

SEVENTH INTER-AMERICAN MEETING OF ELECTORAL MANAGEMENT BODIES



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Organisation des États Américains  
Organization of American States



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American States

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**SEVENTH INTER-AMERICAN MEETING  
OF ELECTORAL MANAGEMENT BODIES  
“INCREASING ACCESS  
TO ELECTORAL PROCESSES”**

**Washington, D.C., United States of America  
May 6-7, 2010**

**General Secretariat of the  
Organization of American States (GS/OAS)**

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# INTRODUCTION

**T**he Inter-American Meetings of Electoral Management Bodies seek to promote the effective exchange of knowledge, experiences and best practices of electoral administration in the region. In particular, these meetings facilitate horizontal cooperation to ensure the continuous strengthening of electoral management body (EMB)'s capacities, and to further improve the organization of elections throughout the Americas.

The seventh meeting once again opened a dialogue that allowed the electoral management bodies of the Americas to exchange and evaluate their diverse experiences regarding the access of political and electoral actors, such as political parties, governing officials, the media and citizens, to these processes. Based on electoral authorities' mandates in this area, this topic was addressed through discussions on three themes:

1. Models of engagement between EMBs and political parties in electoral processes.
2. The role of the media during electoral processes.
3. Access to voting for persons with disabilities.

## 1. Models of engagement between EMBs and political parties in electoral processes

Electoral authorities and political parties are two central actors in competitive electoral processes. Due to their nature, they constantly interact during election periods. In cases when the EMB is permanent, these two entities maintain contact throughout the calendar year. A respectful relationship between these two actors often results in higher quality elections. This subject can be approached from different points

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<sup>1</sup> The first meeting took place in March, 2003, in Panama City, Panama, where participants discussed the importance of consensus among political actors to implement technological changes and to promote necessary legal reforms in this area. In subsequent meetings, participants discussed the effective use of new technologies at different stages of the electoral process, and shared good practices to ensure the accurate and efficient transmission of results, among other topics. In April, 2008, in Quito, Ecuador, representatives of the region's EMBs explored efforts to strengthen public confidence in electoral processes, paying particular attention to three issues: political financing, electoral participation and the use of technology. This meeting was also a milestone in terms of regional participation: it was the first time that Caribbean EMBs were involved in this type of meeting. The contributions of these representatives demonstrated important commonalities between Latin America and the Caribbean. The sixth Inter-American Meeting of Electoral Management Bodies was held in Ottawa, Canada, from June 21 to 23, 2009, where the EMBs discussed three key themes: the role of electoral management bodies between elections, voter registries and international electoral observation.





of view: the structure of the electoral management bodies, the degree of access of political parties at different stages of the processes and the exchange of experiences and information between these two actors.

The level of engagement between electoral management bodies and political parties is largely determined by the legal and structural design of the electoral system. Research has found that the interaction between the two is more direct when the EMB's highest officials are political party members rather than when they are not affiliated with a specific party—a model which is no longer applied in its pure form in the hemisphere<sup>2</sup>. In the Americas, there are both models: EMBs composed of a combination of these two types of members, and EMBs that allow party members within their structure, but limit their participation to the expression of their opinions, and exclude them from taking part in decision-making processes. There are also some EMBs that depend on the national government, a model derived from the organizational structures of European countries.

Taking into account national historical and political contexts, each system presents advantages and challenges regarding the relationship between these two actors. During this meeting, participants exchanged experiences that will help them tackle the challenges faced by the application of these models in different countries.

Another topic of discussion was the level of access political parties have to EMBs' internal decision-making processes. Including political parties in the design and implementation of different policies and activities can positively contribute to strengthening the legitimacy and approval of regulations or programs in some countries.<sup>3</sup> This is most apparent when these actors are opinion leaders, whose affirmations influence other actors in the process. This issue is particularly relevant when results of an

election of referendum are recognized since political validation, which directly influences public opinion about the process, is provided by candidates and party leaders.

It is important to keep in mind the role that technical representatives of political parties have during election periods and in overseeing procedures, specifically the use of various technologies. This approach may contribute to generating trust between those responsible for organizing the election and political party representatives, thereby helping to avoid any technical questioning of the election's legitimacy. In some of the hemisphere's countries, prior to the distribution of electoral materials, EMBs conduct an audit in which political party representatives participate, thus increasing the level of trust in the election.

