Korean democracy is to increase the representation of women and minorities in the formal national decision-making process, including the legislative and deliberative arena of the Korean National Assembly.

In this context, this chapter discusses the institutional changes and innovative practices of Korean democracy in increasing the representation of minor parties and women. To explore the major breakthroughs in these two areas, it traces the origins and evolution of the reform measures, focusing on the changes in legal codes—such as electoral rules and party-related regulations—since the 17<sup>th</sup> National Assembly election in 2004.<sup>2</sup>

Political reform, implemented through a series of amendments of the National Party Law and the National Election Law, is crucial for Korea's democratic deepening. Reform measures taken so far have enhanced the representation of left-leaning progressive minor parties, whose demands had often been interpreted as radical in security-sensitive Korea, which is on full

alert around the clock against the North Korean military threat. They have also significantly increased the representation of women, whose voices had not been effectively incorporated into the political process in the traditionally male-dominated Korean political culture.

This chapter uses election data to assess the impact of institutional changes brought about by these reforms. It argues that these reforms have been successful in the sense that they opened the way for the wider representation of minor parties and women, but that they are limited. It identifies gaps in the reforms and suggests measures that could be adopted to continue to enhance the representation of these two groups.

## **The reform of electoral institutions: a general overview**

Political scientists, elected officials and civic activists strongly agree that a set of political reforms introduced around the 17<sup>th</sup> National Assembly election in 2004 were the most remarkable since Korean democratization began in 1987. After liberal, reform-minded candidate Roh Moohyun was elected as the country's 16<sup>th</sup> president in 2002,<sup>3</sup> Korean politics began to change in every respect. After a series of campaign finance scandals related to the conservative Grand National Party was revealed during the election, the Korean public was infuriated, and requested that substantial reforms be implemented. With the shock of the 1997 Asian financial crisis still lingering, the public wanted to see an end to inefficient political practices. Some groundbreaking innovative measures of historic significance were adopted during this time, including substantial revisions to the National Election Law, the National Party Law and the National Political Finance Law.<sup>4</sup>

First, party organizations located at the level of parliamentary districts were abolished to avoid financial waste. These district-level party organizations were notorious for their political inefficiency. Although they were originally intended to recruit local party members and foster local party elites, they also promoted party policies to the local voters and educated them on important current political issues. They were exploited as private electoral machines, which undermined their integrity and resulted in severe public criticism.

Second, campaign financing regulations became stricter, and a new media-centred campaign approach was widely promoted. In efforts to eradicate money-related electoral corruption, corporations and formal organizations were strictly prohibited from donating money to politicians, and only individuals were permitted to do so within annual limitations. Furthermore, the campaign finance law requires political parties to report relevant

information for individual donors. The government also widely promoted media-related campaign methods such as televised policy debates between candidates, as well as candidate webpages.

Third, it became illegal for a party candidate who failed to get nominated by his or her party to run as another party's candidate or as an independent. This measure was introduced to strengthen the internal party nominating process; in the past, some parliamentary candidates did not respect the nomination outcome and defected from their party, which threatened the credibility of the party's nomination process and damaged its electoral competitiveness in the district.

Two notable institutional changes to promote wider minority and women's participation were also adopted during this time. First, a two-ballot system for minor parties that had never been represented in the national legislature increased their representation by allowing voters to cast an additional and separate vote for party-list candidates. Second, a mandatory quota system for women for proportional representatives<sup>5</sup> (at least 50 per cent of each party's proportional candidates must be women) significantly increased women's representation across major political parties.

## **Representation of minor parties**

### ***History of the reform***

Before the reform in 2004, the Korean electoral system was a combination of single-member-district representation and the plurality rule (the first-past-the-post (FPTP) system) and proportional representation for one-third of the total seats. Notably, the number of each party's proportional seats was determined not through a separate ballot for party-list candidates but according to the percentage of total votes it obtained across the districts nationwide. In other words, a single ballot decided both the number of each party's district representatives and its proportional representatives.<sup>6</sup> This single-ballot system severely disadvantaged minor parties. For example, the Democratic Labor Party (DLP), a left-leaning, pro-labour and pro-farmer progressive party, which did not manage to get a district seat, also did not get a proportional seat. The party was only competitive in one or two districts in which the population density of factory workers was exceptionally high. This changed after the introduction of the two-ballot system, which enabled it to obtain votes to secure proportional seats.

The 2004 reform was made possible through the amendment of the National Election Law, which was largely prompted by the Korean Constitutional Court's 2001 ruling that found that determining the number of proportional representatives for each party based on its total district votes was unconstitutional. The contested stipulations of the National Election Law were found in articles 189 and 146, which determined how proportional representatives were elected and their seats were distributed.<sup>7</sup> Article 189 provided that the number of proportional representatives for each party was determined by the percentage of votes it gained in the district representative election nationwide, without a separate party vote. Article 146 confirmed that proportional representatives were elected through a single ballot.

These pre-reform clauses were criticized by a variety of sectors of society, particularly political strategists who had been planning to form a left-leaning progressive party, on the grounds that they violated citizens' equal right to vote and right to direct votes. For example, the People's Union for Clean Politics, a public-interest citizen group, contended that these stipulations were unconstitutional in the sense that the single-ballot system only permitted voters to choose district representatives, and made the district votes determine the number of each party's proportional representatives, thus depriving voters of their legitimate right to choose party-list candidates. The Preparatory Committee of the DLP also claimed that article 189 violated citizens' right to directly vote for this same reason. As a pro-labour progressive party with a pro-North Korea and anti-American policy stance, the DLP was most critical of the article. The committee also raised the issue of the excessive restrictiveness of the article vis-à-vis minor parties. The DLP, which garnered 3.9 per cent of vote in the 16th presidential election, had been the main victim of the single-ballot system in the parliamentary election.

The Korean Constitutional Court ruled in favour of revising two articles of the Election Law based on the principles of democracy: direct vote, citizens' right to vote and voters' claim of equal rights when they choose to vote for non-partisan independents. The court argued that article 146 did not permit voters to cast a separate party ballot and that article 189 falsely assumed that voters' choice of district representatives was automatically their choice of proportional representatives. The court continued to argue that, in such a case, the voter could not express his/her choice separately when he/she did not favour both the candidate in his/her district and the candidate's party. In other words, the court ruled that voters must be given the chance to split their votes between the district representative and the proportional representative. Otherwise, the voters are deprived of their right to separately select district and proportional representatives and of their chance to bring new minor parties into the legislative arena.

The Constitutional Court also declared that the two articles were unconstitutional because they violated Korean citizens' right to a direct vote. By withholding the voters' right to separately express their choice for proportional representatives, the Election Law virtually allowed each party to decide its proportional representative for itself when the party presented its list of proportional candidates. This had the effect of depriving voters of their right to a direct vote. The court also pointed out that the articles violated voters' right to an equal vote. In particular, voters for independent district candidates were virtually denied their right to an equal vote compared to those voting for party-nominated district candidates, in the sense that the vote value of the latter was virtually double that of the former. The latter group of voters selected both the district and proportional representatives by casting a single ballot, while the former group only selected the district representatives by supporting independent candidates.

Based on the court's ruling, representatives of various public-interest groups, scholars, legal experts, a sizable number of National Assembly members and representatives of the DLP formed an umbrella group, the Pan-Nation Council for the Promotion of Political Reform, which sought to get the two-ballot electoral reform enacted before the 17<sup>th</sup> National Assembly election.<sup>8</sup> The council sought to sustain the reform momentum triggered by the court's decision by mobilizing public opinion and petitioning the National Assembly.

On the heels of the nationwide reform sentiment, and under an obligation to enact the court's ruling, the National Assembly speaker organized the Solidarity of Citizen and Societal Groups for Political Reform as his advisory committee, which eventually recommended amendments to the National Election Law. These include increasing the National Assembly membership from 273 to 299, with 199 district representatives and 100 proportional representatives, and adopting a two-ballot system: one for the district vote and the other for the party-list vote. The National Assembly adopted the two-ballot system by revising the National Election Law in March 2004, just weeks before the election.

The newly adopted clause 2 of article 146 was revised to read '[V]otes are cast either in person or by mail, and by one vote per person, in the National Assembly election, and one person can separately cast one ballot both in the district representative election and in the proportional representative election'. This change allows Korean voters to express their separate preferences for district candidates and party-list candidates, paving the way for minor parties to represent themselves more effectively in the National Assembly.

### ***Assessment of the reform***

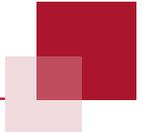
In order to assess the impact of this reform, background information on the Korean political system and the concept of ‘disproportionate proportional-seat benefit’ is presented. Thereafter, observations of electoral statistics, largely focusing on the impact of the reform on minor-party representation, are presented.

#### *Korean political parties*

The Korean political system is characterized by the frequent reshuffling of political parties, which also results in frequent changes of their names, although the members of the newly formed parties are virtually the same as those of the old parties. Since the 16<sup>th</sup> parliamentary elections, Korean politics has been largely dominated by two sets of leading political parties, one conservative and the other liberal; other minor parties have trailed far behind. These two sides have occupied about 80–90 per cent of the National Assembly seats throughout the four parliaments.

Frequent party reshuffling takes place during upcoming presidential and/or parliamentary elections. As an election approaches, presidential candidates or parliamentary members of the National Assembly often defect from their parties, which results in party splits and mergers; popular presidential aspirants often create new parties. Since the president has behind-the-scenes power to nominate party members to the national parliamentary election, a sizable portion of assemblymen often join the president’s newly formed party, often en masse. Party reshuffling may also take place simply to give voters the impression that the party has been rebranded and re-energized before the next election. For example, the Grand National Party was renamed the Saenuri Party in February 2012 ahead of parliamentary elections in April and presidential elections the following year. The name change was initiated by Park Geunhye, then an assemblywoman from the Grand National Party and a popular presidential candidate from the party, who was elected president in December 2013.

Another interesting characteristic of the Korean party system is that the two leading political parties in each election are strongly region-based parties.<sup>9</sup> The voters in each party’s regional stronghold are extremely loyal to their favourite party. For example, the Grand National Party/Saenuri Party is based in the southeastern region (Gyoungsang provinces), virtually monopolizing the votes cast there, whereas the New Millennium Democratic Party and its successor parties are disproportionately supported by the southwestern part of Korea (Cholla provinces). The only place where true party competition



takes place is the Seoul metropolitan area and the surrounding Gyeonggi province. This type of strong region-based voting is one of the major obstacles preventing minor parties from entering the National Assembly under the single-member-district, one-ballot system.

#### *Disproportionate proportional-seat benefit*

The concept of disproportionate proportional-seat benefit measures whether a party is advantaged or disadvantaged by the method of distributing party-list proportional seats under the electoral system. This statistic is calculated for each party as the difference between its percentage of proportional representatives and its percentage of total votes. For example, if a party has 40 per cent of all Korean National Assembly proportional members, while its share of nationwide proportional votes is 35 per cent, it has a 5 per cent positive disproportionate proportional seat benefit. By contrast, if a party has only 5 per cent of the total proportional seats and 10 per cent of all national votes cast for each party's proportional candidates, the party is 5 per cent disadvantaged by this method of allocating proportional seats.

#### *The impact*

The National Assembly elections from the 13<sup>th</sup> parliamentary (first post-democratization) elections of 1988 through the 16<sup>th</sup> parliamentary elections of 2002 were all conducted under the single-ballot system. Since there was no separate party ballot for electing proportional representatives in these four elections, and because the number of proportional seats to be distributed to each party was decided in proportion to the percentage of votes it obtained in district elections nationwide, the two leading parties were able to gain positive disproportionate proportional-seat benefits.

Given the plurality electoral rule of the FPTP system and the strong regional electoral base, the two leading parties virtually divided all the district seats between themselves, at the expense of other minor parties. These advantages in the district election were automatically translated into additional benefits in proportional-seat allocation, at least until the introduction of the two-ballot system in the 17<sup>th</sup> National Assembly election. Tables 4.1–4.3 show the outcomes of the 16<sup>th</sup> through 19<sup>th</sup> parliamentary elections.

**Table 4.1. Comparison of the 16<sup>th</sup> and 17<sup>th</sup> National Assembly election results**

Party	Total # seats (%)		Total # district representatives (%)		Total # proportional representatives (%)		Vote percentage for district representatives		Disproportionate proportional-seat benefit (%)*	
	16 <sup>th</sup>	17 <sup>th</sup>	16 <sup>th</sup>	17 <sup>th</sup>	16 <sup>th</sup>	17 <sup>th</sup>	16 <sup>th</sup>	17 <sup>th</sup>	16 <sup>th</sup>	17 <sup>th</sup>
Grand National Party	133 (48.7)	121 (40.5)	112 (49.3)	100 (41.2)	21 (45.7)	21 (37.5)	(39.0)	(35.8)	(+6.7)	(+1.7)
Open Uri Party	NE	152 (50.8)	NE	129 (53.1)	NE	23 (41.1)	NE	(38.3)	NE	(+2.8)
New Millennium Democratic Party	115 (42.1)	9 (3.0)	96 (42.3)	5 (2.1)	19 (41.3)	4 (7.1)	(35.9)	(7.1)	(+5.4)	(0)
United Liberal Democrats	17 (6.2)	4 (1.3)	12 (5.3)	4 (1.6)	5 (10.9)	0 (0)	(9.8)	(2.8)	(+1.1)	(-2.8)
Democratic Labor Party	0 (0)	10 (3.3)	0 (0)	2 (0.8)	0 (0)	8 (14.3)	(1.2)	(13.0)	(-1.2)	(+1.1)
Democratic National Party	2 (0.7)	DC	1 (0.4)	DC	1 (2.2)	DC	(3.7)	DC	(-1.5)	DC
Korean New Party	1 (0.4)	DC	1 (0.4)	DC	0 (0)	DC	(0.4)	DC	(-0.4)	DC
National Union 21	NE	1 (0.3)	NE	1 (0.4)	NE	0 (0)	NE	(0.6)	NE	(-0.6)
Independents	5 (1.8)	2 (0.7)	5 (2.2)	2 (0.8)	-	-	-	-	-	-
	273	299	227 (83.2% of total seats)	243 (81.3% of total seats)	46 (16.8% of total seats)	56 (18.7% of total seats)				

**Note:** the 16<sup>th</sup> National Assembly election was held under the single-ballot system, while the 17<sup>th</sup> election was the first held under the new two-ballot system. 'NE' means that the party did not exist at the time of the election, and 'DC' means that the party no longer existed at the time of the election for reasons such as a merger with other parties, party name changes or that it did not have any seats in the assembly. Source: National Elections Commission <<http://info.nec.go.kr>>

\* See above for definition of disproportionate proportional-seat benefit

**Table 4.2. The 18<sup>th</sup> National Assembly election results**

	Party	Total # seats (%)	Total # district representatives (%)	Total # proportional representatives (%)	Vote percentage for proportional representatives	Disproportionate proportional-seat benefit (%)*
1	Grand National Party	153 (51.2)	131 (53.5)	22 (40.7)	(37.5)	(+3.2)
2	Consolidated Democratic Party	81 (27.1)	66 (26.9)	15 (27.8)	(25.2)	(+2.6)
3	Liberty Advanced Party	18 (6.0)	14 (5.7)	4 (7.4)	(6.8)	(+0.6)
4	Pro-Park Solidarity	14 (4.7)	6 (2.4)	8 (14.8)	(13.2)	(+1.6)
5	Democratic Labor Party	5 (1.7)	2 (0.8)	3 (5.6)	(5.7)	(-0.1)
6	Creative Korea Party	3 (1.7)	1 (0.4)	2 (3.7)	(3.3)	(0.4)
7	Independent	25 (8.4)	25 (10.2)	-	-	
		299	245 (81.9% of the total seats)	54 (18.1% of the total seats)		

*Source:* National Elections Commission <<http://info.nec.go.kr>>

**Table 4.3. The 19<sup>th</sup> National Assembly election results**

	Party	Total # seats (%)	Total # district representatives (%)	Total # proportional representatives (%)	Vote percentage for proportional representatives	Disproportionate proportional-seat benefit (%)*
1	Saenuri Party	152 (50.7)	127 (51.6)	25 (46.3)	(42.8)	(+3.5)
2	Democratic Consolidated Party	127 (42.3)	106 (43.1)	21 (38.9)	(36.5)	(+2.4)
3	Consolidated Progressive Party	13 (4.3)	7 (2.8)	6 (11.1)	(10.3)	(+0.8)
4	Liberty Advanced Party	5 (1.7)	3 (1.2)	2 (3.7)	(3.2)	(-0.5)
5	Independents	3 (1)	3 (1.2)	-	-	
		300	246 (82.0% of the total seats)	54 (18.0% of the total seats)		

*Source:* National Elections Commission <<http://info.nec.go.kr>>

\* See above for definition of disproportionate proportional-seat benefit

A number of observations can be made from these tables. First, the two-ballot system helped a left-leaning progressive party enter the national legislative arena for the first time since the 1987 democratic transition. Shunned as a taboo party for a long time, the DLP had been unable to gain even one district representative seat before the 17<sup>th</sup> National Assembly election. Although unabashed in its anti-American policy programme, and not thwarted by its strong sympathy toward North Korea, the party had never been competitive, given the generally conservative national sentiment. With two leading major parties (intensely supported by their regional strongholds) having duopolized virtually all of the single-member-district representative seats, the DLP had been blocked out of the national legislative arena. Beginning with the 17<sup>th</sup> parliamentary election, however, and with the help of the newly adopted two-ballot system, it became the third-ranking party by gaining eight proportional representative seats and two district representative seats.<sup>10</sup>

There is no doubt that the newly adopted second party ballot substantially contributed to the DLP's remarkable performance in the party-list competition. As many election experts agree, the DLP's success was largely due to the split voting exercised by a sizable portion of liberal-to-progressive voters (Cho and Choi 2006; Jung and Jung 2005; Kim 2005).<sup>11</sup> Although most voters cast a straight ballot by supporting the same party in both district and proportional representative elections, quite a few liberal-to-progressive voters split their ballot by voting for the Open Uri Party in the district representative election and the DLP list in the proportional representative election. They did so in order to avoid wasting their vote by supporting an uncompetitive DLP candidate in the single-member-district election (Cho and Choi 2006). In other words, they cast a strategic vote, knowing that the DLP's candidates could never win in their district, but they voted sincerely for the party list they favoured.

Second, the disproportionate proportional-seat benefit ascribed to the leading two parties shrank with the advent of the new two-ballot system. That is, for the two leading parties, the positive difference between the seat and vote portions in the proportional representative election was greatly reduced since the voters began to cast a separate ballot for the new party list in the 17<sup>th</sup> parliamentary election, which implies that the positive disproportionate proportional-seat benefit declined for these two parties, particularly for the largest party.

For example, in Table 4.1, the Grand National Party's positive disproportionate proportional seat benefit declined from 6.7 per cent in the 16<sup>th</sup> election to 2.8 per cent in the 17<sup>th</sup> election. The party did not recover its pre-reform, high-

level disproportionate benefit in the 18<sup>th</sup> parliamentary election, as was the case with its successor party, the Saenuri Party, in the 19<sup>th</sup> election, as Tables 4.2 and 4.3 show. This is also the case with the leading liberal parties. The positive disproportionate proportional-seat benefit of the New Millennium Democratic Party, the second-largest party in the 16<sup>th</sup> National Assembly, declined from 5.4 per cent to 2.8 per cent of the Open Uri Party in the 17<sup>th</sup> parliamentary election. The leading liberal parties were unable to reach 3 per cent of positive disproportionate proportional-seat benefit in subsequent elections, as Tables 4.2 and 4.3 show.

## **Women's representation**

### ***History of reform***

As Korea has entered the post-industrial phase of its social and economic development, women's social status and achievements now virtually match those of men. There is no doubt that Korean women are now able to make their presence felt in virtually every corner of society. For example, Korean women currently compete with men on an equal footing in the recruitment of judges, lawyers and diplomats, fields that have traditionally been dominated by men.

These remarkable changes are also reflected in the political process. Beginning in the mid-1990s, an increasing number of Korean women joined in the national legislative process as elected assemblywomen, and were appointed as cabinet ministers by the president. A good example is Han Myoungsook, who was first elected as an assemblywoman in 2000, and then appointed as the minister for women and, subsequently, the minister for the environment, and finally became the first female prime minister in 2006 during the Roo Moohyun presidency. Park Geunhye became the first female president in December 2012.

This huge progress in the political representation of Korean women was made possible in no small part by the political reforms of 2004, which amended party and election laws to allow the wider representation of women. Efforts from various sectors of Korean society to increase women's political representation began in the mid-1990s. Recognizing that the number of women politicians was relatively low compared to the number of women in other professions, various women's citizen groups, such as Women's Solidarity for a Quota System, requested that each of the major parties take concrete measures to include more women politicians. For example, they asked leading political parties to change the National Party Law so that more female politicians

could be recruited through a quota system (Cho and Kim 2010: 126; Jeon 2013b; Kim and Yoo 2010).

In the case of the National Assembly elections, the success of these efforts first came with the revision of the National Party Law in 2000, before the 16<sup>th</sup> parliamentary election. The third clause of article 31 introduced a quota system: 'political parties must select at least 30 per cent of the proportional candidates both in the National Assembly election and among the municipal and provincial proportional candidates from women'. This was criticized, however, for being a low quota and for lacking an enforcement mechanism.<sup>12</sup>

A major breakthrough came when a mandatory 50 per cent proportional-candidate quota for women was introduced in 2004. Three factors were crucial in the discussions on enacting this enlarged quota system into law: active women's citizen groups, public demand for political reform and politicians' acceptance of the larger quota.

First, women's citizen groups were the prime movers in enlarging the quota. The national umbrella organization Women's Solidarity for the 17<sup>th</sup> Parliamentary Elections pressured major political parties to take active measures to promote the political recruitment of women, such as a mandatory 50 per cent quota for women for proportional representatives and a mandatory 30 per cent quota for female district representatives. Solidarity of Citizen and Societal Groups for Political Reform also mobilized public opinion and challenged the National Assembly to take concrete initiatives, which resulted in the establishment of the Pan-Nation Political Reform Council. The council, as an advisory organ to the National Assembly speaker, recommended a reform agenda that included increasing National Assembly membership to 299 from 273 and dividing this membership into 199 district and 100 proportional representatives. It also urged the National Assembly to introduce a 50 per cent mandatory quota for women for proportional candidates.