Regarding the implementation of technology in electoral processes, it is necessary that electoral authorities rely on tools that guarantee transparency and provide access to political party representatives. In some cases, this has been accomplished through clear regulations that are reflected in procedural manuals. Following this line of thought, training for those responsible for both -using and overseeing these technologies- should be sufficient and timely.

During the 2007 Electoral Observation Mission in Colombia, the OAS observed an important communication exercise, called the "Unified Command Center," where local level police departments could communicate directly with the General Director of the National Police to express their concerns and coordinate their work on Election Day. Electoral officials were invited to observe this activity, as well as

<sup>2</sup> Presentation given by Lorenzo Cordoba Vianello, Professor of the National University of Mexico, II Inter-American Electoral Training Seminar, Mexico, D.F. 2009.

<sup>3</sup> International IDEA, Electoral Management Design: The International Idea Handbook, Stockholm, 2006, p. 202.



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representatives of the country's political parties, civil society movements and local government officials. This created a space for collaboration that helped clarify doubts and increase the transparency of the electoral process.

Maintaining a strong line of communication between political parties and the electoral authority can be significant not only in the context of an election or referendum, but also to help both entities strengthen post-electoral processes. In Panama, for example, once the polls close, the Electoral Tribunal heads the National Commission of Electoral Reforms, which re-

views existing norms and procedures and receives complaints. The inputs from this Commission are used for the preparation of legislative initiatives for future electoral processes. The Commission is composed of political party representatives, civil society organizations and members of academia.

The interaction between EMBs and political parties is a key element in electoral processes. One of the main objectives of the meeting was to understand these different types of relationships and exchange good practices in this area.



## 2. The role of the media during electoral processes

There is a general consensus that the media today plays a key role in electoral processes, since political actors are turning to the radio, television and most recently, to the internet to campaign rather than through face-to-face interaction with voters. The information and opinions of the candidates that the media transmits may influence the process of selection and decision-making of citizens at the polls. In addition to informing citizens, the media monitors the performance of different stakeholders in the political process, such as political parties, governing officials and electoral authorities. Within this topic, it is important to consider candidates' access to the media, the content related to electoral processes and campaigns, and the opportunities that arise as a result of new technologies.

Since political parties use the media as their primary platform to campaign for public office, it is necessary to consider the question of equitable access to the media while respecting the right to freedom of expression. In the Americas, there are several models related to political campaigns and the media. In some countries free airtime is available for both public and private media; this becomes a form of indirect public financing. In some cases, free media access is permanent, while in other cases it is provided only during electoral periods. In other countries, free airtime is not awarded, but a cap is placed on media spending as an attempt to control campaign expenditures. There are also some countries without media-related regulations.<sup>4</sup>

The varying characteristics for media access imply different kinds of relationships between electoral authorities, the media and political parties, which can create tension during election periods. In some cases, the electoral authority is responsible for determining the distribution of media time. In four coun-

tries, this is the entire available campaigning time, as well as establishing oversight mechanisms for airtime usage. In this context, election administration organizations face the challenge of administering media advertising. Regardless of the model used, this topic generates controversy, and the electoral management body must find a way so that these disputes do not affect the credibility of the process.

After the discussion of access to airspace, the content transmitted through the media should be addressed. Despite the introduction of new forms of technology, and with them new tools for campaigning, television continues to be the main instrument used during elections. As the Italian political scientist Giovanni Sartori stated, "television is the greatest agent for shaping public opinion, given that information is the cornerstone of shaping public opinion".<sup>5</sup> Therefore the role of television and other electronic media in informing the public about political and electoral issues is worthy of discussion.

Numerous OAS Electoral Observation Missions have observed that in many countries the media prioritizes fights and scandals over other substantive issues, and that space is not always created for the electorate to listen to the candidate's proposals or the different stances regarding a referendum. The role the electoral authority can play in this regard is important, whether established in its mandate or not, by encouraging a broad debate of ideas so that citizens make an informed decision when voting. In this context, one cannot avoid referencing the debate over the tension between the right to freedom of expression and the need for citizens to receive the information necessary to make responsible decisions at the polls.

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<sup>4</sup> Carlos Navarro Fierro, "Acceso de Partidos Políticos a Medios de Comunicación" en *Tratado de Derecho Electoral Comparado de América Latina*, Dieter Nohlen, et al (Comp), II Ed., 2007.



As mentioned in the previous paragraphs, in democratic systems in general, the media can take on monitoring functions through what is called “vertical media accountability”<sup>6</sup>. This accountability consists of media monitoring of the government or public administration’s actions, making these actions visible, driving political actors to keep society’s opinion in mind, as well as making state institutions intensify their oversight mechanisms.<sup>7</sup> It can be affirmed that the media contributes to the development of more transparent electoral processes.

Similarly, efforts by the region’s governments to make processes and institutions transparent have been linked to increased credibility with the citizenry. With this objective, the media can support electoral management bodies, thereby creating a positive relationship that allows them to implement mechanisms to increase the credibility of elections. Taking this goal into account, many EMBs are using new communication technologies to inform citizens in real time and without the intermediation of traditional media. For example, in Los Angeles, California, the district with the highest number of voters in the state used Twitter to communicate with voters regarding delays in specific voting centers<sup>8</sup>.

These new technologies can also be used for educating and training both voters and poll workers. Some of the hemisphere’s EMBs use YouTube to post training videos. This method reaches its audience through an attractive and educational tool and one that is already familiar to young voters. Likewise, the Internet can also provide the electorate with an easier way of finding their voting centers. In Mexico, the Federal Electoral Institute collaborated with Google Maps to help voters locate their voting center in a fast and precise manner.

### 3. Access to voting for persons with disabilities

As stated in Article 2 of the Inter-American Democratic Charter, “Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.” As is made clear in this OAS General Assembly Resolution, citizen participation in electoral processes is a fundamental element for the democratic development in the Americas. However, the special needs for persons with disabilities to exercise their right to vote and be elected has not always received a lot of attention throughout the years.

There are different focal points for the exchange of ideas about political participation for persons with disabilities. Individuals, regardless of disability, not only have the right to vote, but also have the right to be elected. Within this framework, it is important to consider the following issues: physical access to a secret ballot, citizen education on accessibility and, the incorporation of alternative perspectives by the electoral management body.

Despite initiatives that promote the participation of persons with disabilities during elections, in many OAS Member States legal and operational barriers impede the full exercise of civic and political rights for persons with disabilities. For example, in some countries in the region, persons who are hearing im-

<sup>5</sup> Giovanni Sartori, *Videopolítica: Medios, Información y democracia de sondeo*, Instituto Tecnológico de Monterrey y Fondo de Cultura Económica, México D.F., 2003.

<sup>6</sup> María Cristina Menéndez, *Política y Medios en la era de la información*, Buenos Aires, Editorial La Crujía, 2009, p. 139.

<sup>7</sup> *Ibid*, p. 178.

<sup>8</sup> Presentation given by Gineen Bresso, Commissioner; Election Assistance Commission of the United States of America, II Inter-American Electoral Training Seminar.



paired, or who do not know how to write, are prohibited from voting. Even though these individuals can communicate through sign language, they are not allowed to vote. Also, in cases where laws have been passed to increase participation of persons with disabilities, numerous challenges still exist related to financing the mandated improvements and developing infrastructure, technology and education.

It is important not only that individuals with disabilities have access to the vote, but, for their vote to be kept secret. To address this issue, some countries have designed electoral materials in Braille and introduced the use of magnifying glasses so that individuals with visual disabilities do not have to be accompanied by another person when casting their vote. In other countries, technology-based voting systems allow voters a variety of options, including listening to a recording and following verbal instructions. The possibility of people being accompanied when voting, doubts over the possibility of manipulation of that vote. These doubts are often more pronounced in highly competitive elections.

Physical access to the voting centers and polling places is another important topic. In many countries, voting centers do not have the necessary infrastructure to allow individuals with disabilities to cast their vote. During Electoral Observation Missions, the OAS has found that some voting stations are located in areas accessible only by a staircase. Clearly, this placement complicates the participation of persons with physical disabilities.

There are two main approaches to improving physical access to the polling location. The first approach is to analyze all potential voting centers prior to the election so they accommodate both persons with and without disabilities. Second, a census can be conducted to identify voters with disabilities and, based on that assessment, adequately equip those locations assigned to voters with disabilities.