Amid the heated requests for more proportional representatives, the major parties strategically decided to increase the assembly membership by 26 seats (16 district seats and 10 proportional seats). The parties also agreed to increase the share of mandatory female proportional representatives to 50 per cent. This outcome was the result of inter- and intraparty compromise, and was the most feasible given the re-election-sensitive (mostly male-led) district representatives. This solution allowed parties in the assembly to enlarge district numbers and dissipate inter- and intraparty feuds without further turmoil, while demonstrating positive actions toward women.

As a result, clause 4 of article 31 of the newly revised National Party Law enlarged the mandatory quota of female proportional representatives from 30 per cent to 50 per cent. As a follow-up reform measure, the revised National Election Law in 2005 took another positive step for women's representation by mandating a zipper system (which alternates male and female candidates on party lists), and advising each party to 'make efforts' to nominate female candidates to at least 30 per cent of all districts nationwide.<sup>13</sup>

### **Assessment of the reform**

To illustrate the impact, Tables 4.4–4.5 illustrate the positive impact of the new mandatory female proportional quota system.

**Table 4.4. Summary of female representation: the 16<sup>th</sup> through 19<sup>th</sup> Korean National Assembly elections**

	Total # district representatives/ total # proportional representatives	Total # female district representatives/ total # district representatives (%)	Total # female proportional candidates/ total # proportional candidates (%)	Total # female representatives/ total # of representatives (%)
16 <sup>th</sup>	227/46	5/227 (2.2)	11/46 (23.9)	16/273 (5.9)
17 <sup>th</sup>	243/56	10/243 (4.1)	29/56 (51.9)	39/299 (13.0)
18 <sup>th</sup>	245/54	14/245 (5.7)	27/54 (50.0)	41/299 (13.7)
19 <sup>th</sup>	246/54	19/246 (7.7)	28/54 (51.9)	47/300 (15.7)
		41/1215 (3.4)	104/256 (40.6)	154/1470 (10.5)

**Table 4.5. Comparison of the 16<sup>th</sup> and 17<sup>th</sup> National Assembly elections**

Name of the Party	Total # female district representatives/ total # district representatives (%)		Total # female proportional candidates/ total # proportional candidates (%)		Total # female representatives/ total # of representatives (%)	
	16	17	16	17 <sup>th</sup>	16	17 <sup>th</sup>
Grand National Party	1/112 (0.9)	5/100 (5.0)	10/45 (22.2)	21/43 (48.8)	5/21 (23.8)	11/21 (52.4)
Open Uri Party	NE	5/129 (3.9)		26/50 (52.0)		12/23 (52.2)
Democratic Labor Party	NM	0/2 (0.0)		8/16 (50.0)		4/8 (50.0)

New Millennium Democratic Party	4/96 (4.2)	0/5 (0.0)	14/43 (32.6)	15/26 (57.7)	5/19 (26.3)	2/4 (50.0)
United Liberal Democrats	0/12 (0.0)	0/4 (0.0)	6/31 (19.4)	Not available	0/5 (0.0)	0/0
Democratic National Party	0/1 (0.0)	DC	2/19 (10.5)		1/1 (100)	
Korean New Party	0/1 (0.0)	DC	Not available		0/0	
National Union 21	NE	0/1 (0.0)		Not available		0/0
Independents	0/5 (0.0) 5/227 (2.2)	0/2 (0.0) 10/243 (4.1)	-		- 11/46 (23.9)	29/56 (51.8)

**Sources:** National Elections Commission <<http://info.nec.go.kr>>; Jeon 2013a; Cho and Kim 2010; Kim and Yoo 2010; Oh 2003; Oh, Kim and Kim 2005. 'NE' means that the party did not yet exist at the time of the election, 'NM' means that the party existed at the time of the election but failed to win seats, and 'DC' means that the party had disbanded at the time of the election for reasons such as a merger with other parties, party name changes or that it did not have any seats in the assembly.

Some key observations are worth noting. First, despite the low percentage of female representatives, the overall trend shows that their number and share continue to increase. For example, the number of female district representatives increased from five in the 16<sup>th</sup> parliamentary elections to ten in the 17<sup>th</sup> parliamentary elections (Table 4.4). The proportional representatives, who took larger share from the start, also increased in the 17<sup>th</sup> parliamentary election, after which about half of each party's proportional representatives continued to be filled by female candidates, as can be seen in Table 4.4.

Second, the 17<sup>th</sup> parliamentary election in 2004 served as a breakthrough for women's representation. As Table 4.4 shows, the percentage of female proportional representatives has not fallen below 50 per cent since that election, resulting in an increase in the total percentage of female representatives (district and proportional) from 5.9 per cent in the 16<sup>th</sup> parliamentary election to 13 per cent in the 17<sup>th</sup> election.

Third, the impact of the reform was felt across parties. As shown in Table 4.5 for the 17<sup>th</sup> parliamentary election, about half of the proportional candidates nominated by all the major parties were women. Women also made sizable inroads in the district representative competition beginning with the 17<sup>th</sup> parliamentary election. The number of female district representatives also doubled from the 16<sup>th</sup> to the 17<sup>th</sup> parliamentary elections, and continued to increase through the 19<sup>th</sup> election, as shown in Table 4.4.

Finally, compared with other right-leaning parties, liberal-to-progressive parties were more active in recruiting women candidates from early on, and were more successful in getting them elected. For example, in the 16<sup>th</sup> parliamentary election the liberal New Millennium Democratic Party elected more women representatives than the leading conservative Grand National Party—nine (four district representatives and five proportional representatives) vs. six (one district representative and five proportional representatives)—and nominated four more women candidates than the first-ranking party in the proportional representative contest, 14 compared to 10, as shown in Rows 2 and 5 of Table 4.5. After the 17<sup>th</sup> parliamentary election, however, the women’s portion of proportional representatives was about the same due to the stabilized mandatory quota reform, although there were some fluctuations in district representation across the parties.<sup>14</sup>

## Conclusions

This chapter discussed the introduction of major reforms in two areas of representation in Korea: minor parties and women. In the case of minor-party representation, revisions in electoral rules relating to local party organizations and internal party nomination processes that were introduced before the 17<sup>th</sup> Korean National Assembly election played a pivotal role. The court ruling that declared certain clauses in the National Election Law unconstitutional, however, made changes in the legal code possible. In particular, the court ruling paved the way for reform-oriented political actors to successfully lobby and pressure the National Assembly to amend the National Election Law to adopt the two-ballot system.

The impact of the new two-ballot system was remarkable: for the first time, the left-leaning DLP was able to obtain seats in the National Assembly, largely due to its remarkable performance in the party-list vote. Despite fluctuations between elections, the left-leaning progressive parties were able to maintain their seats, proving the lasting impact of the National Election Law amendment in 2004.

As for women’s representation, women’s citizen groups played an important role in amending the National Party and National Election Laws. Moreover, incumbent politicians were willing to compromise with these groups to amend laws amid the strong national pro-reform sentiment. As was the case with the minor parties, women were also greatly favoured by the mandatory 50 per cent quota for women for the party-list nomination. Although liberal parties implemented the new quota system earlier, all parties abided by the rule, regardless of their ideological orientation. The overall share of women

in the National Assembly increased beginning with the 17<sup>th</sup> parliamentary election, particularly among proportional representatives.

Based on the Korean experience of improving minority representation, the following recommendations can be made for newly emerging democracies. First, one of the most effective ways to enhance minority participation is to introduce a proportional system. As the Korean case shows, more minor parties and women were elected to the National Assembly after the introduction of the two-ballot system and the mandatory quota.

Second, any reform to enhance minority participation entails legal changes. Reforms are only stable if they are mandatory and codified in national law or an amendment, and accompanied by substantial sanctions in case of violations. In Korea, reform was achieved through amendments of the National Election Law and Party Law. Once put in place and consolidated in the legal code, the reforms and their achievements can take hold, and additional reform measures can follow the path cleared by earlier reforms, creating a path-dependent virtuous cycle of institutional innovation.

Finally, the nomination process within each party should be transparent and democratic. This requirement is particularly important for the nomination of women. Since most parties nominate candidates using a party nomination committee, which is also often under the influence of the party leadership, its composition is extremely important. In particular, the committee should include female representatives from both within and outside the party. In the deliberation process, the committee should be ready to select a female candidate when it believes that she is the most competitive candidate for the district election or the party list. Otherwise, viable female candidates are discriminated against for irrelevant reasons, such as ties to the party leadership or campaign finance contributions.

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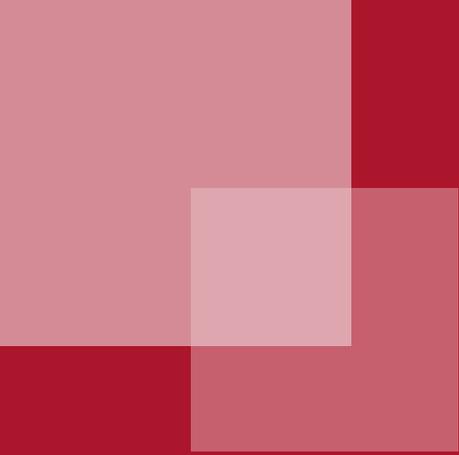
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## Notes

- <sup>1</sup> For a comprehensive introduction to Korean democratization and its achievements since 1987, see Diamond and Shin 2000 and Kim 2003.
- <sup>2</sup> The next section describes why this chapter particularly emphasizes the 17<sup>th</sup> National Assembly election.
- <sup>3</sup> Two main party reforms implemented before this election represent landmark events in post-democratization Korean history. First, the New Millennium Democratic Party, then led by President Kim Daejung, introduced a US-style primary system in which party members and general voters directly participated to select the party's presidential candidate. Previously, only the party delegates had participated in the nomination process, which gave party bosses tight control over the presidential nomination process. The new system was intended to improve the party's image among voters, and was soon imitated by the conservative Grand National Party. The second path-breaking

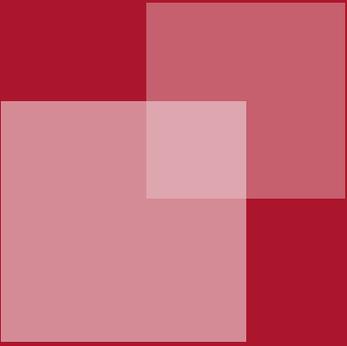
reform measure from the same year was the abolishment of party presidencies (a huge symbol of boss-dominated party politics), which increased the openness and transparency of parties' decision-making processes and finances.

- <sup>4</sup> For a more detailed analysis of these reform measures, see Yoon 2004.
- <sup>5</sup> In this chapter, proportional representative (or candidate or seat) is used interchangeably with the party-list representative (or candidate or seat). On the other hand, a district representative (or candidate) refers to a member elected (or a candidate running) in a single-member-district election under the plurality electoral rule (FPTP). Thus, a district seat refers to a seat in the Korean National Assembly held by the district representative. For a comprehensive analysis of the changes to the Korean National Assembly's electoral rules and their consequences, see Jung and Jung 2005.
- <sup>6</sup> The previous electoral rules were neither mixed-member majority rule (in which voters cast two separate ballots: one for the party's district candidate, the other for the party's list of proportional candidates; the number of each party's seats was determined by the total number of district representatives and proportional representatives) nor mixed-member proportional rule (in which voters also cast two separate ballots, but the total number of seats won by each party was determined by its share of the votes cast for party-list or proportional candidates). In every election since 1988, single-member-district elections have been held under the FPTP/plurality system in which only the front-runner wins, whether he/she received the majority of votes cast in the district or not.
- <sup>7</sup> For more information on the contested stipulations of the National Election Law, see <<http://likms.assembly.go.kr/law/jsp/law/Main.jsp>>.
- <sup>8</sup> For more on the chronological events leading up to the National Assembly's revising the National Election Law in 2004, see Jaung 2006 and Park 2004.
- <sup>9</sup> For analysis of the origins of Korean regionalism since 1987, see Kang 2003.
- <sup>10</sup> By taking away the third-ranking party position from the United Liberal Democrats in the 17<sup>th</sup> National Assembly, the DLP tilted the whole National Assembly's ideological balance toward the liberal-to-progressive end of the pendulum. Furthermore, the party was able to wield a casting vote in the National Assembly with the Open Uri Party only commanding a bare majority. After the 17<sup>th</sup> parliament, the two-ballot system continued to help the DLP keep seats in the assembly.
- <sup>11</sup> For a more detailed analysis of voters' support for the DLP, see An and Ka 2006. For an exploratory investigation of voters who split their votes, see Park 2004 and Cho and Choi 2006.
- <sup>12</sup> For this reason, some scholars are reluctant to consider the quota mandatory (for example, see Jeon 2013a and Park 2012). In addition, Jeon (2013a) points out that in the 16<sup>th</sup> parliamentary election, the New Millennium Democratic Party was the only party that adhered to the quota.
- <sup>13</sup> The 50 per cent female proportional quota is mandatory, while the 30 per cent female district quota is merely advisory (and rarely met), primarily because parties believe that female candidates are less likely to win (Park 2012: 74). While many suggestions have been proposed to increase each party's share of female district candidates, such as placing more female members on each party's nomination committee, the most powerful remedy would be to make the female district candidate quota mandatory.
- <sup>14</sup> For the legislative performance of female representatives after the institutional reform, see Kim 2010. She argues that the 17<sup>th</sup> parliament's legislative record on women's issues was stronger than that of the previous parliament due to the increased number of female proportional representatives.



# **Chapter 5**

## **Inclusiveness Policies in the Transitional Elections in Tunisia**



## Chapter 5

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Amor Boubakri

# Inclusiveness Policies in the Transitional Elections in Tunisia

## Introduction

In January 2011, people demonstrated all over Tunisia, crying out '*Ben Ali dégage*' (Ben Ali, get out) to express their deep indignation toward the country's deliberate policies of marginalization and exclusion that had created flagrant regional and social inequalities. It was a prominent slogan of the Tunisian revolution that has been celebrated by songs, poems, films, plays and other forms of expression (Pearlman 2013: 237).

Poor people, mainly from the less fortunate western regions of Tunisia, youth, women and other marginalized social groups had been affected over the course of several decades by such policies. They were always prevented from voicing their views and were excluded from participating in political life. Yet protests were triggered by unemployment problems; people made a clear connection between social marginalization and political exclusion in the early hours of the Tunisian revolution (Beinin and Vairel 2013; ICG 2011: 3–5; Mabrouk 2011).

After gaining independence from France in 1956, Tunisia was among the few Arab countries that adopted universal suffrage and granted women the unrestricted right to vote and to stand as candidates in elections. The new elite, which rose to power after a long and heroic struggle against the French, made big promises of democratization during the euphoria of the independence victory. The sovereignty of the people had therefore become a milestone of the political discourse during the post-colonization era, especially after abolishing the monarchy in 1957 (Boubakri 2013: 81).

Likewise, political rights, especially election rights, were fully recognized in the 1959 Constitution that was designed to set up the pillars of the new state and establish the basis of a genuine democracy. This constitution, inspired by those of the United States and France, explicitly included the separation and sharing of powers in efforts to avoid despotism and authoritarianism.

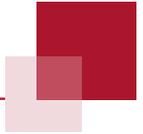
However, the authorities were not prepared to comply with the new constitutional rules and act in accordance with the 1959 Constitution's democratic and liberal spirit. The new elite did not show a strong willingness to fulfil their promises, and missed the historic opportunity to build a democratic system based on political inclusiveness. Popular sovereignty became merely a hypocritical slogan that served as a pretext for long-term single-party rule and political exclusion (Perkins 2004: 157–212).

Under Bourguiba's rule (1959–87), political opposition was banned from 1963 until 1981, while Ben Ali established a number of political parties to serve as a façade for a so-called political opening of the regime (Abdelhaq and Heumann 2000; Erdle 2010; Lamloum and Ravenel 1999–2000). Furthermore, electoral fraud had been widely practiced for decades: falsified results always secured more than 90 per cent of seats for the ruling party (Camau, Armani and Ben Achour 1981; Khiari and Lamloum 1999; Mestiri 2011: 281–8). Political rights were provided by legal texts but not guaranteed in reality; the opposition always had to face the ruling party in uncompetitive elections that had never led to a change in power (Sadiki 2002: 63–9).

The Destour Party (the Constitution Party) under Bourguiba's rule and the Constitutional Democratic Rally Party (RCD) under Ben Ali's rule (1987–2011) controlled access to power and dominated all state institutions. The opposition was therefore prevented from playing any active role in the country's political life.

Political exclusion was not restricted to political parties. It was extended to other actors and categories as the regime's propensity for authoritarianism grew over time. Thus, independent civil society organizations (CSOs) lacked the freedom of action to carry out their activities. Human rights groups and unions faced systematic harassment and undue restrictions.

Genuine inclusiveness and effective participation in public life therefore represented a core demand of the 2011 revolution. The mass protests that took place between December 2010 and January 2011 and ousted Ben Ali after 23 years of authoritarian rule aimed to end these policies of marginalization and exclusiveness. After the fall of Ben Ali's regime on 14 January 2011, the



new authorities were determined to place inclusiveness at the top of their priorities, and committed themselves to ending political exclusion. They promised to include marginalized individuals and groups in the transitional electoral process.

Thus, the interim government set up a new legal and institutional framework for election in order to achieve these goals and prepare the path for democratic transition (Sarsar 2012: 25). The new legislation was progressive in many regards, mainly by providing special measures to ensure the equitable representation of political groups, women and people from marginalized regions of Tunisia.

Inclusiveness can be broadly understood as a 'variation in the proportion of the population entitled to participate on a more or less equal plane in controlling and contesting the conduct of the government' (Coppedge, Alvarez and Maldonado 2008: 633). Indeed, it has become an important way to measure the effectiveness of democracy and political citizenship in modern political regimes (Caraway 2004). Therefore, democratic elections are considered an essential element of political inclusion. They require effective electoral rights, a transparent and accessible electoral process, and equitable representation of the people as it stems from General Comment No 25 of the UN High Commissioner for Human Rights of 12 July 1996 on the right to participate in public affairs, voting rights and the right to equal access to public service.

This chapter examines the different measures adopted to ensure political inclusiveness in the Tunisian transitional elections of 23 October 2011, and evaluate their contribution to the inclusion of individuals and groups who had been victims of deliberate political exclusion under the old regime. The lessons that can be learned from the experience of these transitional elections could help increase inclusiveness in post-transition electoral processes elsewhere.

## **The new election legal framework: toward equitable representation**

After the fall of Ben Ali's regime in 2011, the main political and social actors decided to suspend the old constitution and elect a provisional body, the National Constituent Assembly (NCA), to draft and adopt a new constitution for Tunisia. A new legal framework for elections was negotiated between the different actors, who agreed on Decree Law 2011-35 of 10 May 2011.

Thus, the new text abrogated, *ipso facto*, the 1969 Electoral Code that had served as a tool to perpetuate the hegemony of the same ruling party for more

than six decades. Decree Law 2011-35 clearly stated that ‘the past electoral law did not guarantee democratic, plural, transparent and credible elections’ (Preamble: §3).

This law represents a real revolution from two perspectives. First, it was the outcome of a broad consensus that resulted from a genuine dialogue involving all actors, including CSOs such as unions and human rights groups, during the first months of the transition. This was the first time in Tunisia that the electoral law was the result of negotiations among different actors and resulted from a genuine consensus. Second, the Decree Law was explicitly considered a genuine break from the old regime’s practices, which were characterized by electoral fraud and the usurpation of power (Preamble: §1). The text was therefore intended to end political exclusion and ensure genuine inclusion through democratic and fair elections.

Although Decree Law 2011-35 has not had any legal force since the NCA’s election in 2011, its main achievements are preserved in the new constitution adopted on 26 January 2014 and Law 2014-16 of 26 May 2014 on elections and referendums.

### ***Broad representation of political groups***

The former ruling party used the electoral system to maintain its monopoly over the country’s government and political life from 1956 until 2011. During that period, the regime used the majoritarian system with a party block vote to win all the seats in each constituency, as it always got the majority of the vote.

The opposition was therefore unable to challenge the hegemonic ruling party and did not manage to win even a single seat in parliament between 1956 and 1989. Moreover, the post of president of the republic was contested by only one candidate: prospective opposition candidates for the 1974 and 1994 elections were jailed for trying to contest the election. In the first multi-candidate presidential election in 2004, the incumbent president won with the same overwhelming majority of more than 90 per cent of the vote.

A mixed electoral system was introduced in 1993, which allowed the national-level allocation of reserved seats for some opposition political parties in order to attenuate the impact of the majoritarian system and allow the opposition to be represented in parliament. In practice, the regime controlled the allocation of these seats, and only parties and individuals who were unconditional allies were eligible. These reforms thus created a false political opening, as the ruling party still monopolized the political scene: the new system prevented the emergence of a genuine political opposition able to challenge the ruling

party. It also generated several anomalies in the representation of the people in parliament (Boubakri 2011a: 383–97).

Decree Law 2011-35 on the NCA elections replaced the majoritarian system with a closed-list proportional representation system. Seats were allocated in regional constituencies using the largest-remainder method. The objective was to allow different political movements to be represented in the NCA, which would draft and adopt a new constitution. The transitional elections held on 23 October 2011 were very successful in that regard. Thus, a large number of political groups were represented for the first time in the NCA. These groups, which had been excluded from the political process for decades, are now involved in the democratic transition and the constitution-building process.

Table 5.1 shows the drastic impact of the electoral system on the representation of different political groups between 1956 and 2009. The majoritarian system with party block voting shaped the path for the Destour Party, and then the RCD, to control parliament during this long period. This hegemony also relied on other factors like the manipulation of results and the violation of the fundamental liberties necessary for democratic elections, such as the freedoms of association and expression.