Additionally, some other practical solutions have been identified, including sending the ballot to the voter prior to the election and the use of mobile teams to bring ballots to citizens so they can vote in the presence of an electoral official and a witness.

Educating voters with disabilities about the electoral process and the proposals of various candidates is another important element. Since most people receive information through mass media, this resource can also be used to provide information to voters with disabilities. Closed captioning or sign language can be used when broadcasting campaign advertising or informational spots on television. Materials printed in Braille or using larger print may be considered by the electoral authority to increase access for persons with visual disabilities.

The implementation of mechanisms for persons with disabilities to have better access to vote can also be accompanied by raising awareness and educating the rest of the citizenry. To aid in raising awareness, it is important for everyone who participates in election administration to be familiar with the procedures and measures that assist citizens with disabilities to vote. To this end, some countries have implemented protocols and training for election or poll workers and political party representatives.

Many of these changes can be supported by internal modifications to procedures by those responsible for organizing elections and related activities. Not only should the physical spaces of voting centers or messages be accessible to people with disabilities, but these institutions themselves should also be accessible. For example, buildings can have access ramps, documents can be provided in Braille and personnel can be trained in sign language.

Through the discussions at the Seventh Inter-American Meeting of Electoral Management Bodies,



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participants had an opportunity to share and learn about enriching experiences that will allow them to improve the electoral processes for which they are responsible. By providing citizens better access to voting and candidates, from contenders to the media, and from political forces to electoral administration processes, civil and political rights will be extended to all citizens, thereby strengthening the region's democracies.





# OPENING SESSION

**JOSÉ MIGUEL INSULZA**

**Secretary General, Organization of American States**

**W**elcome to this Seventh Inter-American Meeting of Electoral Management Bodies, to the House of the Americas, which as you know, was commemorating its Centennial a few days ago. I would also like to thank the two electoral agencies of the United States of America: the Election Assistance Commission and the Federal Election Commission, whose cooperation contributed decisively to the successful organization of this meeting, which has brought together the representatives of 25 OAS member States.

The chief purpose of these Inter-American meetings is to promote an effective exchange of knowledge, experience, and best practices for managing elections in the region. In addition, however, they also seek to establish and open an effective forum for facilitating horizontal cooperation, aimed at continuously boosting the institutional capabilities of election management bodies and perfecting the organization of elections in the Americas.

One of the OAS mandates is precisely to strengthen and coordinate such horizontal cooperation. Our

plans and programs are geared to creating tools, procedures, and the capacity to improve the performance of our mandates to strengthen democracy in the hemisphere.

As far as elections are concerned, illustrations abound. Since 2005, there has been a marked increase in the quantity and quality of electoral technical cooperation projects undertaken by the General Secretariat. In 2005, only three technical cooperation projects were carried out. Between 2008 and 2010, there will be 16 such projects, involving electoral registries and the implementation of ISO quality control standards, as well as other areas in which the OAS is now recognized as an authority throughout the hemisphere.

The projects supported by the OAS General Secretariat are currently recorded in technical cooperation reports, which together constitute the institution's memory of their objectives, principal challenges, outcomes, and other key information. We have also increased our electoral cooperation response capability, specifically in reference to the timeliness and





accountability of projects. Now, when projects are completed, there is public accountability to political parties, the media, social organizations, and the diplomatic community.

Everyone now recognizes the OAS as the leading electoral observation agency in the hemisphere and its observations amount to a genuine stamp of approval of correct electoral processes. Precisely because of that, the demand for electoral observation missions continues to grow. To date, the OAS has observed more than 170 electoral processes in more than 24 countries. Between January 2009 and May 2010, no fewer than 17 Electoral Observations Missions were conducted in nine member States. More than 3,000 observers have so far accompanied us on those missions. They have come from OAS member States and from countries in other parts of the world as varied as Switzerland, Korea, Serbia or China, just to mention a few. Recently, a major effort has also been made to honor our commitment to continually enhance the professional quality of our electoral observation missions by developing manuals and standardizing the information compiled during those missions.

Inter-American programs have also been established to address specific issues that are priorities for the member States. To date, we have eight such programs, dealing with Political Financing, the Systematization of Electoral Methodologies, Institutional Capacity-Building, Electoral Studies, Inter-Agency Electoral Cooperation, Voter Registries, Quality Management, and Institutional Improvement.