**Table 5.1. Representation of political groups in parliamentary elections (1956–2009)**

Year	Distribution of seats					
	Destour Party/RCD		Opposition		Total	
	seats	%	seats	%	seats	%
1956	98	100	0	0	98	100
1959	90	100	0	0	90	100
1964	101	100	0	0	101	100
1969	101	100	0	0	101	100
1974	112	100	0	0	112	100
1979	121	100	0	0	121	100
1981	136	100	0	0	136	100
1986	125	100	0	0	125	100
1989	141	100	0	0	141	100
1994	144	88.3	19	11.7	163	100
1999	148	81.1	34	18.9	182	100
2004	152	80.4	37	19.6	189	100
2009	161	75.2	53	24.8	214	100

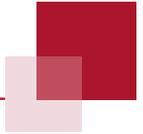
*Source:* adapted from the official gazette of the Republic of Tunisia.

Table 5.2 shows that the new electoral system has contributed to an equitable representation of political parties in parliament and prevented any single party from dominating the NCA.

**Table 5.2. Representation of political groups in the transitional elections**

Political party	Seats	%	Political orientation	Status
Ennahdha Party	89	41	Islamist	Member of ruling coalition: December 2011–January 2014
Congress for the Republic	29	13.4	Social Democrat	Member of ruling coalition: December 2011–January 2014
Popular Petition (Al-Aridha)	26	12	Islamist	Opposition
Democratic Forum for Labour and Liberties (Attakattoul)	20	9.2	Social Democrat	Member of ruling coalition: December 2011–January 2014
Progressist Democratic Party	16	7.4	Social Democrat	Opposition
Modernist Democratic Pole	5	2.3	Social Democrat	Opposition
The Initiative Party (Al-Mubadara)	5	2.3	Liberal	Opposition
Tunisian Communist Workers' Party	3	1.4	Communist	Opposition
People's Movement	2	0.9	Arab nationalist	Opposition
Social Democratic Movement	2	0.9	Social Democrat	Opposition
Parties with one seat and independents	16	7.4	Varied	Opposition
<b>Total seats</b>	<b>217</b>	<b>100</b>		

*Source:* adapted from ISIE 2012: 344–9.



### ***The parity rule and the promotion of women's representation***

Women's political rights are a major concern in the Arab region, where elected assemblies lack gender equality. Some Arab countries do not even recognize women's right to run for elections (Sadiki 2004: 307–19; UNDP 2006: 93–101). While Tunisian women were granted the right to vote and run for all elections soon after independence, they were marginalized in elected assemblies until recently, and their presence in decision-making institutions was insignificant. Women did experience a remarkable increase in representation soon before the transition, from 4 per cent of members of parliament (MPs) in 1990 (UNDP 2006: 309) to 12 per cent in 1999 and 23 per cent in 2004. In 2009, the ruling party introduced a voluntary 30 per cent quota for party lists (Zaatari 2013: 7), which increased female representation to 29 per cent. Yet these increases did not result from a genuine democratization process in Tunisia, but were rather the outcome of cosmetic measures to (falsely) demonstrate political inclusiveness and gender equality in parliament during the last ten years of Ben Ali's rule.

The active role played by Tunisian women in the 2011 revolution and during the fighting against the dictatorship created strong support for the promotion of genuine gender equality in the transitional elections and the future assembly. Decree Law 2011-35 on the NCA elections represents an important step toward this goal by introducing a zipper system based on the parity rule. According to article 16, electoral lists should be of an equal number of men and women, with alternation in their respective ordering in each list.

The system generated an unprecedented level of political involvement of women, who actively participated in all phases of the transitional elections of 23 October 2011 (Gender Concerns International 2012) and who represented roughly half of the candidates for the NCA. However, the results of these elections did not meet the expectations of the democratic and feminist movements, with women winning 27 per cent of the seats in the NCA. This number increased slightly to around 30 per cent after some MPs resigned, mainly to join the government, and the alternation rule allowed some female candidates to replace their colleagues. Compared to the rates of female representation elsewhere in the world (UNDP 2013: 156–9), the representation of women in the NCA can be considered an acceptable first step toward the genuine inclusion of women in the electoral process.

The parity rule provided in Decree Law 2011-35 offered women the opportunity of genuine inclusion in the transitional electoral process. Yet most of the closed lists in the proportional system favoured the head of the

list at the expense of other candidates for election to the NCA. The outcome of this rule therefore depends on the willingness of the political parties to implement full parity at the top of their candidate lists. Unfortunately, this did not happen in the 2011 elections, as the political parties were reluctant to commit themselves to genuine respect for the spirit of the parity rule. Thus, women topped only 8.5 per cent of the candidate lists (ISIE 2012: 271, 276).

Regardless, Decree Law 2011-35 has already achieved an irrevocable step toward women's inclusion in elections. The parity rule has already been confirmed in article 24 of the new Electoral Law 2014-16. Moreover, the fair representation of women in elected assemblies has been granted constitutional status, as article 34 (§2) of the 2014 Constitution says that: 'the state should guarantee women representation in elected assemblies'. Article 46-3° also provides that the 'state seeks to achieve parity between men and women in elected assemblies'.

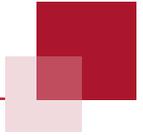
These important constitutional and legislative provisions are in line with the transition policies encouraging gender equality in the electoral process in Tunisia. They should further enhance women's inclusion in the electoral process and promote gender equality in Tunisian political life.

### ***Youth: Zouaoua's soldiers***

The Zouaoua tribe provided the monarchy with soldiers who were always sent to war and mostly placed at the front in each battle, though they were usually poorly paid. Thus, Zouaoua's soldiers were said to be 'onward in war but backward in salary'. This proverb perfectly describes the situation of youth in Tunisia in the transitional elections.

Young people played a critical role in the Tunisian revolution, when they surprised the old elite with their deep political awareness and strong commitment to fighting against the dictatorship. Youth determination during the 2010–1 protests was decisive in the fall of Ben Ali's regime, mainly through their use of social media and new information technology (Honwana 2013; ICG 2011: 6–8; Rezgui 2012: 235–57).

The remarkable involvement of young people in the Tunisian revolution was prompted by a profound transformation in Tunisian society during the last three decades, on the one hand, and the failure of the established political and social systems to adequately satisfy the young generation's aspirations, on the other hand. Political exclusion and social marginalization were therefore at the heart of the widespread frustration among youth that led to the uprising in 2010.



The unemployment rate among young people has dramatically increased in the last few years (ICG 2011: 3), reaching 33.6 per cent among university-educated youth in 2011 (MSA 2012: 5). This created an explosive situation, which was exacerbated by the practices of nepotism and favouritism that had made access to jobs so difficult for young people from the interior regions and marginalized social classes (ICG 2012: 12–4).

The interim authorities were aware of the need to include youth in the transitional electoral process. Thus, Decree Law 2011-35 granted the right to vote to citizens who had reached 18 years of age. Citizens 23 or older could also stand for the NCA elections. However, the law's commitment to the genuine inclusion of youth was not strong enough. Article 33 (§2) only encouraged candidate lists to include at least one young candidate under 30 years of age. Unfortunately, these soft-law provisions did not persuade political parties to comply with the spirit of the legislation to include young people in the electoral process. In the 2011 elections, young people headed no more than 4.5 per cent of the candidate lists, and citizens under 30 represented only 23.7 per cent of all candidates (ISIE 2012: 272–76). In the end, only 4 per cent of those elected to the NCA were under 30.

The 2014 Constitution contains provisions to include young people in the electoral process. Article 74 (§2) allows citizens 34 years of age and older to be candidates for president, and article 133 (§3) requires the Electoral Law to guarantee the representation of young people in local assemblies. While youth representation in local assemblies would improve their participation in political life, their presence should be supported at both the local and national levels as well.

The new Electoral Law 2014-16 provides in article 25 that in parliamentary elections in constituencies with four or more seats, candidate lists should include at least one candidate who is under 35 years of age among the first four candidates. Candidates that do not comply may be deprived of half of the public funds provided for the electoral campaign. While this article represents a positive development, genuine youth representation in future parliaments requires more effective measures.

### ***Inclusion of marginalized regions***

The self-immolation of a young street vendor in the town of Sidi Bouzid to protest against social and economic marginalization and government corruption triggered massive protests in all marginalized regions of Tunisia. The interior regions of the country, where the 2011 revolution started, had suffered continuing and damaging marginalization policies for decades.

The economic marginalization of these regions created flagrant disparities compared to the coastal regions, which have always been favoured in terms of development projects and infrastructure (ICG 2011: 3).

The economic and social marginalization of the interior regions of Tunisia was always linked to political marginalization. These regions were subject to direct central government interference, even in nominating and selecting local officials. This had generated deep-rooted clientelism and allegiance toward a central government in which one party monopolized all the institutions (Tarchouna 2005: 248–81). In addition, the marginalized regions were not equitably represented in the central government's executive branch, which represented the main political power in Tunisia.

After the revolution, an important debate on the best way to enhance the representation of the marginalized regions in the new assembly took place. The decision was made to introduce positive discriminatory measures in the new electoral legislation. Article 33 of Decree Law 2011-35 took into consideration the political sensitivities between regions and granted additional seats to the interior regions, based on population, in order to enhance their representation in the NCA. The special measures did not directly target these regions per se; rather, the law allocated additional seats to these regions based on the assumption that they were underpopulated.

This policy has enhanced the representation of some marginalized regions in the NCA and allowed them to voice their concerns at the central level. Table 5.3 presents the difference in representation of some marginalized interior regions between the 2009 Parliament and the NCA in 2011. It demonstrates the important increase in the number of seats allocated to these regions in the NCA elections brought about by the special measures included in Decree Law 2011-35. Some regions, such as Tatouine and Tozeur, doubled their representation in the NCA compared to the 2009 Parliament.

**Table 5.3. Representation of marginalized regions 2009–11**

Constituency/ region	Number of seats in 2009	Number of seats in 2011	Growth rate %
Gabes	5	7	40
Gafsa	5	7	40
Kebili	2	5	150
Kef	4	6	50
Seliana	4	6	50
Tataouine	2	4	100
Tozeur	2	4	100
Zaghouan	3	5	40

*Source:* adapted from Tunisia's official gazette.

The 2014 Constitution established a new basis for regional inclusiveness that consisted of reinforcing local democracy and limiting central power. Thus, local and regional entities are allowed to manage their own affairs through independent bodies elected by universal and direct suffrage. This new constitutional deal will certainly help limit the negative impact of the excessive centralization of power that was behind the marginalization of the interior regions in Tunisia since independence.

The 2014 Constitution also introduced positive discrimination in article 12 in order to limit injustice between regions. According to this article, 'The state endeavours to achieve social justice, sustainable development and balance between regions based on development indicators and positive discrimination.' However, the new Electoral Law 2014-16 does not provide any special measures to enhance the representation of marginalized regions in parliament. Article 173 preserved the same constituencies with the same number of seats for the next parliamentary elections. A law is needed to redefine the constituencies for subsequent parliamentary elections.

### ***The exceptional inclusion of Tunisians abroad***

Given the widespread belief that Tunisians living abroad had made a crucial contribution to the revolution (Boubakri 2011b), they were given the opportunity to vote for the NCA for the first time in 2011. Previously, the 1969 Electoral Code allowed out-of-country voting only for presidential

elections and referendums. The new legal framework for elections established in this context featured exceptional sympathy toward Tunisian migrants. Decree Law 2011-35 represented a generous reward, especially for those who were forced into exile because of their political activities and the oppression they faced under the old regime. Six constituencies were created to represent Tunisians abroad, who comprised 8.8 per cent of the total seats in the NCA. In the 2011 elections, 29.1 per cent of the voters registered abroad took part in the election (ISIE 2012: 311). The right to vote for (and be represented in) the NCA has since been codified in article 55 of the new constitution.

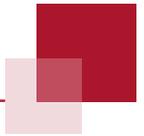
Tunisia is one of the rare countries that allow their migrant citizens to vote in, and be represented in, legislative elections (Ellis et al. 2007: 28–30): out-of-country voting is generally limited to presidential elections and referendums. Political, social and historical reasons are usually behind such a choice—generally, to increase the diaspora’s attachment to the country of origin—which is the case in Tunisia. Elections are considered an efficient tool that helps maintain and develop links with Tunisians living abroad.

The experience of the 2011 elections showed that out-of-country voting is very complicated and difficult to carry out, and requires a lot of effort and preparation from the EMB. The difficulties faced in 2011 may encourage more realism in designing external voting processes in the post-transition elections. Nonetheless, article 173 of the new Electoral Law 2014-16 preserved the same constituencies and number of seats for Tunisians abroad for the 2014 parliamentary elections.

## **The role of the new electoral administration in an inclusive electoral process**

Elections in Tunisia were managed by the Ministry of Interior until the revolution, when people demanded the establishment of a new independent electoral management body (EMB) as a prerequisite for credible and transparent transitional elections. Decree Law 2011-27 of 18 April 2011 created the High Independent Authority for Elections (*Instance Supérieure Indépendante pour les Elections*, ISIE), which is the first independent EMB in Tunisia. This step was indispensable for building people’s confidence in the electoral process after decades of electoral manipulation and fraud.

The ISIE was mandated, as a temporary EMB, to organize the NCA elections on 23 October 2011. After completing this mission, the decision was made to create a new permanent EMB to be in charge of future elections and referendums. The 16 December 2011 interim constitution required the NCA



to set up a new legal framework to this end. Thus, Law 2012-23 on the ISIE was adopted and promulgated on 20 December 2012. The new Tunisian Constitution also granted a constitutional statute to the ISIE. Article 126 (§1) provides that: ‘An electoral authority, called the High Independent Authority for Elections, manages and organizes elections and referendums, supervises all their steps, guarantees the integrity and the transparency of the electoral process and announces the results.’

The ISIE played an important role in the 2011 elections, and increased the people’s confidence in elections. International observers recognized the ISIE’s strong commitment to ensuring the success of the first democratic elections in Tunisia’s history (EU 2011: 17; Carter Center 2011: 3–4).

Article 4 (§6) of Decree Law 2011-37 mandated the ISIE to guarantee the right to vote for all citizens. It was therefore responsible for ensuring an inclusive electoral process that allows all voters to participate in NCA elections without difficulty. However, the time frame and the political situation created a difficult context. The ISIE was established in May 2011 and had to work within a very short time frame, as elections were initially scheduled for July 2011 before being rescheduled for 23 October 2011. The ISIE also operated in a very difficult context marked by mistrust in the interim government and fear of electoral manipulation. The situation was exacerbated by endless social protests and governmental instability, as three new cabinets succeeded Ben Ali in January and February 2011. The ISIE also had to set up a new bureaucracy and create a voter register from scratch. This context affected the quality of the electoral process, as the ISIE faced many organizational, political and logistical challenges to carrying out its mission.

One of the main deficiencies of the 23 October 2011 elections was the voter register, which lacked inclusiveness and accuracy (Carter Center 2011: 27) due to the ambiguity of the voter registration system as designed by Decree Law 2011-35 (article 6), which provided that the voter register was to be derived from the National Identity Cards Database (NIDD).

However, the NIDD was not accurate enough to create an acceptable voter register in a short time frame. It suffered from two major problems: it did not include around 400,000 people, or 5 per cent of the electorate (Carter Center 2011: 27), and a large number of dead people were included in the database, which the ISIE failed to purge due to technical difficulties (ISIE 2012: 102). This problem created an atmosphere of scepticism and fear of possible electoral fraud, and forced the ISIE to decide on 6 October 2011

on the use of indelible ink in the elections to avoid the risk of fraud (Official Gazette of the Republic of Tunisia 2011: 2177).

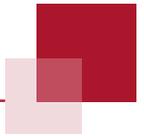
While the ISIE was not responsible for designing the voter registration system, if an efficient public outreach strategy had been set up during the voter registration campaign with clear and coherent messages, this would have avoided confusion among voters and made the process easier. Due to their lack of experience and the short time frame they had in which to organize the elections, the ISIE's members provided diverging statements that confused voters.

In addition, Decree Law 2011-35, as amended by Decree Law 2011-72, provided in article 61 that the ISIE should take necessary measures in order to allow voters with a disability to vote under adequate conditions. These provisions were an important development compared to the previous electoral legislation, which did not provide any specific measures to guarantee the right of voters with a disability to vote. Nonetheless, voters with disabilities faced many difficulties in the 2011 elections because the ISIE did not incorporate adequate measures to help them exercise their electoral rights easily (Petit 2012: 19–20).

Illiterate voters—around 18 per cent of the Tunisian population over 10 years old was illiterate in 2011—faced similar difficulties in the 2011 elections because the ISIE underestimated the scale of the problem (MSA 2012: 3). Initially, article 61 of Decree Law 2011-35 allowed illiterate voters to be assisted in the polling booth. But the text was amended just a few weeks before polling day by Decree Law 2011-72, which neglected this category of voters among those who might have difficulty casting their vote. This situation was further complicated by the poor design of the ballot papers (EU 2011: 39–40).

The issue of illiterate voters was discussed again during the parliamentary vote on the new Electoral Law. A strong opposition rejected assisting illiterate voters in the polling booth in order to avoid electoral manipulation. However, article 126 of Law 2014-16 on elections and referendums requires the ballot paper to be clear and well designed in order to avoid confusion in voting, mainly among illiterate voters. The same article requires that the ISIE publish a sample ballot paper before polling day to give voters the opportunity to learn how to use it.

In general, it is clear that the ISIE prioritized building confidence in the electoral process during the 2011 elections because mistrust was tremendously



widespread among the people and it was unreasonable to neglect the problem. Fortunately, the ISIE managed to achieve this goal, and stakeholders perceived the electoral process as fair (Carter Center 2011: 56). Yet the process was not exempt from several problems that reflected the ISIE's lack of professionalism and experience (EU 2011; Carter Center 2011).

The lesson learned from the 2011 elections experience is that a new EMB that has to conduct highly sensitive elections in a transitional context should tackle the problem of mistrust and give top priority to building public confidence in the electoral process. In the Tunisian elections of 2011, CSOs played an important role and were represented in the ISIE's central commission and field commissions, which helped create confidence in the electoral process.

In the post-transition elections, however, the ISIE could only rely on its professionalism, impartiality and transparency to ensure public confidence in the elections. Law 2012-24 (which organized the ISIE) and Law 2014-16 on elections and referendums provide a set of rules that could help the ISIE enhance its professionalism and efficiency in conducting future elections.

## **Protecting the emerging democracy and the challenges of inclusive elections**

The interim authorities wanted to protect the emerging democracy from officials associated with the old regime through the legal and institutional framework of the transition elections. Thus, the people who were involved with the ex-RCD were excluded from the NCA elections in order to prevent them from returning to public life through democratic elections. Different actors were unanimous regarding the importance of protecting the revolution from any possible return of the old regime in the transitional elections. This attitude is very common in countries in transition, which often adopt special measures to protect their nascent democracy from predation.

In this respect, Decree Law 2011-35 provided two kinds of exclusion. First, more than 100 people were denied the right to vote according to article 5 (§3). The list was composed primarily of Ben Ali's relatives and people who had unduly gained assets because of their close connection with the family. Second, a large number of people who were involved with the old regime were ineligible to be candidates in the NCA elections (article 15).

The exclusion from the right to run for public office in Decree Law 2011-35 was built on the assumption that any person who was involved with the RCD, from the top national level to the lowest local level, would be held

responsible for the violations and abuses committed by Ben Ali's regime. The exclusion was therefore decided *prima facie* and was not based on a case-by-case investigation. Since Decree Law 2011-35 was a provisional legal framework that only applied to the NCA elections, this exclusion does not apply to future elections.

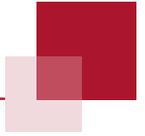
Nevertheless, in 2013, the topic of post-transition elections in Tunisia again raised the issue of the participation of the old regime's officials in the electoral process. A draft law on political immunization of the revolution was submitted to the NCA that aimed to ban RCD officials from running for public office for seven years. The scope of the exclusion was broader than that provided by Decree Law 2011-35. The draft had created a lot of tension because it was perceived as targeting one specific political group from the opposition. Due to a lack of consensus, the draft law had only a limited chance of passing (NCA 2013: 3). Some parties tried to transfer the exclusive provisions to the new electoral law. However, the NCA rejected all proposals for amendments aimed at restricting the right to stand for election.

Other Arab countries have recently adopted legislation to exclude people involved with the old regime from the political process. For example, Iraq adopted its famous de-Baa'athification laws between 2003 and 2008 (Sissons and Al-Saeidi 2013: 9–24). The Libyan Parliament also adopted the Law on Political Isolation on 5 May 2013, which bans Gaddafi regime officials from all political activities for ten years. These experiences generated significant political tension and endangered the transitional processes in both countries. Mainly, the de-Baa'athification process has produced a rise in sectarian conflict in Iraq (Meierhenrich 2008; Sharqieh 2013; Visser 2010: 5–6).

## Conclusions

The 2011 revolution triggered genuine legal and institutional election reforms that helped increase inclusiveness in Tunisia's first post-transition electoral process. Thus, the new legal framework set up after the dictatorship has resulted in fair political representation in the NCA for the first time. It also helped end decades of power monopoly by the same ruling party.

Women's representation has improved remarkably thanks to the parity rule provided by Decree Law 2011-35. As a result, the current NCA meets international standards in terms of female representation. Tunisians living abroad were also widely included in the electoral process, and the new electoral authority managed to create stakeholder confidence in the process. Thus, people enjoyed true democratic and free elections for the first time.



The long lines at polling stations on election day in October 2011 were an exceptional scene that Tunisia had never witnessed before (Carter Center 2011: 45).

Beyond the enthusiasm generated by the triumph of the 2011 revolution over Ben Ali's dictatorship, however, the 23 October 2011 elections were marked by some weaknesses that had a negative impact on the inclusiveness of the electoral process. Undoubtedly, the new Electoral Law 2014-16 represents a serious attempt to overcome the problems faced in the 2011 elections. During the drafting process, the NCA showed a genuine openness toward different actors, including CSOs and independent and international experts. This helped improve the electoral system and complied with international standards and best practices.

Certainly, inclusion in the electoral process is not only a legal matter. The EMB's role is crucial in this regard. Thus, the ISIE's contribution will be critical after the vote on new electoral legislation. Professional and sustainable electoral management will certainly enhance people's confidence in, and improve the inclusiveness of, the electoral process.

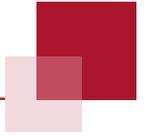
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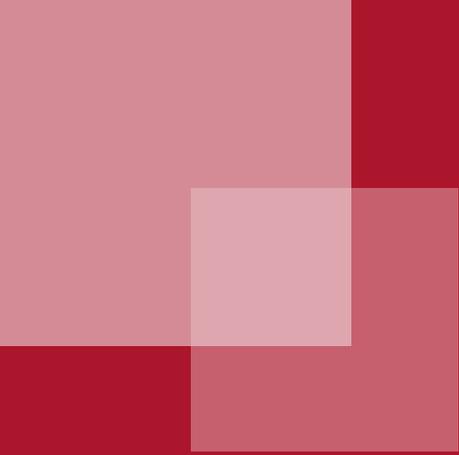
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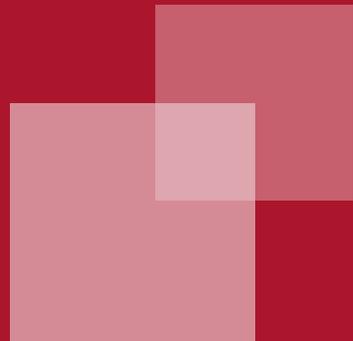
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# **Chapter 6**

## **Electoral Reforms and Women's Representation in Indonesia: Successes, Challenges and the Way Forward**



## Chapter 6

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Firman Noor

# Electoral Reforms and Women's Representation in Indonesia: Successes, Challenges and the Way Forward

## Introduction

Indonesia is the third-most-populous democratic country in the world. It has held a number of general elections, the first of which was in 1955 during the so-called Liberal Democracy Era (1945–59). At the time, that election was considered democratic because it applied certain principles of democracy such as transparency, freedom of information and 'one man one vote' (Feith 1999; Evans 2003: 8–9; Budiardjo 1998: 161). Unfortunately, however, when the votes were counted, women filled less than 7 per cent of the seats in the legislature.

While elections were held regularly in the New Order Era (1966–98), they mostly functioned to preserve the power of the Soeharto regime (Irwan 1995; LIP 1998: 49–55) and did not reflect the true voice of the people (Liddle 1992: 90–1). The number of parties were reduced to three, which reflected the lack of freedom of expression. During this era, women's representation entered its dark ages. Women were expected and directed to merely support men's activities (Parawansa 2002: 70; Andriana 2012: 24–7).

The Reform Era (1998 until the present) has witnessed motivation among politicians to hold more meaningful elections, namely as a medium to strengthen democracy. Elections are widely considered to be an important part of political reform in Indonesia,<sup>1</sup> and the government and parliament have

worked hand in hand to create rules and regulations to reduce government intervention. The *Dewan Perwakilan Rakyat* (People's Representative Council or House of Representatives, DPR), for instance, gives citizens the opportunity to propose bills and provide suggestions and comments on bills. Citizens expected that the role of women will be strengthened, since the new regime is more accommodating of women's interests. Various women's networks throughout the country raise gender awareness, offer mentoring and fight for the rights of marginalized peoples.

Elections in the Reform Era have generally been conducive to good governance. However, there are still a large number of issues that need to be addressed, such as women's representation in parliament. Even though the number of women members of parliament (MPs) is increasing, many believe greater representation of women is needed in order to help women maximize their role in society.

This chapter focuses on Indonesia's achievements in terms of women's representation, highlights certain weaknesses and provides suggestions for the future. The discussion concentrates on the electoral process only. Following this introduction, the next section discusses electoral reforms in Indonesia, particularly after the fall of Soeharto. Then, issues related to attempts to expand women's representation in parliament are explored. The subsequent section provides advice on increasing the representation of women, and the chapter concludes with a summary of the findings and a possible way forward.

## **Electoral reforms**

Indonesia's Constitution mandates that the government hold regular elections. In the Liberal Democracy Era, general elections were carried out once, in 1955. In the New Order Era, general elections were held six times, in 1971, 1977, 1982, 1987, 1992 and 1997. Four general elections have been held thus far in the Reform Era, in 1999, 2004, 2009 and 2014.

The conditions for holding general elections have changed fundamentally since the beginning of the Reform Era. The *Komisi Pemilihan Umum* (General Election Commission, KPU), which has primary responsibility for election regulations, has members that are independent individuals, who are elected by parliament from a list of 14 candidates chosen by an 11-member selection team. Despite parliament's role in selecting KPU members, this body is meant to be free from parliamentary or other intervention in terms of making and implementing policies.<sup>2</sup>

The KPU and election processes in general are supervised by the *Badan Pengawas Pemilu* (the Election Observer Body/Bawaslu), the members of which are also elected by the DPR using a similar process as for the KPU. The *Dewan Kehormatan Penyelenggara Pemilu* (Honorary Board of Election Organizers) serves as an internal arbiter and is required to oversee the quality of the KPU's policies and maintain public trust in it.<sup>3</sup>

General elections are held every five years, in which all MPs, including members of the DPR, local parliaments (DPRD at the province and regency/municipality levels) and the Senate or *Dewan Perwakilan Daerah* (Regional Representatives Council, DPD), are elected by Indonesia's 185 million registered voters. There are over half a million voting stalls spread throughout hundreds of election districts in the country's 33 provinces.

## The electoral system in the Reform Era

Indonesia's legislative elections use a proportional representation (PR) system.<sup>4</sup> In the 1999 elections, a closed-list PR system was used, in which eligible voters could only vote for one of 48 political parties rather than individual candidates. In this system, the parties determine the sequence of legislative candidates on the list, placing those more likely to be elected at the top of the list. Since candidates for MP can represent a region where they do not reside, political parties control which districts MPs stand for, and place candidates with strong prospects for success in districts the party is more likely to win.

In the 2004 general elections, Indonesia used an open-list PR system, which allowed people to elect the individual candidates they wanted from the 24 participating parties. While this change was considered major progress for the Indonesian people, who were unable to directly elect candidates for almost four decades, there was also a rule that a candidate could only be elected if she or he reached the threshold of votes for the area. Yet out of the 550 MPs elected to the DPR, only two exceeded this threshold (the rest were chosen by their party based on their order on the candidate list). In this case, the party had a strong role, and the people's wishes were not necessarily accommodated. The public called this mechanism a 'half open system' (Hussein 2012).

In 2004, the first elections to the DPD were also held. Each province was represented by four individuals who were directly elected by the people. A direct presidential election was also held that year. Based on a new regulation, presidential candidates were proposed by a party or coalition of several parties, and the successful candidate had to win an absolute majority (50 per cent of the votes plus one) or face a run-off election.

A more consistent open-list system was used in the 2009 general election, in which the order on the list no longer determined the election of a candidate. The Constitutional Court ruled that legislative candidates had to be elected based on the total votes he or she received. Party members who thought they had a strong grass-roots network in society welcomed this gesture.

The PR open-list type created individual competition in party campaigns, leading to tight competition even among members of the same party (Noor 2009). It also resulted in intensive communication between MPs and the people in election districts.

A total of 38 parties participated in the 2009 general elections at the national level. Six parties, meanwhile, took part in the local election.<sup>5</sup>

Notably, the regulations for the DPD were not changed during the 2009 general elections, i.e. each province was represented by four DPD members. As for presidential elections, regulations were more stringent, indicated by the requirement that presidential and vice presidential candidates have to be supported by a coalition of parties that have obtained a minimum of 25 per cent of the total votes in the presidential election or 20 per cent of the total seats in the parliament.<sup>6</sup>

**Table 6.1. Variants of general elections (1999, 2004, 2009 and 2014)**

Year	PR variant	Number of parties	Number of DPR members	Number of senators
1999	Closed list	48	500	0
2004	Open list (+ fulfil quota)	24	550	128
2009	Open list	38	560	132
2014	Open list	12	560	132

*Source:* KPU

In the 2014 general elections, after going through a selection process and fulfilling more complicated requirements than before, 12 parties contested the general election (plus three in Aceh) using an open-list system. This election chose 560 MPs and 132 members of the DPD, i.e. senators. Similar

to the previous election, the people in each province voted directly for DPD candidates. The four candidates in each province who received the most votes were selected to represent the province.

In the April 2014 parliamentary elections, ten parties acquired seats.<sup>7</sup> In the July 2014 presidential election, there were two pairs of presidential and vice presidential candidates, namely: (1) Prabowo Subianto and Muhammad Hatta Rajasa, who were supported by six parties, Gerindra, PAN, PKS, PPP, Golkar and PBB; and (2) Joko Widodo and Muhammad Jusuf Kalla, who were supported by five parties, PDIP, PKB, Nasdem, Hanura and PKPI. The KPU declared Joko Widodo and Muhammad Jusuf Kalla as the winners of the election.

## **More conducive regulations for women's representation**

Although women's organizations and movements became more active in the 1999 general election, there were no regulations to help create opportunities for women to participate in politics. Most parties have yet to pay close attention to women's representation. Currently, women represented around 10 per cent of the management ranks of the major political parties (Wulandari 2013: 28).

Several affirmative-action regulations were introduced to encourage female representation in the 2004 general election, which stated that at least 30 per cent of a party's board had to comprise women (Law No. 31/2002), and that women had to fill at least 30 per cent of the slots on the MP candidate list (Law No. 12/2003). Article 65(1) of Law No. 12/2003 states that 'Every political party that participates in an election may propose Member of Parliament candidates at the national, provincial and regency/municipality level or in each election district, ensuring at least 30% women's representation.'

These policies highlight significant progress in attempts to increase the number of women representatives in parliament. The existence of these policies is no doubt the result of a long period of struggle, particularly since the beginning of the Reform Era, by non-governmental activists, particularly female activists, around Indonesia (Dewi 2007: 33–8). Some of the factors that made the implementation of such policies possible include persistent attitudes, better strategies to establish a relationship with policymakers and support from civil society.

The 2009 general election also saw certain successes in terms of the effects of affirmative-action policies for women, including the requirement that women make up 30 per cent of the members of each party's managing officers

(Law No. 2/2008) and also that women comprise at least 30 per cent of the legislative candidates on party lists (Law No. 10/2008). The law states that: ‘On the Member of Parliament candidate list, as mentioned in article 1, there should be at least one woman candidate out of every three Member of Parliament candidates.’

This policy requires there to be at least one woman among the top three candidates on the list and to use a zipper list system, which theoretically provides more chances for female politicians to be elected. This situation also indicates that election regulations over time tend to be more favourable toward women. Similar rules were also used in the 2014 election.<sup>8</sup>

For some, the implementation of the zipper system is irrelevant or comes too late because, in an open-list system, candidates’ prospects are not determined by their position on the list but purely by the number of votes they receive. However, a survey on voting behaviour conducted by the Centre for Political Studies (Wardani et al. 2013: 85) indicates that the position on the candidate list still plays an important role because most voters tend to vote for candidates at the top of the list (see Table 6.2). They consider those at the top to be the most qualified candidates, perhaps because they lack sufficient information about the candidates’ backgrounds.

**Table 6.2. Elected female candidates’ positions on candidate lists**

Level	No. 1	No. 2	No. 3	No. 4
National				
(DPR)	44%	29%	20%	7%
Province				
(DPR Provinsi)	41%	20%	24%	14%
Regency/municipality				
(DPR Kabupaten/Kota)	41%	23%	18%	18%

*Source:* Wardani et al. 2013: 85.

## Increasing female representation

The electoral system has become more conducive to, and supportive of, the presence of female MPs, particularly following the introduction of a 30 per

cent quota for women on legislative candidate lists and the zipper system. The quota policy is an improvement on the 2002 requirement for parties to enact a 30 per cent quota for women among political parties' managing officers, which is considered one of the most historical moments in Indonesian politics.

**Table 6.3. Number of female MPs (1955–2015)**

Period	Number of female MPs	Percentage (%)
1955–6	17	6.3
1956–9	25	5.1
1971–7	36	7.8
1977–82	29	6.3
1982–7	39	8.5
1987–92	65	13.0
1992–7	62	12.5
1997–9	54	10.8
1999–2004	48	9.6
2004–9	61	11.1
2009–14	101	18.0
2014–5	96	17.1

*Source:* Wardani et al. 2013: 17; KPU.

The use of quotas and the zipper system has helped boost the number of female MPs from only 48 women (1999–2004) to 101 (2009–14) and 96 (2014–2015) (Wulandari 2013: 38; Amalia 2012: 233–4). A similar pattern has emerged at the province and regency/municipality levels (which currently have 403 and 1,857 female MPs across the country, respectively) (see Table 6.4).

The number of female senators also increased gradually to 36 during 2009–14 (plus an additional two senators assigned as replacements). For the 2014–19 term, there are 34 female senators, which represents a 5.6 per cent decrease. However, this achievement generally indicates that the DPD has opened up more opportunities for women's involvement in political life, particularly in the decision-making process.

**Table 6.4. Percentage of female MPs (2004–14)**

Level	Percentage female MPs	
	2004–9	2009–14
National	11.1	18.0
Province	12.0	16.0
Regency/municipality	6.0	12.0

*Source:* KPU; Wulandari 2013: 22.

## Criticisms and challenges

Given that women represent roughly half of the country's population (around 49 per cent), 18 per cent representation in parliament is not that impressive. The number should ideally be close to half, or at least 30 per cent of MPs. Within the region, the Philippines and Singapore have greater female representation, and internationally Indonesia ranks 76<sup>th</sup> out of 143 countries.

This situation exists for various reasons. The first is that there are no strict sanctions for parties that do not meet the female quota for the candidate list. Thus, all parties were able to participate in the 2004 general election even though many of them had less than the 30 per cent quota of women candidates. Only 14 of 24 eligible parties that contested the elections met the requirement. These parties were generally medium-sized and small parties, of which only three have survived until the present day (PKS, PKB and PAN) (see Table 6.5).

Parties that failed to meet the quota included some big parties such as the PDIP, *Partai Golkar and Partai Demokrat* (Democrat Party) (Subiyantoro 2004: 72). At the local level, the situation is similar since nearly all parties at that level failed to meet the quota (Wulandari 2013: 39). Indeed, there is criticism that parties do not pay serious attention to the quality of female politicians but rather only seek to meet the quota (Dewi 2007: 34; Amalia 2012: 225, 229).

**Table 6.5. Political parties that met the 30 per cent quota in their MP candidate list (2004 general election)**

No	Party	Men (%)	Women (%)
1	Prosperous Justice Party (PKS)	59.7	40.3
2	Indonesia Justice and United Party (PKPI)	61.2	38.8
3	Indonesia United Party (PSI)	61.4	38.6
4	New Indonesia Association Party (PPIB)	61.5	38.5
5	Indonesia Muslim Communities Awakening United Party (PPNUI)	61.6	38.4
6	National Awakening Party (PKB)	62.4	37.6
7	Democrat Social Labour Party (PBSD)	62.9	37.1
8	National Care Functional Party (PKPB)	64.1	35.9
9	Independent Party (PM)	64.4	35.6
10	Indonesia Democracy Holder Party (PPDI)	64.9	35.1
11	National Mandate Party (PAN)	65.0	35.0
12	Local United Party (PPD)	65.8	34.2
13	National Democracy United Party (PPDK)	67.3	32.7
14	Reform Star Party (PBR)	68.5	31.5

*Source:* KPU; Wulandari 2013: 40.

Of the 38 parties that were eligible to participate in the 2009 general election, six failed to comply with the female quota.<sup>9</sup> Many of the parties that met the requirement were minor or small parties, which under new regulations are not eligible for seats in parliament. Unfortunately, the failure to meet the 30 per cent quota did not prohibit parties from participating in the election.

The second factor preventing greater female representation in Indonesia is that parties are given full control over determining the election districts for legislative candidates. They often place female candidates in hard-to-win districts, where they are unfamiliar with the area and lack a strong network, which limits women's chances of getting elected.<sup>10</sup>

The third factor that hinders female representation is the implementation of an open-list PR system, which creates individual contests that force all MP

candidates to compete individually in a district to win votes. Unfortunately, most people, especially those who live in villages, still consider women's role to be limited to household matters (Utami 2001: 23–5; Amalia 2012: 220–4; Soetjipto 2005; Siregar 2012). While this perception has started to become less popular, a negative view of women's role in society persists, as demonstrated by the decrease in female MPs in the 2014 legislative election.

Many women who are successful in the political arena rely on the support of their family. The findings of the Puskapol Study demonstrate that most female MP candidates (47 per cent) relied on their family network, which was developed by their parents or a political dynasty, for their political careers (Wardani et al. 2013: 93–4). This situation also indicates that there are few independent female MP candidates in Indonesia, causing their performance to be influenced by others—which is often counterproductive to the agenda of women's empowerment and the strengthening of democracy.

This condition decreases opportunities to establish gender balance in parliament, which jeopardizes women's interests and representation (Irwansyah, Panjaitan and Novitasari 2013). Despite the fact that the number of women in parliament is increasing, there is minimal discussion of issues related to women in parliament, including their marginalization.

## Recommendations

In the near future, Indonesia should continue implementing policies that enhance female representation in politics and try to rethink others in order to strengthen the agenda of women in parliament.<sup>11</sup> These recommendations could include:

1. In the medium term, Indonesia should continue using a PR system, which is still regarded as conducive to affirmative action, particularly for increasing female representation in parliament (Darcy, Welch and Clark 1994: 140–1; Wardani et al. 2013: 34–7). Indonesia's paternalistic political culture and inadequate political networks make it difficult for female representatives to compete in a first-past-the-post (FPTP) system. Inter-Parliamentary Union data also show that the top ten countries in terms of female representation in parliament use a PR system.<sup>12</sup>
2. Since open-list systems eventually push female candidates to compete directly in districts that generally still lack gender-equality awareness, Indonesia should reinstate PR with a closed-list system. Since this system does not oblige candidates to compete in a district individually, it tends to protect female candidates from unfriendly political environments that

could prevent them from gaining support and votes. Individual contests caused serious problems for female candidates in the 2014 election, including for some prominent women,<sup>13</sup> which likely contributed to the decline in the number of female MPs.

3. The PR system should be combined with policies like the 30 per cent female representation quota and the zipper system, which should be applied in all elections. Otherwise, political parties are less motivated to fulfil such requirements.
4. The zipper system can help ensure that more female candidates are named at the top of candidate lists. This system has been proven to increase female representation even in the most difficult situations, as women are forced to compete hard as a result of an open-list PR system (Amalia 2012: 235). However, it is more effective in a closed-list system. The 2014 election results indicate open-list systems result in an unsatisfactory outcome even with a policy that requires that one out of every three candidates be a woman.
5. Parties should also consider the proposal that the upper third of legislative candidate lists also comprise at least 30 per cent women. This is mainly due to the voters' habit of electing candidates listed first, second and third on the candidate lists.
6. Internal party reform is essential (Sundari 2011: 50; Siregar 2012: 50–8, 70, 82; Haris 2012: 110; Yanuarti 2012: 122–40, 149). Parties in Indonesia generally provide stronger support to male candidates, and most of the important party positions are still dominated by men. Even though most parties in Indonesia meet the 30 per cent quota of female officials, most of these women do not occupy strategic positions.

Parties have not been making any serious effort to provide maximum opportunities for female candidates in the electoral process. Thus, at least two actions need to be taken:

1. Strictly uphold the quota for female representation.
2. Enhance the commitment of party members and female candidates to women's rights by encouraging interactions with activists, educators, and other institutions or individuals who care about women's interests. This is important in order to nurture awareness, solidarity and mutual support among female activists (including party members and female candidates) and increase public support.

## Conclusions

The Reform Era paved the way for the improved representation of women in Indonesia. The increase in the number of female MPs that has been witnessed in this era is a significant achievement and indicates a better situation for Indonesian women in political life. The Reform Era also proves that a new government can provide conducive policies, regulations and affirmative actions to enhance the role of women in politics, in particular female representation in parliament.<sup>14</sup>

Nonetheless, women's representation needs to be further improved in the future. In the medium term, there are certain regulations that should be continued, including the 30 per cent quota for candidate lists and the zipper system. There should also be clear sanctions for violating these regulations, such as revoking a party's right to participate in an election if it fails to meet the requirements.

Moreover, in order to maximize female representation, Indonesia should reinstate a closed-list PR system since it works well in the Indonesian political environment, which to some extent is more favourable toward male than female politicians. It is difficult for female candidates to succeed in such an atmosphere.

In the long term, at least two things should be developed to support women's representation and the quality of political representation in general. The first is related to improving the quality of political parties' internal activities and policies. This is important since one of the main obstacles to female representation in Indonesia are parties' attitudes toward female politicians.

The second is establishing an alternative election system that is concerned with plurality and proportionality, as well as accountability, particularly making people's voices heard. Many politicians are insensitive to the worrisome condition of the people, and they conduct expensive working visits abroad. It is no surprise that most people think that representatives are not performing their functions properly.<sup>15</sup>

In this context, the introduction of a mixed-member majoritarian (MMM) system could act as a bridge between the need to have adequate female representation and the need to have more accountable government. Such a system is in operation in approximately 20 countries, where some MPs are elected based on a majoritarian system and others through a proportional system (Shugart and Wattenberg 2001). The proportion of MPs elected through the PR system vs. the majoritarian system is different in each country.

The best way to select people's representatives through a majority system is to use the FPTP method. In this way, voters know which MP candidate will represent their district. The FPTP system is also considered a practical mechanism for Indonesian society, which is used to voting only once in any particular election. However, a mixed system would have a significant impact if new rules set a very high quota for the PR element. The ideal method for electing parliamentary candidates using a PR system would be closed-list PR combined with the zipper system (i.e. one female candidate out of every three candidates on the list).