All this work is ultimately geared to effective action. For example, with the goal of strengthening electoral systems, an effort is being made to turn the recommendations of electoral observation missions into projects. Those projects have to comply with three basic requirements. They have to be timely, relevant, and they have to guarantee accountability.

Currently, we are also addressing the challenge of consolidating the electoral role of the OAS beyond the Americas. Recently, in cooperation with the African Union, we have participated in the Inter-Regional Technical Cooperation Missions (MICTI) in Angola and Togo. We are also currently sharing our experiences with electoral observation and follow-ups to our missions with the Council of Europe, and in June, we will be doing the same with the European Union.

I would finally like to assure you, that the OAS stands by its commitment to support electoral institutions and processes in the region through our three channels: observation, cooperation projects, and training. We hope to continue contributing to administrative, technological, legal, and institutional improvements of electoral management bodies and to continue supporting efforts to identify and disseminate best practices in this field. I would once again like to say how much I hope this meeting proves useful for your work and that we can continue striving jointly to maintain, improve, and consolidate this fundamental achievement of our political systems: free and fair elections in the Americas.

#### **CARMEN LOMELLIN**

**Chair of the Permanent Council, Permanent Representative of the United States of America to the OAS**

I'm really honored to accompany you today to launch the 7th Inter-American Meeting of Electoral Management Bodies and I bring you greetings from the Permanent Council.

This meeting is intended to once again open a dialogue that will allow the Electoral Management Bodies of the Americas to exchange and evaluate their diverse experiences, especially in regard to the access of political electoral actors such as political parties, governing officials, the media and citizens to these processes.



Over the past years, this forum has discussed issues of broad yet critical concern, including electoral financing. This time you will be able to bring your specialized focus on three important themes: models of engagement between Electoral Management Bodies and political parties in electoral processes; the role of the media during electoral processes, and access to voting for persons with disabilities.

I am also struck by the diverse participation as reflected in the public program of this meeting. This is, of course, the first time the electoral authorities of the United States have co-sponsored this forum with the OAS, and I am honored and delighted by this fact.

I also know that Dr. Gary Cort, Chairman of the ISO Technical Committee 176, Quality Management and Quality Assurance, who had joined us earlier this year at the Permanent Council, will be offering his particular expertise in this forum.

It is always a pleasure to see substance areas reaching across expert lines to enable a further integration. As a result, we all are committed to engagement and a thoughtful and thorough planning of review processes.

We look forward to the collective results of this meeting, especially your assessment of the different models in our region. Providing better access for citizens to voting and candidates, of contenders to the media, and of political forces to electoral administration processes will strengthen democracies in our region.

#### **DONETTA DAVIDSON**

**Chair, U.S. Election Assistance Commission**

I'm a strong believer that our best work comes from sharing our experiences and our knowledge. That's what makes this meeting so vital and important.

First, I'd like to make sure that everybody understands how we run elections in the United States. We have a very decentralized system and each state and district has their own laws and regulations that they follow in conducting their elections. This means our states take different approaches in running their elections. In our work with them we always find something to learn, to improve the process of elections and to improve the way that our voters can actually vote.

The Election Assistance Commission (EAC), is an assistance commission by law, and we work with the states to improve the process of elections. We are a small staff that works to carry out EAC's activities. We administer the volunteer voting program to test and certify voting systems. We approve our voluntary system guidelines; we distribute federal funds to the states and watch how they spend them. We conduct election research and we maintain the National Voter Registration Form.

Our cooperation with the OAS supports the EAC's mission to assist US elections by learning from our colleagues through out the hemisphere. Today we gather to share the world of experiences and knowledge of our great nations, from the Rockies in Canada to the Andes in Chile. For the benefit of our countries, we have a distinguished group of speakers for the session and I am looking forward to a lively and enriching discussion that we'll have over the next two days.

I am thrilled to be hosting this event with the OAS and Federal Election Commission (FEC) in our great nation's capital.

#### **MATTHEW S. PETERSEN**

**Chairman, U.S. Federal Election Commission**

Today we commence what I know will be an enlightening exchange of ideas and policies between elec-



toral management officials who are all focused on one goal: ensuring the integrity, accuracy, transparency and efficiency of our respective countries' election systems. This is a crucial important objective, because legitimacy of democracy rests upon the effectiveness of its election system.

All of us dedicate ourselves to achieving this goal, using a wide variety of tools and methods. I believe that through the discussions and exchanges of ideas that will take place today and tomorrow we can learn from one another about how we can improve the functioning of election processes in our home countries.

As you know, I currently serve as the Chairman of the Federal Election Commission and it is an honor to be a co-host of this meeting. The Commission was created in 1975 as an independent regulatory agency, tasked with administering and enforcing campaign finance laws in the United States.

Our law reflects two beliefs about democracy in the United States. The first is that democracy works most effectively when voters are able to make informed decisions in the political process, decisions based in part on knowing the sources of financial support for federal candidates. The second is that placing limits on the amount of money that individual contributors may give to federal candidates and prohibiting certain entities, such as corporations and labor unions for making direct contributions are legitimate tools for preventing corruption. By corruption I mean the trading of official government actions in exchange for campaign contribution.

However, the law's scope is limited by the First Amendment to the United States Constitution, which states that government shall make no law abridging the freedom of speech. Since spending money is necessary for a fact of political speech, the US Constitution permits limits on political contribu-

tions only to the extent that such limits advance the compelling interest of preventing corruption or the appearance of corruption.

This principle was recently re-adhered in an important decision by the United States Supreme Court, that in exercising statutory responsibilities, the Commission must faithfully administer, interpret and enforce the law while remaining ever mindful of the Constitutional guarantee of free speech that is at stake during political campaigns.

Because the conduct of election campaigns is inherently political and partisan, the Commission is structured to protect against the law being administered or enforced in a partisan manner.

The Commission is run by six Commissioners who are appointed by the President with the advice and consent of the Senate. By law, no more than three Commissioners can be members of the same political party. Each member serves a six-year term and the Chairmanship of the Commission rotates each year to a different Commissioner, but no Commissioner serves as a Chair more than once during his or her term.

The Commissioners meet regularly to formulate policies and to vote on significant legal administration and enforcement matters. The law requires the votes of at least four Commissioners in order to adopt any official action or policy.

In administering and enforcing the law, the Commission has a number of primary objectives:

- 1 The Commission facilitates transparency through public disclosures of campaign finance activity. Under the Act, all federal candidates and all federal political committees must file periodic financial disclosure reports. The Commission is



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required to make those disclosure reports available for public inspection and does so primarily through its internet-based public disclosure system.

- 2 The Commission encourages voluntary compliance with the law because of the large and ever-growing number of political committees and the corresponding increase in the number of financial disclosure reports filed with the Commission.

Voluntary compliance is essential to furthering the goals of the law. Accordingly, the Commission devotes considerable resources to disseminating educational materials related to federal campaign finance laws to candidates, the public, the press, political committees and state election officials.

- 3 The Commission enforces the Act through audits, investigations and civil litigation. The Commission does not have the authority to bring criminal cases. Commission enforcement matters originate from a number of sources, including external complaints, referrals from other government agencies and internal referrals resulting from audits or inspections of filed disclosure reports.

Non-compliance with the law may lead to an enforcement matter, which often leads to a conciliation agreement between the Commission and the individual or entity under investigation. In some cases, subjects of enforcement actions may be referred to the Commission's Alternative Dispute Resolution Program, which seeks to quickly resolve matters. By law, all Commission enforcement matters remain confidential until a final decision is reached and the matter is closed.



Finally, the Commission develops the law through the instruments of regulations and advisory opinions. The Commission updates or adopts new regulations in response to Congressional action, judicial decisions, petitions for rule-making or other changes in campaign finance laws. Advisory opinions are issued as official Commission responses to questions regarding the application of federal campaign finance laws to specific factual situations.

Together, the Federal Election Commission, the Election Assistance Commission and now, more state and local agencies and officers across the country, all work hard to ensure that every time an individual goes to a polling station to cast a ballot, he or she is doing so as part of a free and fair election.

Through the regulation of the financing of federal election campaigns, the commissioners and the staff of the Federal Election Commission play an important role in furthering the health of our democracy.