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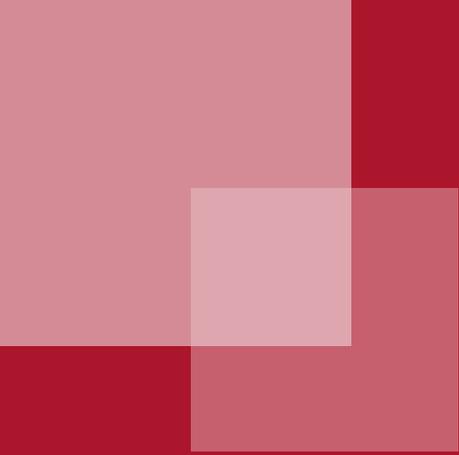
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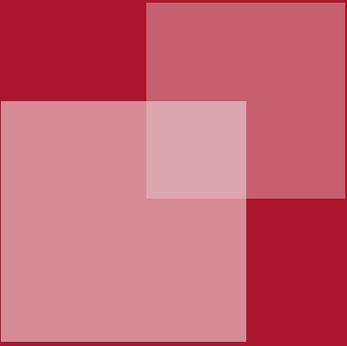
## Notes

- <sup>1</sup> See, for instance, Surbakti, Supriyanto and Santoso 2008; Asfar 2002; and LIP 1998: 50, 55–69.
- <sup>2</sup> Article 1(6) of Law No. 8/2012 on Elections to the People's Representative Council, the Regional Representatives Council and the local parliaments.
- <sup>3</sup> These additional authorities are discussed in Asshiddiqie 2013.
- <sup>4</sup> This system is a continuation of the model used in previous elections.
- <sup>5</sup> The six political parties running in Aceh province in 2009 (three in 2014) competed at the local level to elect local legislatures. The total number of parties admitted by the government reached 44 in the 2009 election (and 15 in the 2014 election).
- <sup>6</sup> Article 9 of Law No. 42/2008 on Presidential and Vice Presidential Elections.
- <sup>7</sup> PDIP (109 seats), Golkar (91 seats), Gerindra (73 seats), Partai Demokrat (61 seats), PKB (47 seats), PAN (49 seats), PKS (40 seats), Nasdem (35 seats), PPP (39 seats), Hanura (16 seats).
- <sup>8</sup> Article 56(2) of Law No. 8/2012 on Elections to the People's Representative Council, the Regional Representatives Council and the local parliaments.
- <sup>9</sup> These were the *Partai Peduli Rakyat Indonesia*/Care for Indonesia People Party (26.0 per cent), the *Partai Gerakan Indonesia Raya*/Great Indonesia Movement Party (29.3 per cent), PAN (29.7 per cent), the *Partai Republik Nusantara*/Archipelago Republic Party (29.9 per cent), the PPP (26.9 per cent) and the *Partai Patriot*/Patriot Party (19.7 per cent) (Wulandari 2013: 40).
- <sup>10</sup> Interview by the author with Lucky Sandra Amalia, a researcher at the Center for Political Studies in Jakarta, December 2013.
- <sup>11</sup> The UN Division for the Advancement of Women concludes that the struggle of women will have a significant impact (or at least be heard) if female politicians can secure at least 30-35 per cent of the seats in parliament (Wulandari 2013: 15).
- <sup>12</sup> The top ten countries by rank are Rwanda, Sweden, South Africa, Cuba, Iceland, the Netherlands, Finland, Norway, Belgium and Mozambique. See ranking by Inter-Parliamentary Union <<http://www.ipu.org>>.
- <sup>13</sup> For example, Nurul Arifin from Golkar and Eva Sundari from the PDIP.
- <sup>14</sup> For example, Laws No 31/2002, 12/2003, 2/2008, 10/2008 and 8/2012.
- <sup>15</sup> This evaluation has been reflected in several poll results that generally represent the disappointment of the Indonesian people with the House of Representatives. A survey by the Indonesian Research Institute in September 2013 indicated that 60.9 percent of respondents reported being dissatisfied with the performance of the DPR. A similar result was found in a survey carried out by the Pol-Tracking Institute in October 2013, stating that 61.68 per cent of respondents were dissatisfied with the DPR's performance.



# **Chapter 7**

## **Lessons Learned in Removing Barriers to Women's Participation in the Mexican Federal Congress**



## Chapter 7

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Alberto Guevara Castro

# Lessons Learned in Removing Barriers to Women's Participation in the Mexican Federal Congress

## Introduction

Democracy is a moving target; it is a historically bounded decision-making process, institutional arrangement and set of outcomes based on the principles of freedom, equality and oversight. Members of a given society should have the right to participate in the process.

Women represent 49.6 per cent of the world's population (World Bank 2012), and their interests are certainly affected by decisions made by courts, governments and parliaments. In many cases, however, their participation has faced political and socio-economic barriers (Shvedova 2005). This partly explains why, 120 years after the right to vote was first granted to women in an independent country (New Zealand), there are still plenty of opportunities to increase their presence in democratic processes (Keane 2009: 539). Data for January 2012 show that, worldwide, only 5.3 per cent of heads of state, 7.3 per cent of heads of government and 15.1 per cent of presiding officers in parliament were women (IPU 2012). On average, women represented only 21.3 per cent of the total members of parliament in the world by the end of 2013 (IPU 2013).

This chapter will describe almost two decades of legal efforts to dismantle obstacles to the participation of women in democratic processes and, more specifically, to improve the descriptive and substantive representation of women in Congress at the national level in Mexico. Moreover, it will explain specific decisions made by the Electoral Tribunal of the Federal Judiciary

(*Tribunal Electoral del Poder Judicial de la Federación*, TEPJF)<sup>1</sup> that have contributed to reinforcing legal certainty, including women's participation, and strengthening the rule of law.

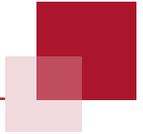
This summary of legal reforms in Mexico aimed at increasing women's representation at the national level will show that gender quotas for candidates have been an effective but limited mechanism for removing barriers to equal political participation. The kind of quota adopted, the rules for its implementation, how political parties apply these rules and the type of electoral system have played a role in their impact (Aparicio and Langston 2009; International IDEA, UNDP and UN Women 2013). These affirmative actions—hindered by entrenched practices within political parties and general political attitudes toward women—have been complemented in Mexico by decisions adopted by the Electoral Tribunal in order to guarantee their effectiveness, including those regarding principal and substitute candidates, as well as gender alternation on party lists.

To better explain this process at the national level, the next section will offer a general background of the Mexican electoral system and explain how representatives to the lower and upper chambers of Congress are elected. Several amendments to the Federal Code of Electoral Institutions and Procedures (COFIPE) since 1993 will be referenced in order to understand how the legal framework changed to include quotas in 2002.

Then, the main international regulations that Mexico has committed to with regard to the elimination of barriers to women's political participation will be outlined. Two major political reforms after 2002 will be described: the amendments and additions to the COFIPE in 2008 and 2014, both of which featured increased quotas for the nomination of female candidates to Congress. This section will provide details on how these amendments were introduced, and will include data on political parties' nomination of female candidates during the 2009 and 2012 federal elections.

The next section will highlight the importance of TEPJF decisions, and point to the fact that electoral tribunals and supreme courts often need to reinforce rights, obligations, liberties and restraints that inform democratic decision-making procedures. Increasingly in modern democracies, equality of opportunity for the participation of women is turning into a basic *pattern of behaviour*.<sup>2</sup>

To illustrate the impact of quotas, data on the number of women elected to Congress during the period of analysis will be examined. Although it is



difficult to establish a causal link between legal amendments and the number of female members of Congress, it is an undeniable fact that more women have been elected over time.

The conclusions will present some lessons learned from this process that may be useful for improving electoral processes elsewhere. It is important to note that this case study is by no means an example of what should be done in every case, but only in areas that require attention in order to improve the equality of representation. Gender quotas are a mechanism that may help to achieve fair representation by levelling the playing field, and in this sense their application should take into consideration which rules are best suited to specific electoral systems, and federal vs. central forms of government, for instance.

## **Institutional and historical background**

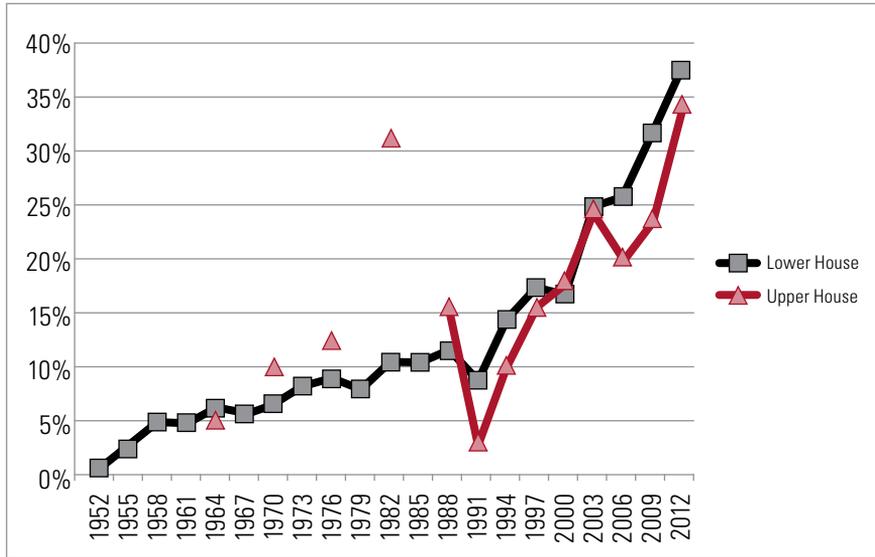
### ***Who is represented in Mexican democratic institutions, and how?***

When the Political Constitution of the United Mexican States (CPEUM) was adopted in 1917, Mexico embraced a representative, democratic, federal form of government with a presidential system. Since then, however, and throughout the history of Mexican democracy, changes have been made with respect to who is entitled to participate in public affairs (and how), including who has the right to vote and to stand for office.

The constitution currently grants citizenship to Mexican men and women above 18 years of age 'who have an honest way of living'. Their rights include active and passive voting, the freedom of association to peacefully participate in political affairs, the right to take up an appointment in public service and the right to propose laws, among others (CPEUM: articles 34–5).

However, women were not granted the right to vote at the national level in the 1917 Constitution despite the fact that there were important precedents at the local level. In 1916, the states of Chiapas, Tabasco and Yucatán adopted the first reforms that legally enabled women to vote and run for office at the local level. This legislation was only echoed by federal constitutional reforms in 1947, when women were granted the right to vote and run for office in any municipal election, and in 1953, when this right was extended to every election. Mexican women have since increased their presence in Congress, although with limited results and some backlashes.

**Figure 7.1. Percentage of women in the Mexican Federal Congress (1952–2012)**



**Source:** adapted from data on occupied seats from the National Statistics, Geography and Information Institute (Instituto Nacional de Estadística, Geografía e Información, INEGI), Information for the upper house during the LII and LIII legislatures (1982–8) is contested by other sources (see UNDP 2012).

### ***Mexico's electoral system***

In Mexico, the federal legislative branch is deposited in a Congress divided into two houses. While members of the lower house serve for three years, senators serve for six years. Until a recent constitutional amendment passed in 2014, there was no possibility for immediate re-election (CPEUM: articles 50–1, 56). Legislators can now serve for up to 12 years.<sup>3</sup>

The lower house is formed of 300 representatives elected by majoritarian vote in single-member districts and 200 more elected by proportional representation in five multi-member districts of 40 seats each, through regional lists. For the elections by majority vote, the distribution of the 300 districts is based on equivalent segments of population, and political parties present principal and substitute candidates for the districts in which they participate. A political party can only be allocated seats by proportional representation if it has presented candidates in at least 200 single-member districts and gets a minimum of 2 per cent of the total votes. It is worth noting that lists presented

by political parties are closed and blocked, which means that it is not possible to alter the order of candidates (CPEUM: articles 52–4).

For the Senate, the 128 seats are also allocated using a mixed system. In each of the 31 states and the Federal District, three senators are elected by majority vote. Political parties register two formulas of candidates. Two seats are allocated to the party that gets the most votes, and one to the party with the next-highest number of votes (called the first minority). The remaining 32 seats are distributed using pure proportional representation in a single national district.

Some studies have suggested that there is a relationship between a country's institutional framework—particularly its electoral system—and the impact of quotas (Matland 2005; Htun 2005). The adoption of a mixed system for the election of members of Congress and the use of closed lists to implement proportional representation are some important variables that need to be considered by countries when analysing how quotas have been adopted, enforced and amended throughout the last decade.

## **Quotas: international environment and the road to women's representation in parliament**

### ***International environment***

While no causal relationship is implied, a facilitating international environment increases the possibility of implementing quotas. Mexican democracy's 'external embeddedness' through international integration (Bühlman, Merkel and Wessels 2008) enabled this possibility. Table 7.1 summarizes the main international and regional instruments that Mexico has signed regarding women's rights.

Other relevant international declarations include the Universal Declaration of Human Rights (1948), the Beijing Declaration of the Fourth World Conference on Women (1995), the Millennium Declaration (2000) and the Inter-American Democratic Charter (2001).

It is worth noting that there were two periods during which the Mexican state signalled specific commitments to the international community with regard to women's rights: at the beginning of the 1980s and at the beginning of the 1990s. During the latter period, some countries in Latin America had already amended their laws to introduce quotas, beginning with Argentina in 1991. In this context, Mexico started discussing the adoption of quotas.

**Table 7.1. International and regional instruments signed by Mexico**

<b>Instrument</b>	<b>Open to signature</b>	<b>Signed by Mexico</b>
Convention on the Political Rights of Women	1953	1981
International Covenant on Civil and Political Rights	1966	1981
Optional Protocol to the International Covenant on Civil and Political Rights	1966	2002
Convention on the Elimination of All Forms of Discrimination against Women	1979	1981
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	1999	2002
Inter-American Convention on the Granting of Civil Rights to Women	1948	1954
Inter-American Convention on the Granting of Political Rights to Women	1948	1981
American Convention on Human Rights	1969	1981
Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 'Convention of Belém do Pará'	1994	1998

*Source:* adapted from INMUJERES 2003.

### ***First steps toward the introduction of quotas***

In 1993, the need to increase women's participation was acknowledged by an amendment to the federal Electoral Law. The amendment urged political parties to encourage, in the terms specified by their internal documents, the greater participation of women in politics through their nomination to publicly elected positions. Three years later, through a reform adopted in 1996, it was indicated that national political parties should stipulate in their statutes that nominations for members of Congress and senators would not exceed 70 per cent for the same gender. Although this amendment recommended gender distribution in nominations, it was still not a mandatory quota, and there were no sanctions to enforce compliance with the recommendations.

The flaws in the language were evident: the law used verbs such as 'encourage' and 'consider', which made non-compliance possible. But even if nominations aimed at a 70/30 distribution, there was no clear rule for their allocation. This allowed political parties to present women only as substitute candidates for elections by majority principle or in the lowest positions on candidate lists for proportional representation, effectively minimizing their probability of getting a seat in the Federal Congress. Furthermore, as Table 7.2 shows, not even the suggested 30 per cent was achieved by any of the three major political parties in the registration of candidates for the lower house.

**Table 7.2. Registered candidates to the lower house by gender (1994-2000)**

Political Party	1994			1997			2000		
	W	M	T	W	M	T	W	M	T
PAN	8%	92%	100%	14%	86%	100%	16%	84%	100%
PRI	15%	85%	100%	21%	79%	100%	20%	80%	100%
PRD	18%	82%	100%	20%	80%	100%	24%	76%	100%

*Source:* Adapted from Huerta and Magar 2006.

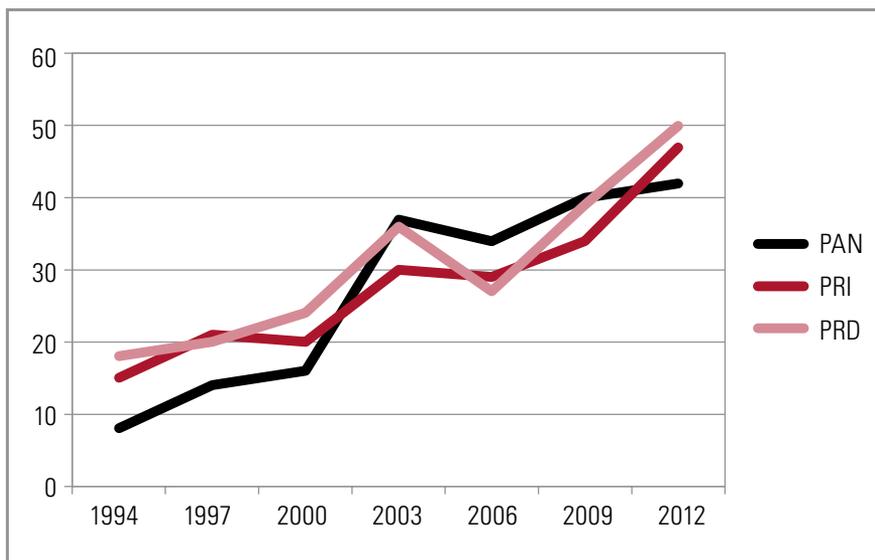
This situation called for a new amendment, which came in 2002. That year, gender quotas for the nomination of candidates for all political parties were adopted, and specific rules for their application were included in the law. The amended Electoral Law stated in article 175, sections A and B, that out of the total nominations of candidates for the lower house and the Senate, political parties could not include more than 70 per cent from the same gender. The law specified that this provision applied to the main candidates, so that the quota could not be filled mainly by female substitutes. The lists of candidates to be elected by proportional representation were also segmented into groups of three people, with at least one female candidate and one male candidate. This was applicable only to the first three segments, but was clearly stated as a baseline and not as a ceiling.

The 2002 law also included sanctions for non-compliance in article 175-C. If political parties did not observe the quota, the Federal Electoral Institute (*Instituto Federal Electoral*, IFE, now *Instituto Nacional Electoral*, INE)<sup>4</sup> would request that they change their nominations within 48 hours. If the party did not obey, it would receive a public warning and would be given another

24 hours to do so. If the party refused to change its nominations once again, the corresponding candidates would be denied registration. However, these sanctions were hindered by an escape clause in the same article: candidates who were nominated ‘as a result of an election through direct vote’ were exempt from the quota rule.

A 2008<sup>5</sup> reform introduced a new Electoral Law that increased the gender quota to a minimum of 40 per cent for principal candidates and redefined segments for proportional representation lists into groups of five people, of whom at least two should be women. However, the escape clause from the previous Electoral Code was inherited. The new Electoral Law exempted parties from compliance if candidates were chosen by a ‘democratic election process, according to the statutes of each party’ (COFIPE 2008: articles 219–20).

**Figure 7.2. Percentage of female candidates for the lower house nominated by the three major political parties (1994–2012)**



**Source:** Adapted from Huerta and Magar 2006; IFE ‘Database on Candidates’, <<http://genero.ife.org.mx/candidaturas.html>>.

Figure 7.2 illustrates the impact of the introduction of quotas in 2002 and reveals that the threshold introduced in 2008 also helped to increase the percentage of female candidates. However, it is also clear that two of the three

main political parties presented fewer female candidates than the established quota, using the escape clauses mentioned earlier, during the 2006 and 2009 elections.

Figure 2 also shows that in 2012 the three major political parties complied with the quota and even went beyond the established threshold. The enforcement of quotas cannot be understood without explaining the role that the Electoral Tribunal played in this process. This will be explained in the next section, but it is worth mentioning that its decisions preceded a constitutional amendment passed in 2014 that is aimed at increasing the number of women in Congress.

Before this amendment, article 41 of the constitution established that political parties would enable citizens to exercise power 'according to the programs, principles, and ideas that they advocate, and by means of universal, free, secret, and direct suffrage'. During the debates over the amendment, a group of female senators from different parties argued that gender equality should be explicitly included in the constitutional text. They managed to include a sentence that added 'as well as the rules to guarantee parity between genders, in candidacies to legislatures at both the federal and local level'.

This constitutional provision will effectively increase gender quotas to 50 per cent.<sup>6</sup> The updated electoral legislation, with the rules for its application, was published on 23 May 2014 and provides detailed standards for the application of the parity principle, including same-gender formulas and gender alternation criteria.

The result is that the 2014 General Law on Electoral Institutions and Procedures explicitly acknowledges equality of opportunity and parity between men and women to access publicly elected positions as a right for citizens and an obligation for political parties (article 7). It also mandates that substitute and principal candidates must be of the same gender (articles 14, para. 4; 232, para. 2) and that political parties will guarantee parity in their nomination of candidates to the federal and state legislatures (article 232, para. 3). It also gives the INE and local electoral authorities the power to deny the registration of candidacies of a gender that exceeds parity and gives the political party a deadline to make the corresponding substitutions. After this deadline, these candidacies will be invalidated (article 232, par. 4). Finally, it establishes that proportional representation lists should alternate genders, in line with what is known as the zipper system (article 234).

Moreover, the new General Law on Political Parties establishes not only that the criteria to guarantee parity in local and federal legislatures should

be objective and made public, but that these criteria should not result in any gender being assigned exclusively to districts in which a political party received the lowest percentage of votes in the previous election (article 3). Although there are no explicit sanctions for violations of this directive, the law provides grounds for the intervention of electoral authorities to guarantee parity.

## **Strengthening the rule of law: the role of the Electoral Tribunal**

Mexico's EMB, the INE, is responsible for implementing the Electoral Law, including gender provisions. The 60/40 gender quota established in the 2007 amendment was applied in the 2009 and 2012 elections. In 2011, through an agreement adopted by its General Council (CG327/2011), the INE issued criteria for registering candidates. This agreement included an interpretation of what a 'democratic election process' meant and called on parties to *try* to present formulas of principal and substitute candidates of the same gender. This agreement was challenged by a group of ten women before the Electoral Tribunal on the grounds that it diminished certainty in the electoral process by going beyond what was established in the Electoral Law and effectively restricting gender quotas.

### ***Judicial intervention to guarantee the implementation of quotas: reasoning and main decisions by the Electoral Tribunal***

In the interpretation of the IFE's General Council, the concept of a 'democratic election process', stipulated in article 219 of the COFIPE, should be understood as one in which candidates are 'elected directly by party members or by citizens, or indirectly through a convention or assembly in which an important number of delegates elected for this purpose by party members take part' (IFE 2011). It is important to note that this definition of a democratic process was not explicitly included in the law. Moreover, there was already a clear reference to political party statutes as a source of this definition in the Electoral Law.

After analysing the case, the Electoral Tribunal ordered the elimination of the IFE's definition of a 'democratic election process', thus closing the loophole of the escape clauses that were included in the 2002 and 2007 electoral reforms. Political parties were then mandated to comply with gender quotas in all of their candidate lists: for both the 300 seats allocated by majority rule and the 200 seats allocated by proportional representation, through party lists.<sup>7</sup> The

Electoral Tribunal effectively enabled the enforcement of gender quotas for the first time since they were included in the law.

The IFE's General Council agreement also established that formulas presented by political parties—formed by a principal candidate and a substitute—should try to present candidates of the same gender. The Electoral Tribunal ruled that this language was against the gender provisions in the Electoral Law, as quotas were not a recommendation but rather an obligation for all political parties. Indeed, the goal was to protect 'equality of opportunities and gender equality in the political life of the country, without favouring one gender or the other; in other words, it aims at a reasonable balance between them' (TEPJF 2011: 59–60).

The TEPJF's decision regarding this issue was that both principal and substitute candidates *must* be of the same gender. This was a particularly important resolution, since in the 2009 election there were cases in which female principal candidates who helped political parties comply with the gender quota requirements resigned shortly after taking office, giving way to male substitutes.<sup>8</sup> These candidates became popularly known as *juanitas*; the political parties that supported them did nothing illegal since the law allowed for different genders in the same formula of candidates. The TEPJF's ruling put to an end to this practice.

It is worth noting that the reasoning behind this judicial ruling included, among other sources, references to commitments adopted by the Mexican state through international instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (TEPJF 2011: 22) and the American Convention on Human Rights (TEPJF 2011: 48). It also quoted reforms adopted in Mexico that year with regard to human rights and the provisions favouring their broadest protection in the interpretation of laws (CPEUM, article 1). In this sense, the Electoral Tribunal enabled the active protection of human rights and enforced the democratic principle of equality of opportunity.

These international instruments signed by the Mexican Government and the decisions by the Electoral Tribunal have helped activists, legislators and relevant political actors push the gender agenda further and dismantle obstacles to the political participation of women. Two important examples are the bills presented by a group of female senators from different political parties and by President Enrique Peña Nieto in October 2013. Both documents quote instruments such as the International Covenant on Civil and Political Rights and CEDAW, which provide solid international grounds to amend the law

and strengthen gender equality. They also refer to the Electoral Tribunal's resolution as the legal basis for proposing that formulas comprise principal and substitute candidates of the same gender.

## Data analysis

In the first section of this case study, Figure 1 shows an increase in the presence of women in the Mexican Congress. In the second section, Figure 2 also reflects a positive trend in female registered candidates by the three main political parties, although not fully complying with the legal gender quota due to the use of the escape clauses explained above. This section will focus on ascertaining whether the percentage of women in the lower house has changed over time, and if the presence and size of quotas have played a major role in this behaviour. Statistical analysis and detailed descriptions are included in Appendix 1.

### ***Increased presence of women in the lower house: time and quotas matter***

Regression analysis was undertaken to test whether the percentage of women in the lower house has changed over time with the presence and size of quotas. The analysis showed that time and the presence of quotas have had a statistically significant effect on the percentage of women in the lower house. The percentage of women in the lower house is expected to be 8.19 per cent higher for elections in which quotas are imposed. Moreover, the percentage of women in the lower house is expected to be 8.7 per cent higher for elections with a 30 per cent quota and 11.6 per cent higher for elections with a 40 per cent quota. As such, the size of quotas (rather than their mere presence) increases the proportion of explained variation in the percentage of women in the lower house.

It is important to note that these tests are blind to political parties' decisions about the way they comply with quotas, since they only use data on seats occupied by women. In other words, it is not possible to detect a difference between seats allocated by proportional representation and those determined by a majority-rule election, or what role political parties played in these nominations. This analysis also does not take into consideration other variables used in alternative models (Aparicio 2011), in which political competitiveness is also introduced to analyse the nomination of female candidates and, ultimately, their chances of winning a seat.

The tests and figures shown in this case study show that quotas matter, but that how they are applied is more important. In 2003 and 2009, there were

important increases in seats occupied by women, and these years coincide with the first election after an amendment on quotas was passed.<sup>9</sup> But it is also apparent that 2012 had the highest number of registered candidates by the major political parties and for seats occupied by women. This was the first election after the Electoral Tribunal ruled that the gender quota should be applied to both majority and proportional representation principles and to candidates of the same gender in the same formula.

## **Conclusions: the road toward improving the quality of equality**

Women in Mexico and other countries have been a historically marginalized category in electoral processes. Granting them the right to vote and run for office was only the starting point for increasing their representation in democratic institutions. Many years of incremental progress and important backlashes set the tone for acknowledging the need for specific mechanisms to increase the presence of women in public office.

The Mexican experience in developing quotas suggests important lessons that may be useful for removing barriers to the political participation of women and other marginalized groups.

1. Quotas are mechanisms that may help foster fair representation by levelling the playing field for traditionally marginalized groups. In order to improve their effectiveness, their design should take into account, for example, the specific electoral systems, federal or central forms of government, and how strong and institutionalized political parties are. In the Mexican case, the use of a mixed system to elect parliamentarians and the role of political parties in selecting candidates called for clear and detailed rules to make the adoption of quotas effective. Loopholes and room for broad interpretation should be avoided.
2. EMBs have a very important role in guaranteeing conditions of equality in electoral processes. However, the Mexican case also shows the importance of an independent, specialized last instance to enforce compliance with gender quotas. More importantly, this case study shows that the systematic interpretation of equality principles, in line with international instruments to protect political rights, helps to prevent backlashes, provide certainty about the rules in electoral processes and strengthen the rule of law.
3. Detailed, clear and foreseeable rules for the application of quotas, as well as sanctions for their violation, provide certainty to all political actors, and valuable instruments for the electoral authorities to fulfil their mandate.

4. The adoption and internalization of international standards by electoral authorities helps enhance the conditions of equality in electoral processes.
5. Quotas should be conceived as temporary measures to equalize political competitions. They should remain in place until equality is achieved. As long as cultural patterns of marginalization of women persist in a given society, they should be used to dismantle barriers to political participation.

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## Appendix

**Table A.1. Raw data**

Members, total	Women, total	Women, percentage	Year of election	Time (t0=1979)	Quotas (dummy)	Quotas
400	32	8.0	1979	0	0	0
400	42	10.5	1982	3	0	0
400	42	10.5	1985	6	0	0
500	58	11.6	1988	9	0	0
499	44	8.8	1991	12	0	0
496	72	14.5	1994	15	0	0
500	87	17.4	1997	18	0	0
500	74	16.8	2000	21	0	0
498	142	24.9	2003	24	1	30
500	129	25.8	2006	27	1	30
486	154	31.7	2009	30	1	40
498	187	37.6	2012	33	1	40

### Bivariate regression model

In order to ascertain whether the percentage of women in the lower house has changed over time, a bivariate regression analysis was performed. The dependent variable is the percentage of women in the lower house for each election included in the analysis (the eight elections preceding the introduction of quotas and the four elections held since). The independent variable is the number of years since the 1979 election.

**Table A.2. Bivariate regression model**

	Coefficient	t-value	p-value
Constant	4.40	2.22	0.050
Year (t0=1979)	0.83	8.22	0.000

**Table A.3. Goodness of fit**

	Autometrics model
$R^2$	0.87
Adjusted $R^2$	0.86

The results of the regression analysis show that time has a statistically significant effect on the percentage of women in the lower house at a 99 per cent level of significance. The coefficient is 0.83, which means that the percentage of women in the lower house is expected to increase by, on average, 2.49 per cent with each new election ( $0.83 \times 3 = 2.49$ ). The coefficient of determination ( $R^2$ ), which gives the proportion of explained variation in the dependent variable by the independent variable(s), is 0.87, which means that time explains a great deal of the change in the percentage of women over time.

## Trivariate regression models

### *Presence of quotas*

To test the impact of the presence of quotas on the representation of women in the lower house, a trivariate regression analysis was performed. The dependent variable is the percentage of women in the lower house for each election included in the analysis. The independent variables are the number of years since the 1979 election and whether or not quotas were imposed in the year of the election.

**Table A.4. Trivariate regression model: presence of quotas**

	Coefficient	<i>t</i> -value	<i>p</i> -value
Constant	6.71	3.77	0.004
Year ( $t_0=1979$ )	0.53	3.80	0.004
Quotas (dummy)	8.19	2.68	0.025

**Table A.5. Goodness of fit**

	Autometrics model
$R^2$	0.96
Adjusted $R^2$	0.93

Again, the regression analysis shows that time has a statistically significant effect on the percentage of women in the lower house at a 99 per cent level of significance. Furthermore, the presence of quotas (Yes/No) is statistically significant at a 95 per cent level of significance. The coefficient is 8.19, which means that the percentage of women in the lower house is expected to be 8.19 per cent higher for elections in which quotas are imposed. The adjusted coefficient of determination ( $R^2$ ), which is used to compare the proportion of explained variation in the dependent variable by the independent variable(s) for analyses with different numbers of variables, is 0.93, which is considerably higher than the 0.86 of the bivariate regression model. This means that also using the presence of quotas increases the proportion of explained variation in the percentage of women in the lower house.

### **Size of quotas**

In order to test the impact of the presence and size of quotas on the representation of women in the lower house, another trivariate regression analysis was performed. The dependent variable is the percentage of women in the lower house for each election. The independent variables are the number of years since the 1979 election and the size of the quotas imposed in the year of the election (ranging from 0 per cent to 40 per cent).

**Table A.6. Trivariate regression model: size of quotas**

	<b>Coefficient</b>	<b>t-value</b>	<b>p-value</b>
Constant	7.48	5.11	0.000
Year ( $t_0=1979$ )	0.44	3.80	0.004
Quotas	0.29	4.01	0.003

**Table A.7. Goodness of fit**

	<b>Autometrics model</b>
$R^2$	0.98
Adjusted $R^2$	0.95

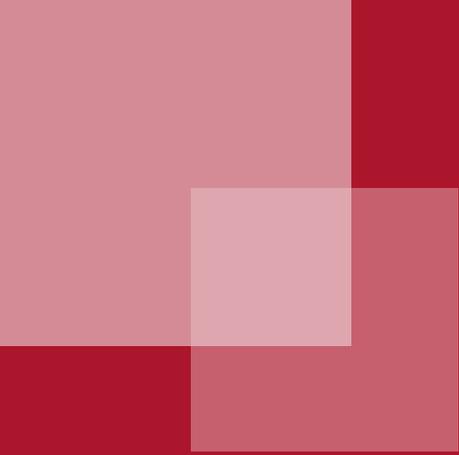
Again, the regression analysis shows that time has a statistically significant effect on the percentage of women in the lower house at a 99 per cent level of significance. In addition, the size of quotas is also statistically significant at a 99 per cent level of significance. The coefficient is 0.29, which means that,

for example, the percentage of women in the lower house is expected to be 8.7 per cent higher for elections in which quotas of 30 per cent are imposed ( $0.29 \times 30 = 8.7$ ) and 11.6 per cent higher for elections with a 40 per cent quota ( $0.29 \times 40 = 11.6$ ). The adjusted coefficient of determination ( $R^2$ ) is 0.95, which is slightly higher than the 0.93 of the previous model. This means that using the size of quotas, rather than their presence, increases the proportion of explained variation in the percentage of women in the lower house.

## Notes

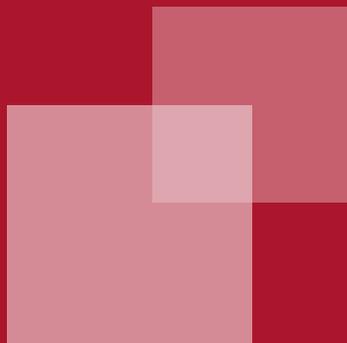
- <sup>1</sup> The TEPJF is a last-instance court, specializing in the protection of political rights, with powers of constitutional and conventional oversight over matters within its mandate. In principle, the Supreme Court does not review its decisions.
- <sup>2</sup> In his analysis of the US Supreme Court, Robert Dahl (1958) claims: 'at its best the Court operates to confer legitimacy, not simply on the particular and parochial policies of the dominant political alliance, but upon the basic patterns of behaviour required for the operation of a democracy'.
- <sup>3</sup> For a detailed description of the Mexican electoral system in English, see <[http://www.ife.org.mx/portal/site/ifev2/The\\_Mexican\\_Electoral\\_System/](http://www.ife.org.mx/portal/site/ifev2/The_Mexican_Electoral_System/)>, accessed 4 January 2014. It is also important to note that proportional representation was introduced in the constitution in 1963. The number of members of Congress for each house has been increased through legal amendments several times.
- <sup>4</sup> A constitutional amendment passed in 2014 modified the responsibilities and name of the Mexican electoral management body (EMB). In the following pages, the acronyms IFE and INE will be used to refer to the same EMB at different points in time.
- <sup>5</sup> Another provision that will not be analysed in this case study, but that it is worth noting, is a rule establishing that a minimum of 2 per cent of the overall budget for political parties' regular activities must be spent on the training of women. For more information, see <[http://genero.ife.org.mx/partidos\\_2por100.html](http://genero.ife.org.mx/partidos_2por100.html)>.
- <sup>6</sup> A valuable online resource developed by the Judicial Training Centre of the Electoral Tribunal, which explains the constitutional and legal reforms, is available in Spanish at <<http://portales.te.gob.mx/consultareforma2014/reforma>>. It includes a description of the legislative process and relevant rulings by the TEPJF and the Supreme Court of Justice.
- <sup>7</sup> Further decisions by the TEPJF reinforced this criterion and set the grounds for the adoption of Jurisprudence 16/2012
- <sup>8</sup> For a summary in Spanish of media coverage of this phenomenon, see <<http://allman.rhon.itam.mx/-emgar/sip/conducta/Juanitas.docx>>, accessed 13 February 2014.
- <sup>9</sup> However, these years also saw mid-term elections, in which participation, campaigns and competitiveness vary.





# **Chapter 8**

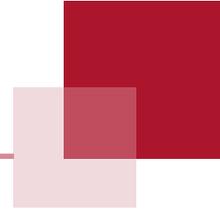
## **Equal Representation in Spain: Lessons Learned from Balanced Electoral Lists**



## Chapter 8

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Paloma Biglino Campos



# Equal Representation in Spain: Lessons Learned from Balanced Electoral Lists

## Introduction

Women's representation in Spain has radically changed in recent decades. Although still far from parity, women make up 35 per cent of the members of the Congress of Deputies, 30 per cent of the national government and 50 per cent of judges (Instituto de la Mujer 2013a, 2014). While social and economic factors can explain some of this progression, the adoption of Law 3/2007 on Effective Equality between Women and Men (the Equality Law) in 2007, which introduced balanced electoral lists, has had a decisive impact on increasing women's empowerment.

This chapter reviews the Spanish experience with regard to fostering equal opportunities. In particular, it provides some background information on the situation of women's political participation and representation in Spain before the 2007 reform. Then it analyses the Equality Law and the impact of balanced lists on the electoral system as a whole. Then the functioning of the system will be explained in more detail. Next, a specific case will be examined to explore the role of electoral commissions, courts of law and the Constitutional Court as principal custodians of equal representation.

The chapter concludes with lessons learned from the Spanish experience that can serve as a helpful guide for electoral reforms aimed at fostering women's equal representation. First, since any modification of the electoral system can affect the presence of women in representative institutions, this impact must always be evaluated before making such decisions. Second, legally requiring

balanced lists entails certain conditions concerning the electoral system and political party behaviour. Finally, the most important factor is not the *kind* of action to be taken (which can include the introduction of balanced or zipper lists), but rather the effective enforcement of compliance with such measures.

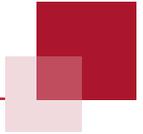
## Where we were

Before the passage of Spain's new democratic constitution in 1978, the Franco regime was inadequate in terms of protecting women's rights. Civil law subordinated women to men in matrimony and contracts, for example, and public law was also highly discriminatory. During the rare elections that took place under the Franco regime, women could vote or run only if they were married or served as the head of the family.<sup>1</sup> Law 56/1961 on the Political, Professional and Labour Rights of Women still prohibited women from becoming judges or public prosecutors.<sup>2</sup>

The first free elections were held on 15 June 1977, less than two years after Franco's death. Universal suffrage was recognized and for the first time since 1933, women were able to participate in the polls under equal conditions. However, only 27 women were elected as representatives—21 in the Congress of Deputies and seven in the Senate—less than 5 per cent of the total members (Instituto de la Mujer 2013).

Article 14 of the 1978 Constitution declared that 'Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.' Nevertheless, the situation of women in politics did not improve during the following years. Although Spain's culture, traditions and family constraints were decisive causes of this decline, political parties also played a role.

At the end of the 1970s, not even the political parties that later approved internal quotas had a clear strategy on women's political participation. For example, the issue was not on the agenda of the Extraordinary Congress of the Spanish Socialist Workers Party (*Partido Socialista Obrero Español*, PSOE) of 1979, which elected an Executive Commission of 16 members, only two of whom were women (Ollero 1980: 206–7).



## Where we are

After the general elections of 2011, there were 124 women in Congress (36 per cent of the chamber) and 74 in the Senate (33 per cent). Although still far from parity, the improvement in female participation is clear. The most important aspect is perhaps the increase not only in representative institutions, but also in the executive power.

More than 35 per cent of city councillors and more than 43 per cent of the members of regional parliaments are currently women. In the national government, women comprised 50 per cent of the Zapatero governments appointed in 2004 and 2008 (Instituto de la Mujer 2014). Now the percentage is near 30 per cent, which is still higher than in some other European countries. In 2012, the average number of female ministers in EU countries was 26 per cent, and Spain occupied eighth place, behind Sweden and France but ahead of the United Kingdom and Italy (Foundation Robert Schuman 2012). The number of female members is slightly higher in regional governments, near 34 per cent (Instituto de la Mujer 2014).

## What the law says

The improvement of the position of women in Spanish politics is, in part, the result of social and economic changes that began in the 1970s. During those years, the number of women with a university education began to increase and eventually reached that of men.<sup>3</sup> A change in mentality stimulated by democracy also allowed women's participation in the labour market.<sup>4</sup> While the feminist movement was weak in those years, the influence of women inside the main political parties began to grow. For example, the PSOE and United Left (*Izquierda Unida*, IU) reformed their statutes in 1997 to limit the number of candidates of the same gender. According to these new provisions, candidates presented to the internal organs of the party or to representative institutions could include no more than 60 per cent (and no less than 40 per cent) of the same gender (Biglino 2000).

These internal norms are the clearest precedent of the 2007 Equality Law, which reformed the previous electoral system and imposed gender-balanced electoral lists. A short explanation of the Spanish electoral system will help explain the changes introduced by this law.

The principal decisions on the Spanish electoral system were taken in the transition period, just after Franco's death but before the passage of the new constitution. In that period, the main goals were to ensure government

stability and strengthen the new political parties. These formations were still weak because they were illegal during the dictatorship.

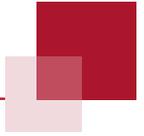
To fulfil these ends, Royal Law Decree 20/1977 on Electoral Norms made some decisions on constituencies, electoral formulas and monitoring of elections that are still in force. The Spanish Parliament has two chambers: the Congress of Deputies and the Senate. The provinces (territorial units that are deeply rooted in Spanish history) are the constituencies for electing members of parliament. Electoral lists are multi-nominal, and political parties provide the vast majority of candidates, although independent candidates can also run for election.

However, the electoral system is different for each chamber. For the Congress of Deputies, the seats are distributed according to the proportional D'Hondt method. This electoral formula uses closed lists (i.e. voters cannot pick and choose from candidates presented by political forces that run for elections). Lists are also blocked, since electors cannot change the order of the candidates. Thus, the system reinforces the role of political parties and limits the freedom of electors. Voters can choose between the different candidates but cannot modify them.

In the Senate, voters have more freedom of choice. They make up their own list by selecting three candidates from among all the candidates presented by the political parties. Each party can present three candidates, but the constituency is represented by four senators. Senate elections use a majoritarian system in which the first three seats usually go to the main party, and the last one goes to the second party.

After the approval of the constitution, Organic Law 5/1985 on the General Electoral System made no substantial changes to these systems. But in the case of municipal and European Parliament elections, the system preferred by the lawmaker was the D'Hondt method, which is also unanimously used in regional parliament elections (Araujo 2001: 276).

The D'Hondt method and the Senate's majoritarian system are not detrimental to women's representation. Both are multi-nominal systems, and candidates are mainly put forward by political parties. Therefore, if parties decide to place women at the top of their candidate lists, they have a greater chance of being elected. The main problem is that only left-wing parties have committed to nominating women. Other parties have been less sensitive to female representation because they consider electoral quotas to be paternalistic. From their point of view, if a woman has worth, she will succeed (San José Serrán 1995: 60).



Things did not change until 2004, when the PSOE won the general elections. This party, with the support of the IU, had enough votes in both chambers to change the electoral law. Thus, the 2007 Equality Law was passed. The purpose of the law is to foster equality in different areas, such as education, public administration and labour relations. To this end, it introduces the idea of balanced composition, which means that in certain institutions, members of each sex cannot make up more than 60 per cent or less than 40 per cent of the total.

The most relevant effect of the law was its influence on electoral matters. It applied the principle of balanced composition to electoral lists by introducing article 44 into Organic Law 5/1985. The first paragraph of this article establishes that electoral lists ‘shall have a balanced proportion of women and men, so that candidates of either sex make up at least 40 per cent of total membership. Where the number of seats to be covered is fewer than five, the ratio between women and men shall be as close as possible to equal.’ Paragraph 3 of the article states that the lists of substitutes must respect the same rules as for candidates.

These provisions are applicable to elections to the National Congress, municipalities, European Parliament and autonomous community parliaments. However, the same article allows autonomous communities to improve their female representation. Thus, some regions (e.g. Andalusia, Castilla-La Mancha and the Balearic Islands) have established electoral lists in which the number of men and women must be equal in a zipper system.

According to Alnevall (2011: 122), ‘from being a country with little focus on gender issues, Spain has developed to one of the most advanced countries in the world in terms of gender equality’. However, ‘the gender quota law of 2007 failed to increase the number of female representatives. The number of female candidates has increased but there was no or small effects on the number of women elected. Women are systematically placed on less favorable positions on the party lists’ (Alnevall 2011: 130).