# PANEL I:

## “MODELS OF ENGAGEMENT BETWEEN EMBs AND POLITICAL PARTIES IN ELECTORAL PROCESSES”

MODERATOR: STEVEN GRINER, Chief of the Electoral Observation Section of  
the Department of Electoral Cooperation and Observation, OAS

### ALBERTO DALLA VÍA

President, National Electoral Chamber of Argentina

**M**r. Dalla Vía holds a Ph.D in Law and Political Science. He has also a Degree from the Center for Constitutional Studies, at the University Complutense of Madrid, Spain, and the Society of International Studies. President of the National Electoral Chamber of Argentina, professor of Constitutional Law, Director of the Master 's Program in Judicial Training and Constitutional Law at the University of Buenos Aires; President of the Argentine Association of Constitutional Law, a member of the International Academy of Comparative Law, and a member of the Royal Spanish Academy. In 1998 he received the Konex Award in the “Judges” category.

### Jurisdiction of the Argentine Electoral Courts

In Argentina, the National Electoral Justice has jurisdiction at the federal level over electoral and political party matters. The system is made up of 24

federal electoral judges, one for each electoral district, and a single court of appeals with jurisdiction throughout the national territory, hears appeals of decisions issued by the lower courts. The National Electoral Chamber is composed of three judges, whose decisions are binding (see Article 6 of Law 19108) on lower court judges and on the National Electoral Boards, which are temporary entities that are formed with judicial magistrates in each district during election periods<sup>9</sup>.

The plenary nature of judgments is meant not only to unify jurisprudence on a subject that has a strict technical content, but also to prevent legal insecurity.

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<sup>9</sup> The Federal Electoral Judge, the president of the Federal Chamber of Appeals for the district, and the President of the Superior Provincial Court.



rity that could—in an area that is highly sensitive from an institutional standpoint—lead to contradictory judgments, especially since electoral processes are very brief and require prompt and clear definitions to preserve the political objective of the election.

The electoral system has both jurisdictional and administrative authority, although the infrastructural and logistical duties involved in electoral processes are performed with the support of the Ministry of Interior. The system also includes a general electoral command unit for maintaining public security, and the Official Postal Service, which is in charge of distributing election materials, among other things. The information that appears on the voter lists is provided by the National Registry of Persons, under the Ministry of the Interior.

The National Electoral Justice system is responsible for the organization, management, and control of electoral processes, defined as all of the acts that are legally regulated and designed to allow the authentic expression of the political will of citizens” (C.N.E judgments 3473/05, 3533/05 and 4075/08). As explained by the Chamber, it is based on the fact that “under the Constitution, courts [...] may guarantee the primacy of the objective legal truth, which in turn is a requirement for the authenticity of the system, controlling the entire democratic process of the formation and expression of the political will of the people, which begins with the organization of political parties, continues with the internal selection of candidates, and culminates with the actual voting process to elect the national officials” (C.N.E judgments 3533/05, 3571/05 and 4075/08).

Since the electoral courts are part of the country’s Judicial Branch, they exercise widespread control of constitutionality inherent in our system. For many years, it was considered that matters involving elections and political parties remained outside the field

of competence of judges to review, as they were regarded as “non-actionable political matters.”<sup>10</sup> However, case law diverged from this position when a specialized jurisdiction was created within the federal justice system, which considered these matters as actionable.<sup>11</sup> In fact, judicial functions have not been affected by the matters judged, and the intervention of judges is required because they act with impartiality, due to the method they use to resolve matters in strict compliance with the principle of the logic of facts.

The decisions of the National Electoral Chamber may be reviewed by the National Supreme Court of Justice only on extraordinary appeal, when the interpretation of a constitutional provision is directly implicated. Approximately 13% of the judgments issued by the National Electoral Chamber are appealed, and only a small number of cases have been revoked by the Supreme Court.

### The party system

To consider the interaction of political parties in the electoral process, one must first be acquainted with the Argentine party system, understand the context

<sup>10</sup> The Supreme Court of Justice in Judgments 256: 208 (1963) considered that “Both the organization of the electoral process and the contentious jurisdiction function are matters outside the constitutional and legal jurisdiction of the Supreme Court. [...] The Supreme Court’s intervention through its extraordinary jurisdiction is not warranted in matters related to contentious electoral decisions and procedures that are in principle outside the specific jurisdiction of courts. [...]”

<sup>11</sup> On this point, we can cite the case of “Bussi, Antonio