This restricted effectiveness is real in the case of general elections, but it is questionable in other types of elections. In fact, the number of women increased in city councils (5 per cent) and in the European Parliament (3 per cent). As mayors are elected by city councils, the number of women in these offices also increased from 13 per cent in 2003 to 15 per cent in 2007 (Instituto de la Mujer 2014). But the most important achievements of the balanced lists have been more qualitative than quantitative. First, there has been a snowball effect, because the criteria introduced by the law have been applied to other

areas. Women in high administrative offices and constitutional bodies (such as the Council of Judicial Power) are no longer a rarity. Second, no one argues about the content of the law anymore. Even political parties that contested gender-balanced lists before the Constitutional Court (e.g., the Popular Party, *Partido Popular*, PP) now accept them. Although the PP won the elections in 2011, it did not change the law, which is still in force.

## How the system works

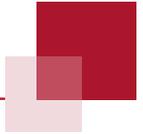
The main point in favour of the law is the manner in which it works. In the beginning, there were some problems related to the constitutionality of the new norm and the manner in which it had to be applied by candidates and the electoral administration. These difficulties were solved by the Central Electoral Commission and the Constitutional Court. Perhaps the best way to understand the functioning of the balanced electoral lists is by examining a specific case, the most interesting of which might be the Garachico case.<sup>5</sup>

However, before analysing this case, it is useful to describe Spain's system of electoral oversight. Its most important features are the kind of bodies that oversee the elections and the appeals system during the electoral process. Both features show the close relationship between electoral administration and judicial oversight, which, in this case, facilitated the correct implementation of balanced lists.

### ***The supervision of balanced lists***

The material organization of elections, which includes everything from printing ballots to setting up polling stations, is the responsibility of the executive power, namely the Ministry of the Interior. But the electoral commissions implement the main electoral acts and oversee the electoral proceedings. According to article 8 of Organic Law 5/1985, they are 'responsible for ensuring the transparency and objectivity of the election process and of the principle of equality'.

Although there are different levels of electoral commissions,<sup>6</sup> they are all composed of judges and experts. Judges, who always constitute the majority of the members of these bodies, are chosen by lot, and experts are jointly nominated by political parties. Electoral commissions are organized hierarchically: the Central Electoral Commission can repeal decisions taken by provincial and district commissions. In spite of their judicial composition, electoral commissions are defined by article 8.1 of Organic Law 5/1985 as



electoral administration. This means that their decisions can be brought before courts of law and, especially, before the Administrative Court.

If the appeal is related to fundamental rights, the final decision can be taken by the Constitutional Court. In fact, appeals against the registration of candidates and the announcement of results must be lodged before an administrative judge in a very short time, and the judge's decision must be pronounced within only two days. Thus, the applicant has time to appeal to the Constitutional Court, which also has to decide before the publication of the election results. In short, the intervention of the ordinary courts and the Constitutional Court during an election period has been decisive for the efficient guarantee of rights related to political participation throughout the electoral process.

In each election, only a few cases decided by electoral commissions are brought before the ordinary courts, and even fewer appeals are lodged before the Constitutional Court. Over the years, electoral commissions have shown a high degree of independence, and the political parties usually respect their decisions. However, there are some exceptions to this general tendency, one of the most interesting of which is the question of balanced electoral lists.

### ***The consequences of non-compliance: the Garachico case***

During the municipal elections of March 2007, when balanced lists were used, the PP presented an electoral list composed only of women. It was in Garachico (Tenerife), a small town of approximately 5,000 inhabitants in the Canary Islands.

The consequences of breaking the exigencies imposed by the law on the nomination and presentation of candidates are severe in the Spanish system. Indeed, electoral commissions cannot proclaim candidatures unless they meet the requirements set out by article 47.4 of the above-mentioned law. Thus, it is not possible to approve electoral lists that do not respect the legally required proportion of women to men.

The law is quite clear regarding balanced electoral lists, but some of its provisions could be interpreted in different ways. At that time, there were certain technical doubts related to the order of candidates and the effects of balanced representation on the substitute lists. The main issue was that the percentage of candidates required by the law could be interpreted either as applying to the combined total of the list (i.e. both candidates and substitutes together) or as applying separately to the list of candidates and the list of substitutes. In the former case, it is conceivable that women could be relegated

to the substitute list, thus fulfilling the legal requirements, but not the intent, of the new law.

Other doubts were related more to the correction of mistakes in the candidate lists submitted to electoral commissions. Also, it must be taken into account that the system was new. Thus, some political parties had serious problems in fulfilling the new requirements.

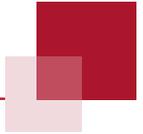
The Central Electoral Commission issued two binding and general instructions on these matters. The first (Instruction 5/2007) stated that a balanced composition was also applicable to lists of alternates. In this way, it prevented political parties from evading the purpose of the law by placing men in the first posts and women on the substitute lists. The second (Instruction 8/2007) was aimed at facilitating the correction of mistakes. This instruction stipulated that amending the order of candidates, and including or excluding candidates, was only possible if it was done with the sole purpose of correcting irregularities and within 48 hours of the presentation of candidates.

According to these rules, the Electoral Commission of Icod de los Vinos, which was responsible for the Garachico elections, required the PP to amend its all-women list since it did not fulfil the requirements stated by the law.

Since the party did not comply with this requirement, its candidates were not allowed to contest the election. According to the law, the only remedy for such a situation was to appeal to an administrative court and, if the appeal was dismissed, to the Constitutional Court.

Many aspects of the case were merely procedural and not essential in order to understand the workings of the system. Hence, it is important only to highlight the case's impact on the Constitutional Court's interpretation of the principles of equality and freedom of association proclaimed by Spain's supreme law.

The real intention of the applicants was not to stand for election, since it was clear that their claim could not succeed. Neither an administrative court nor the Constitutional Court could grant an appeal without challenging the constitutionality of the law. Thus, the PP did not run for election in Garachico. However, the case resulted in one of the Constitutional Court's most interesting decisions, as described in the next section.<sup>7</sup>



***Balanced lists, equality and freedom in the jurisprudence of the Constitutional Court***

The issues discussed before the court were, of course, written in legal terms. But, as usually happens in constitutional matters, the points of departure were mainly political. The appeal contained a vision of equality, freedom and political participation separate from the ideas that had guided the lawmaker.

One of the appellants' claims was that Spain had taken a positive action in favour of women without changing the constitution. In their opinion, article 14 of the constitution, which proclaims equality before the law, prohibits taking gender into account when devising electoral lists. Thus, they argued that the Spanish authorities should have changed the constitution before imposing electoral quotas, as France and Italy had done.<sup>8</sup>

The Constitutional Court replied to this challenge by declaring that the balanced lists were gender-neutral. According to the sentence, the provisions of the law do not imply pejorative treatment of either sex since, strictly speaking, they do not express a differentiated treatment of sex. Indeed, the law does not establish an inverse or compensatory discrimination measure, favouring one sex over another. Rather, the stipulated proportion is equally ensured for both sexes (points of law 3, 4). According to the Constitutional Court, the notion that balanced lists infringe upon equality cannot be upheld; on the contrary, 'it is this equality that the measure ensures'. The amendment of Organic Law 5/1985 does not incorporate compensatory formulas in favour of women as a historically disadvantaged group, 'but rather [gives] expression to a criterion that refers indistinctly to candidates of both sexes' (point of law 9).

The appellants' second claim regarding the alleged unconstitutionality of the measure was related to freedom. In their opinion, balanced lists were an imposition on political parties that were against quotas, since they maintain a different idea of equality. The Constitutional Court rejected this claim on the basis of article 9.2 of the Spanish Constitution, which states that 'it is the responsibility of public authorities to promote conditions ensuring that freedom and equality of individuals...are real and effective, to remove obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life'. Thus, the Spanish legal order ensures both formal and substantive equality. This means that public powers not only have to abstain from generating arbitrary differences, but they also have the obligation to promote real and effective equality.

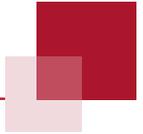
According to the Constitutional Court, political parties enjoy the freedom to function and are free to form and express their ideologies. And, of course, they are also free to elaborate and present their lists of candidates. But this freedom is not absolute. The lawmaker can limit it by imposing conditions, such as exigencies regarding eligibility or closed and blocked lists. Thus, balance between the sexes is just another limitation, the constitutional basis of which is the mandate to foster equality imposed by the supreme law.

The particular case that led to the constitutional conflict was the rejection of a list composed only of women. Thus, another argument made by the appellants was that balanced representation was against feminist ideology. The new law made it impossible to make feminist statements by presenting all-women lists. The Constitutional Court dismissed this criticism, saying that it was true that radical feminism could not be constitutionally prohibited. However, it cannot elude the constitutional mandate of formal equality or the rules pronounced by article 9.2 of the constitution in order to assure effective substantive equality (point of law 6).

The last argument made against balanced lists was connected with the right of political participation, particularly the right to stand for election. In the appellants' opinion, the new law transformed candidates' gender into a cause for ineligibility. Indeed, the norm adds a new exigency for being elected: to belong to the gender required by balanced candidate lists.

The Constitutional Court also dismissed this challenge. On the one hand, the new requirement does not immediately affect an individual's right to stand for election. It is a condition related to political parties and groups of electors, which are not entitled to this fundamental right (point of law 3). On the other hand, the balanced composition is applied before the elections, when candidacies are shaped. And the Spanish constitutional order does not include the right to be presented as a candidate by political parties.

This reasoning is not new in comparative law, since the Spanish Constitutional Court follows the precedent of the Italian Constitutional Court some years before. In Judgement No 49 of 13 February 2003, the Italian Constitutional Court stated that the duty to present male and female candidates was not a limitation of the right to stand for election. It only binds parties and groups lists, imposing a gender balance. Thus, the requirement applies to the earlier candidacy stage of the election, and therefore constitutes a technical criterion established for the selection of candidates.<sup>9</sup>



### ***Balanced lists vs. zipper lists***

Judgment 12/2008 is not the Spanish Constitutional Court's only decision on female representation. The court has also upheld norms that were more advantageous for women, such as laws that were passed by the assemblies of autonomous communities.<sup>10</sup> Some of them established zipper lists, in which male and female candidates alternate.<sup>11</sup>

Spain is a regional state that grants autonomy to its territorial communities. The degree of autonomy described in article 147 of the constitution allows regional parliaments to establish their electoral systems under the basic principles established by the state in Organic Law 5/1985. Many of these regional laws were passed before the national parliament approved balanced gender lists.<sup>12</sup>

In theory, zipper lists are more advantageous to women's representation than balanced lists, since they oblige political parties to alternate men and women. For this reason, women have a greater likelihood of being elected. Balanced lists are more flexible, since the proportion between women and men must be respected only in brackets of five seats. Therefore, women are rather frequently placed at the bottom of such lists.

In the Spanish case, however, both models have had similar results. Furthermore, the percentage of women in the regional parliaments that use zipper systems is still lower than that of regions that have balanced lists. In 2012, for example, the Andalusia Assembly, which introduced the zipper system in 2005, had 43 per cent women. In the same year, the Castile and León Parliament, which only has balanced lists, had 67 per cent women (Instituto de la Mujer 2014). This paradox is perhaps the most interesting result of the Spanish experience. For this reason, it will be analysed in detail in the following conclusions.

### **On balanced lists**

Balanced lists have been used in Spain for at least seven years. The results for women's representation have not been drastic, but they have been regular and incremental. The number of women in parliament has remained constant regardless of the political forces running the country. Moreover, the issue is no longer controversial, since all the political forces in the country have accepted and comply with the 2007 amendment. It is true that some political parties (such as the PP) have not explicitly accepted balanced lists or zipper lists; they are more sensitive to the parity principle and informally incorporate

women into their electoral lists. Although the PP does not accept quotas,<sup>13</sup> it has increased the number of women in the party's internal organs and in the executive branch. For example, the regional branch of Andalusia recently elected a new executive board, which is composed of six women and six men.<sup>14</sup>

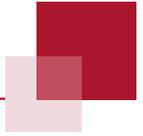
The Spanish experience can be deemed a positive one, and drawing some lessons from it can be useful, especially in regard to countries that are trying to foster women's empowerment. These concluding remarks will focus on three specific lessons learned from the Spanish experience: (1) the advantages of establishing balanced electoral lists; (2) the conditions that have facilitated the establishment and functioning of balanced electoral lists, with the goal of focusing on equality in political representation; and (3) sanctions and how they have influenced political parties in their acceptance of, and compliance with, the 2007 amendment.

### ***Advantages of balanced lists***

The impact of balanced electoral lists on the composition of representative institutions has been analysed above. Perhaps the increase in the percentage of female representatives has not been significant (and balanced representation may be less effective than other measures that can be taken in favour of women), but the advantages of the measure are not strictly quantitative. Some of the benefits of balanced lists are related to their compatibility with the idea of political representation that is inherent to contemporary democracy. Indeed, balanced lists are gender-neutral. Their true goal is to improve the ratio of women in politics, but they achieve this end by treating men and women equally. This impartiality is convenient for two reasons.

First, it helps avoid constitutional problems, because balanced lists are compatible with formal equality. As mentioned before, the Spanish Constitutional Court has determined that this model does not discriminate in favour of women because it can also benefit men.

Second, neutrality is not only a legal fiction, but something deeper that affects the nature of balanced lists. Balanced lists are not quotas since they do not require the special treatment of women. This is perhaps their most positive aspect. Indeed, quotas for women imply that political participation is a right naturally reserved for men, which must be shared with women as an exception to the general rule (i.e. that power belongs to men). In contrast, balanced representation means that men and women have the same right to be elected, although balanced lists establish guarantees for the under-represented sex.



The impartiality of balanced lists has constitutional advantages as well as political rewards. Since they are flexible, they can be better tolerated by parties that are against positive actions. They also have a greater chance of succeeding because they are less aggressive for those who do not believe in compensatory methods.

The Spanish experience also demonstrates that balanced lists help change the vision of power. In Spain, women have fully joined the labour market and share similar positions in society with men, but there are still clear differences in salaries and levels of responsibility. Indeed, a glass ceiling persists and excludes women from higher positions in both the public and private sectors. The idea of balanced composition helps address this problem because it creates a model that can be imitated in the composition of non-representative bodies. The judiciary is an interesting example of the ‘contagious’ effects of a balanced composition. In Spain, although women make up 57 per cent of public prosecutors, judges and court clerks, they make up only 12 per cent of the judges on the Supreme Court. Nonetheless, women currently constitute 33 per cent of the General Council of the Judicial Power (up from 7 per cent in 2007): its members are elected by the Senate and the Congress of Deputies, which recently introduced a standard similar to balanced composition for selecting members.

Article 16 of Organic Law 3/2007 states that public powers should respect balanced composition in the appointment of public offices albeit prescribed in terms of making a best effort. Thus, it is possible to conclude that in Spain, balanced electoral lists have had a snowball effect. They have opened the way toward a more equal composition of legislative institutions and other bodies.

### ***Conditions for establishing balanced lists***

Balanced electoral lists are just one element of elections, which are complex processes composed of many pieces that must fit together. Thus, the effects of balanced lists depend on other elements, the nature of which may vary. The first condition for setting up balanced lists is connected with the electoral system—particularly the electoral formula, the size of the constituency and the type of list.

The Spanish case shows that balanced lists have better results when seats are allotted proportionally, constituencies have more than one representative and electoral lists are closed and blocked. In Spain, these are the main features of the Congress of Deputies, city council and regional parliament elections, in which balanced lists have had a notable impact, as mentioned above. Balanced lists are also used in Senate elections, which employ a majoritarian

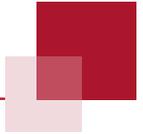
method: each constituency elects only four seats, and the lists are open. Under these conditions, it is possible to impose balanced lists, but the results are less effective. Indeed, after the first time the law was applied, in the general elections of 2008, women made up 29 per cent of the Senate, whereas they constituted 36 per cent of the Congress of Deputies (Instituto de la Mujer 2014).

Changes in the electoral system can indirectly affect women's representation. This influence has to be evaluated, especially when such changes are the result of popular pressures. Political forces have tried, from time to time, to improve the stability of the executive power by proposing that constituencies only have one representative or that the first-past-the-post system be introduced. Or citizen groups have sometimes demanded the use of open electoral lists in order to have more freedom in selecting candidates. While these reforms could certainly achieve the mentioned goals, they could also be very negative for women's representation: in the first case, because women still encounter more obstacles than men in being nominated as candidates; in the second case, because electoral campaigns are also a central element of the electoral system, and the media differentiate between male and female candidates in their coverage (Khan 1994: 154).

The second condition for establishing the use of balanced lists relates to political parties, which have been defined as the 'gatekeepers to gender balance in political decision making' (Dahlerup and Freidenvall 2011: 24). Currently, political parties are the main actors in elections since they are the ones that nominate candidates. While the law can force them to present female candidates in the proportion required, ensuring equality is only possible if parties are inclined to change the nomination process to foster women's representation.

## Conclusions

As mentioned above, there have been positive, though not spectacular, results when balanced lists have been used in Spain. According to Alnevall (2011: 126), the reason for this limited effect may be that the major political parties had already incorporated women into their candidate lists. On the one hand, the left-wing parties (PSOE and IU) had previously changed their nomination processes to include percentages of women that were close to the ratio later required by law. On the other hand, the PP was formally against quotas but, *de facto*, had included women on its candidate lists in a percentage similar to the proportion imposed by the law.



Thus, the Spanish experience shows that balanced representation can be achieved without passing laws if the main political parties agree on strengthening women's representation. However, this commitment does not always exist, and, when it does exist, it cannot be taken for granted. New political parties that are unconcerned about equal representation may appear and gain public support. Furthermore, traditional political parties can change their interests and remove women's empowerment from their agenda.

The most effective method for increasing gender equality in politics is to impose zipper lists, since they oblige political parties to alternate men and women on candidate lists. In Spain, autonomous communities that use this type of list have achieved positive results for women.

The Spanish case also shows, however, that it is possible to achieve similar effects using balanced lists, although balanced lists only force the incorporation of a certain percentage of women in five-post brackets. This means that major political parties can evade the effects of the law by reducing the ratio of women to 40 per cent and presenting women only in the last positions in each bracket. In such cases, if the constituency has few seats, only men will be elected. This is what happened in a number of small constituencies in the general elections of 2011. Provinces like Avila, Soria, Segovia and Alava had fewer than four seats, and they were all won by men. There can be similar results in bigger constituencies as well. In Tarragona, for example, there were eight seats available in the same election, and only men were elected (Instituto de la Mujer 2013: 2). Thus, balanced lists only improve women's representation if political parties take the presence of women on electoral lists seriously.

### ***Requirements for implementing balanced lists: sanctions for non-compliance***

The conditions analysed above are related more to politics than constitutional law. They refer to contests in which the benefits of balanced lists can be maximized. However, there must also be requirements for guaranteeing their observance. The Spanish case can also provide some interesting data on this issue.

There are different means of ensuring that electoral lists respect a balanced composition. One of them is to finance—or increase the financing of—political parties that meet the requirement. This method is mainly persuasive, and it is recommended when there are doubts about the constitutionality of balanced representation or when some of the major political parties are against positive actions.

Although funding is one of the main worries of political parties during the electoral period, this manner of enforcing balanced composition is too soft. Some political forces have fewer problems than others in obtaining private funding, and perhaps they prefer to give up public money rather than achieve a balanced composition.

Spain has followed a different system to ensure balanced electoral lists. Electoral commissions cannot accept candidate lists that do not respect the proportion of men and women stated by the law. The rejection of the list is a strong penalty that seriously limits a party's right to run for election. For this reason, Organic Law 5/1985 provides many guarantees in order to avoid disproportionate consequences that could endanger the fundamental right of political participation.

The Spanish experience shows that, in most cases, legal infringements can be caused by simple mistakes. That is what happened in the municipal elections of 2007, the first time balanced lists were used. Several lists put forward by independent candidates and political parties miscalculated the number of women. The most common mistake affected lists composed of 13 candidates, because only five women (instead of at least six) were included.

Many of the problems were solved by the electoral commissions, since it was their duty to notify parties of any irregularities, which had to be corrected within 48 hours. Other problems were solved by administrative judges, who allowed the correction of lists previously rejected by the electoral commissions.

Finally, the Constitutional Court intervened. Only the Garachico case was polemical since what was at stake was the constitutionality of balanced representation. The rest of the appeals were again related to mistakes<sup>15</sup> and easily resolved by the courts, which also gave parties the opportunity to make corrections before voting day<sup>16</sup> (Biglino 2008a and 2008b).

Since upholding the constitutionality of the law in the Garachico case, and up until now, balanced lists have not caused major problems in Spain, and they have been respected by the political forces that run for elections. Since 2007, no candidate list has been excluded for not respecting the percentages imposed by the law. Thus, it is possible to conclude that the law has been properly implemented.

Several factors can explain the lack of judicial conflicts. Except for the Garachico case, no political party has been seriously opposed to balanced representation. The features of Spain's system of electoral oversight can also explain the acceptance of balanced lists. The close collaboration between

electoral commissions, ordinary judges and the Constitutional Court during electoral periods has proven to be critical for ensuring women's representation.

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## Notes

- <sup>1</sup> Law 26/1967 on Family Representation in Parliament, article 4.
- <sup>2</sup> The first female judge was appointed in 1971, after the reform of the law in 1966 (Law 96/1966 Abrogating the Limitation Established in article 3.2.c of Law 23 of July of 1961 on Women’s Rights). See Espuny et al. 2010: 113.
- <sup>3</sup> From 1956 to 1960, women represented 19 per cent of all university students. In 1960, the percentage of women with tertiary education was 0.1 per cent of the total population; the percentage for men was three times higher. In 1980–1, women comprised 44 per cent of total university students (Instituto Nacional de Estadística, INE <<http://www.ine.es>>). In 1986–7, they reached 50 per cent (García de León 1992: 101).
- <sup>4</sup> In 1970, only 23.3 per cent of women were employed, while the figure was 79.6 per cent for men. In 2002, the percentage of employed women increased to 42.3 per cent (INE <<http://www.ine.es>>).
- <sup>5</sup> There was also another controversial case that the Constitutional Court resolved without questioning the constitutionality of the law. It was the *Falange Española y de las Jons* electoral list presented in Brunete, a town near Madrid. In this case, the list was made up of ten women and only three men. In the first appeal, the Constitutional Court recognized the right to amend the gender imbalance, but the party representative insisted on maintaining the composition of the list, claiming that there were not enough men in the constituency. The Constitutional Court rejected this second appeal by stating that the female candidates were not residents of the constituency. Thus, the party could have also included male residents from other towns. According to the Constitutional Court, the only reason for the appeal was to call into question the law in force (Judgments 108 and 115/2007).

- <sup>6</sup> According to article 8 of Organic Law 5/1985, there are electoral commissions of judiciary districts (*juntas electorales de zona*), provincial electoral commissions (*juntas electorales provinciales*), electoral commissions of autonomous communities (*juntas electorales de Comunidades Autónomas*) and the Central Electoral Commission (*Junta Electoral Central*). Each type of commission has a different territorial competence, and their jurisdictions vary according to the kind of election. For example, the commissions of judiciary districts mainly act in municipal elections. The principal functions in general elections are the responsibility of provincial electoral commissions. The Central Electoral Commission is competent in elections to the European Parliament, and can revoke decisions taken by inferior commissions and issue binding instructions in other elections (Organic Law 5/1985, article 19).
- <sup>7</sup> To read more about Constitutional Court Judgement 12/2008 of 29 January 2008, please see <<http://www.tribunalconstitucional.es/es/jurisprudencia/restrad/Paginas/JCC122008en.aspx>>.
- <sup>8</sup> After the French Council of State decisions of 18 November 1982 (82–146) and 14 January 1999 (98–407), in which the reforms of the electoral and municipal codes were declared unconstitutional, the French Constitution was amended on 8 July 1999. A new paragraph was added to article 1, declaring that ‘Statutes shall promote equal access by women and men to elective offices and posts as well as to positions of professional and social responsibility’. Article 3 was also modified, since a new paragraph obliges political parties to contribute to the implementation of the principle of equal access stated in article 1. In Italy, after the Constitutional Court decision of 12 December 1995, the first step was the reform of article 117 of the constitution. The new paragraph declares that ‘Regional laws shall remove any hindrances to the full equality of men and women in social, cultural and economic life and promote equal access to elected offices for men and women’ (Constitutional Law of 18 October 2001 No 3). Later, article 51 of the constitution was modified. This article recognizes the right of access to elected positions and public offices on equal terms. Constitutional Law No 1 of 30 May 2003 added a new sentence that declares ‘To this end, the Republic shall adopt specific measures to promote equal opportunities between women and men’.
- <sup>9</sup> Point of law 3.1. The challenged articles (2.1 and 7.1) were introduced by the Val D’Aosta Regional Law of 13 November 2002. According to article 2.1, lists presented for regional council elections should include candidates of both sexes. Article 7.1 states that the electoral office should declare void electoral lists that do not fulfil that requirement. For more information on this, see <<http://www.cortecostituzionale.it/actionPronuncia.do>>.
- <sup>10</sup> Law 4/2005 on Equality between Women and Men was passed by the Parliament of the Basque Country. The fourth and fifth provisions of the law established that electoral lists had to consist of at least 50 per cent women. The ratio had to be applied to the entire list of candidates and to each bracket of six posts. The PP challenged this law before the Constitutional Court, and Judgment 13/2009 upheld the constitutionality of the law on grounds that were very similar to those previously stated by the court in Judgment 12/2008. The full text of the decision can be read here (in Spanish only): <<http://www.boe.es/boe/dias/2009/02/13/pdfs/BOE-A-2009-2502.pdf>>.
- <sup>11</sup> This was the case for Law 11/2002 of Castilla-La Mancha, Law 5/2005 of Andalusia and Law 6/2002 of the Balearic Islands. The only one that was contested by the PP before the Constitutional Court was the Law of Andalusia: again, the Constitutional Court rejected the appeal (Judgment 40/2011). The court’s central argument was the duty to foster equality, imposed by article 9.2 of the constitution on public powers. The full text of Judgment 40/2011 (in Spanish only) can be found here: <<https://www.boe.es/boe/dias/2011/04/28/pdfs/BOE-A-2011-7629.pdf>>.
- <sup>12</sup> A discussion of the problems of the allocation of power between national law and autonomous community law is beyond the scope of this chapter, which instead focuses on the effectiveness of regional laws.
- <sup>13</sup> Point 3.4 of the programme presented by the Popular Party for the 2011 general elections proposes that effective equality between men and women be ensured by improving the position of women in the labour market, through education, family life, etc. The programme also includes new measures

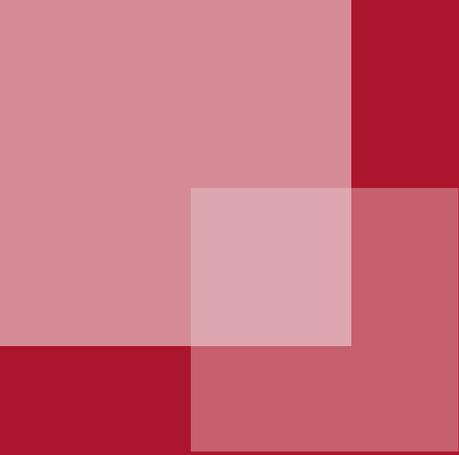
to fight against gender-based violence. However, there are no references related to women's presence in representative institutions or in other public powers (Partido Popular 2001: 118–20).

<sup>14</sup> See press coverage of results of elections in Andalusia: <<http://www.rtve.es/noticias/20140301/juan-manuel-moreno-elegido-presidente-del-pp-andaluz-9854-votos/888621.shtml>>.

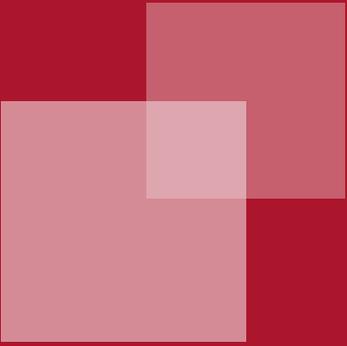
<sup>15</sup> With the exception of the *Falange Española y de las Jons* case, which was decided by the Constitutional Court as described above.

<sup>16</sup> Constitutional Court Judgments 96/2007, 97/2007, 98/2007, 99/2007, 100/2007, 101/2007, 102/2007, 103/2007, 104/2007, 105/2007, 107/2007, 111/2007, 113/2007, 114/2007.





# Conclusion



# Conclusion

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Raul Cordenillo

Recognizing the importance of the integrity of elections, the report of the Global Commission on Elections, Democracy and Security<sup>1</sup> entitled *Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide* put forward a set of recommendations for governments, international organizations and other stakeholders to pursue in order to make elections more transparent and credible, including the creation of professional and competent EMBs with full independence of action; the set-up of oversight mechanisms for political finance; and the removal of barriers to the participation of women, youth and traditionally marginalized groups.

This book discusses practical approaches to implementing these three recommendations by examining eight case studies, which comprise the chapters of the book. The cases highlight reform processes that address at least one of the recommendations and identify good practices and lessons learned.

## Professionalizing EMBs

Chapters 1 and 2 discuss two countries' experiences with professionalizing their EMBs, Australia and Nigeria, which are not only at different stages of democratic consolidation but also different levels of economic development. The Australia chapter, in particular, shows the value and positive impact of the professionalization of its EMBs, a process that commenced earlier in its history, and points to areas in which the EMBs could further improve. The Nigeria chapter discusses efforts to reform the Independent National Electoral Commission (INEC). In particular, it delves into the rationale, the process, its achievements and its challenges.

Developing a culture of non-partisan public-sector work ethic and providing career-path opportunities for officials are essential elements of the professionalization of EMBs in Australia. This process began in pre-federation colonial society,

when the EMB was part of the public service, and thus evolved with it. Over time, election administration gained greater independence from the government through the establishment of statutory offices. At the national level, the Commonwealth Electoral Legislation Amendment Act of 1983 formally established the Australian Electoral Commission (AEC). The AEC is an independent elections body, albeit subject to budgetary supervision and parliamentary oversight. Election administration at the sub-national state and territory levels in Australia, which have separate jurisdictions, also evolved in essentially the same manner as the AEC.

Australia's federal system, which has nine separate electoral commissions (one national, six state and two territory parliaments), has paved the way for a professional career path for electoral administrators. It gives them opportunities to transfer, and to be promoted between state and national administrations. Moreover, there are opportunities for officials to assist in the conduct of elections at various levels, which has produced strong collegial relations between electoral administrations. The system has also promoted innovations in the management of electoral systems between jurisdictions. As such, Australia's system promotes the transfer of expertise and experiences between electoral administrations and encourages innovation and good practices.

The professionalism of Australian EMBs is further enhanced by a system of budget reviews. Although parliamentary committees represent partisan interests, they provide a cross-party forum for impartial assessments of the electoral commissions. These assessments, together with the involvement of the Australian public through public hearings and submissions, promote accountability for the actions and performance of the EMBs.

The Australian system also improves transparency regarding the provision of public funding by allowing monitoring of the flow of political money. This transparency, however, needs to be improved further. Disclosures currently take place well after elections, and there are no restrictions on private donations and campaign expenditures.

In Nigeria, a consensus on the need to reform the electoral process emerged after the 2007 elections, which were deemed to be poorly organized and rigged, and also saw patterns of violence. This led to the establishment of the Uwais Panel on Electoral Reform, which put forward recommendations to address the INEC's lack of autonomy. The recommendations included the need for reforms to ensure operational and financial autonomy from the executive, and to address inadequate funding, logistics and staffing. They

also highlighted the need to address the INEC's image crisis, which was then perceived as the weakest link.

The INEC's professional weakness was largely due to the cross-posting of civil servants in and out of the EMB and officials' high degree of mobility. These conditions slowed the pace of developing a core professional cadre of officials proficient in electoral management. As a result, there was an overt reliance on ad hoc staff who could not be held accountable for how the country's elections were conducted. Thus, despite the strength of its mandate, the INEC's capacity to implement policies to encourage gender equality, accountability, internal democracy, and the promotion of national cohesion by political parties was compromised.

Reform of the INEC eventually began in the run-up to the 2011 general elections with the government's commitment to implement at least 80 per cent of the recommendations of the Uwais Panel. These included improved transparency in the voter registry; adoption of new security measures to protect ballot papers and ballot boxes; and formalizing the recruitment, training and deployment of staff.

Notably, the impact of the reform was immediately felt during the 2011 general elections, which experienced a 50 per cent reduction in election-related litigation. Given that the reform process is still ongoing, the positive results encouraged the INEC's management to continue their work and ensure more credible general elections in 2015. Challenges remain, however, particularly a lack of resources.

As in the Australian case, there is a need to develop a culture of independent public service and a long-term career path for election administrators in Nigeria. Moreover, networking with EMBs in other jurisdictions, including through the African Union, could help the INEC develop a sense of collegiality with other administrators, and facilitate the exchange of innovations and good practices.

As in most developing countries, an incremental approach to reform in Nigeria has been beneficial. However, it is good to be mindful that the process, while cognizant of the context, must not lose sight of the reform goals. In this regard, it was useful that Nigeria set its goals early on, including through the Uwais Panel.

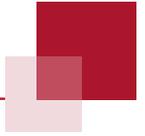
## Regulating political finance

The Polish experience (Chapter 3) shows how government funding of political parties and candidates can be monitored and held more accountable. In particular, it illustrates how political finance regulation can be significantly strengthened by constitutional principles that explicitly promote transparency, and thereby ensure disclosure. The Polish Constitution of 1997 stipulates that ‘the financing of political parties shall be open to public inspection’ (article 61). Thus, rules and regulations have had to comply with this principle or risk being unconstitutional.

There is, however, no one-size-fits-all policy for political finance regulation. It very much depends on the national context. In addition, introducing new provisions or amendments to existing laws in order to track and regulate spending during elections takes time. In Poland, the consolidation and harmonization of its different electoral laws into the Election Law of 2011 presented such an opportunity. In line with the constitution, article 25 of the Election Law of 2011 provides that ‘financing of election campaigns is public’.

It must be noted that political finance regulations are generally intricate and detail-oriented. They typically involve reporting requirements from all relevant parties, mechanisms that will receive and assess these reports, an auditing system, as well as professional and impartial personnel to oversee the whole regulatory process. In this set-up, the forms, procedures and provisions may look good and encouraging on paper, but in practice they may not work well. Indeed, a lack of compliance and enforcement are the weakest links in political finance regulations. For example, expenditure reports filed by political parties with an elections commission are only relevant and useful if they are filled out correctly, assessed in a timely manner, audited and made available to the public. Otherwise, they remain just forms that need to be filled out in order to obtain political financing, as in most systems.<sup>2</sup>

Importantly, other than the right to monitor and supervise political financing, there should be a system of enforceable sanctions to deter non-compliance. This could take the form of reductions in funding or disqualification from full support. In this case, an impartial, fair and competent mechanism could enhance the credibility of the country’s political financing system. In Poland, the purely judicial character of its electoral authority has been able to play such a role.



## Removing barriers to political participation

Varying experiences in efforts to remove barriers to political participation in the Republic of Korea, Tunisia, Indonesia, Mexico and Spain are discussed in chapters 4–8. While the chapters on the Republic of Korea and Tunisia have a broader focus, the chapters on Indonesia, Mexico and Spain concentrate mainly on improving the political participation of women.

In the Republic of Korea, reforms to the National Party Law and the National Election Law before the 17<sup>th</sup> National Assembly elections paved the way for the greater political participation of minority parties and women. In particular, the introduction of a two-ballot proportional representation (PR) system allowed the smaller Democratic Labor Party to obtain seats in the National Assembly for the first time by winning the party-list vote. Female representation also greatly improved following the introduction of a 50 per cent mandatory quota, to which all political parties adhered.

In Tunisia, the 2011 revolution paved the way for legal and institutional electoral reforms that resulted in a more inclusive post-transition electoral process. The transitional electoral law was the result of a genuine dialogue among the country's relevant democratic actors; it ended the political exclusion propagated by the former regime. The transitional law paved the way for fair political representation in the National Constituent Assembly (NCA) following the 2011 elections. Through the parity rule and the zipper system, female representation improved and is now on par with average international standards. Tunisians living abroad were not only allowed to participate in the electoral process but are now also represented in the NCA. Moreover, there was an increase in the representation of Tunisia's marginalized regions in the NCA.

However, the 2011 elections had some weaknesses. It was difficult to develop an acceptable voter register given the short time frame. Disabled and illiterate voters encountered difficulties in voting, and the markedly low presence of youth on the electoral lists led to their under-representation in the NCA. The new electoral law, decree 2014-16, represents a serious attempt to overcome the problems faced in the 2011 elections; it aims to ensure that Tunisia meets international standards and best practices. Tunisia continues to face the challenge of how to handle the exclusion of officials associated with the old regime from the political process, which is common among countries in transition.

## Improving women's political participation

As in the Republic of Korea and Tunisia, PR—coupled with gender quotas and zipper lists—improved women's political participation in Indonesia, Mexico and Spain. Gender quotas are more effective when they are mandatory and when sanctions are applied for non-compliance. Zipper lists ensure that female candidates are not relegated to the bottom half of candidate lists.

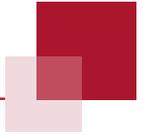
The benefits of mandatory quotas can be seen in Korea, which introduced a mandatory 50 per cent women proportional candidate quota. This policy, coupled with the zipper system, has been more effective than its earlier advisory 30 per cent quota, which the political parties rarely adhered to.

Indonesia has a mandatory 30 per cent quota, but the zipper system requires that one out of every three parliamentary candidates be female. While some analysts argue that a closed PR system would benefit female candidates, this system did not work well for Tunisia during the 2011 elections because the first person on the candidate lists was most often a man; therefore, it was not possible to directly elect women, which would be possible in an open PR system.

Mexico also experienced an incremental rise in female political participation after the introduction of a quota, which was increased to parity in the 2014 electoral law. While quotas can help improve women's participation, the Mexican experience cautions that they should be temporary measures to equalize political competition, and should only remain as long as women are marginalized.

The Spanish system has adjusted to electoral reforms introduced in 2007 that require candidate lists to have a balanced proportion of women and men (i.e. candidates of either sex make up at least 40 per cent of the total candidate list). All political forces currently comply with this gender policy, especially since it was accompanied by sanctions for non-compliance. Although in some cases parties do not explicitly agree with quotas or balanced lists, they are quite sensitive to parity, and thus include women on their electoral lists, albeit sometimes informally.

Notably, the introduction of reforms to improve the political participation of women in the Republic of Korea, Indonesia, Mexico and Spain are the result of lobbying efforts from various national stakeholders, including advocates for women's rights, who advocated the merits of gender balance in the conduct of elections. Without these groups, changes in the electoral system would not have been possible.



In sum, these case studies show that PR increases women's participation in the political system. Participation can be further enhanced by introducing gender quotas, whether mandatory or voluntary, and zipper lists. The decision to introduce these mechanisms, however, very much depends on the country's political and socio-economic context.

## **Electoral reform**

A common set of lessons on electoral reform emerges from the experiences of the eight countries in this book, which relate to the professionalization of EMBs, political finance regulation and removing barriers to inclusive political participation. Electoral reform is not an easy undertaking, for resistance is inevitable, particularly from those who benefit from the status quo. As such, progress is not always forthcoming and takes time.

The most important lesson is that there must be the political will to reform and there must be a determined group of advocates representing various relevant stakeholders within society. This is evident in the cases of Nigeria, the Republic of Korea, Indonesia, Mexico and Spain. The champions of reform must convince both those who are in power and in opposition of the need for reform, as pointed out in the case of Australia. This group could help secure the necessary legitimacy to go ahead with the reform process, including through parliament, as in Poland.

In this context, there is value in understanding and reviewing the current system in order to fully understand what needs to be reformed. This review could then be used to help develop a reform plan, which would be useful, as reform processes are often incremental.

Another important lesson is that reform processes also require substantial resources. This challenge is clearly illustrated in the case of Nigeria, where limited resources have, among other things, made reform incremental.

Once the reform process is under way, it is useful to anchor it to a law—or even to the constitution, as in Poland. And as reiterated in the chapters of this book, rules and regulations may look good on paper but may not work well in practice. Thus, the implementation of reforms should be monitored and followed up on by all interested parties.

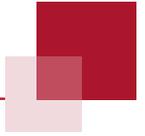
In this regard, the rule of law is important. The cases of Mexico and Spain highlight the importance of the electoral tribunal and judiciary in ensuring that the gender reforms in the electoral system are implemented.

It must be pointed out that the Tunisian case, while not typical, is important in that reform was made possible following a revolution. While instituting changes in such a context seems easier, the Tunisian case shows how the democratic system has to be rebuilt—in some cases, from scratch—after being subject to an authoritarian regime for a long period. In such a case, while initiating reforms was easier than in a relatively stable political system, there is a lot to reform. Moreover, more attention should be paid to implementing the new policies.

## **Recommendations for countries in democratic transition**

A number of practical recommendations can be drawn from the foregoing chapters and the above discussion to help countries in democratic transition undertake reform, particularly in the areas of professionalization of EMBs, regulation of political finance and removing barriers to political participation.

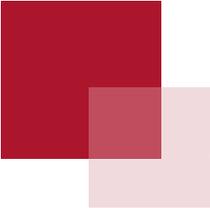
- (1) Electoral reform is difficult, and proceeds incrementally. Thus, relevant stakeholders should carefully design the kind of electoral system they want for their country.
- (2) In order to professionalize EMBs, a public-sector work ethic should be espoused among electoral administrators. They should be given opportunities to advance their careers, and they should be encouraged to recognize innovation and good practices through networking with their peers.
- (3) For political finance regulation, there must be sufficient political will to apply the principles of transparency and accountability to all relevant stakeholders. Rules and regulations need to be clear, implementable and tailored to the country's context. Moreover, a credible, impartial and sufficiently resourced mechanism should be in place to oversee regulation and ensure follow-up and enforcement.
- (4) The type of electoral system in place can affect the inclusiveness of political representation in a country. Depending on the system adopted, countries should be able to expand political representation to women and marginalized groups. In the countries covered, it was shown how PR can create a framework for more inclusive political participation. Countries must, however, make sure that the right variant of PR is used in order to ensure that the desired level of political participation is achieved. This very much depends on the country context, and this needs to be studied closely before deciding on an electoral system.



- (5) The use of gender quotas and zipper lists in PR systems has helped remove barriers to women's political participation. How these quotas and lists are applied, however, also depends on the political context, which needs to be assessed before such measures are introduced.

## Notes

- <sup>1</sup> The commission was established jointly by International IDEA and the Kofi Annan Foundation and chaired by Kofi Annan.
- <sup>2</sup> For a more extensive discussion of funding of political parties and candidates, see International IDEA, *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance* (Stockholm: International IDEA, 2014).



## About the Contributors

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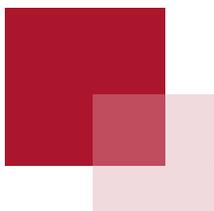
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## About International IDEA

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### What is International IDEA?

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide.

The objectives of the Institute are to support stronger democratic institutions and processes, and more sustainable, effective and legitimate democracy.

### What does International IDEA do?

The Institute's work is organized at global, regional and country level, focusing on the citizen as the driver of change.

International IDEA produces comparative knowledge in its key areas of expertise: electoral processes, constitution building, political participation and representation, and democracy and development, as well as on democracy as it relates to gender, diversity, and conflict and security.

IDEA brings this knowledge to national and local actors who are working for democratic reform, and facilitates dialogue in support of democratic change.

In its work, IDEA aims for:

- increased capacity, legitimacy and credibility of democracy;
- more inclusive participation and accountable representation; and
- more effective and legitimate democracy cooperation.

### Where does International IDEA work?

International IDEA works worldwide. Based in Stockholm, Sweden, the Institute has offices in the Africa, Asia and the Pacific, Latin America and the Caribbean, and West Asia and North Africa regions.



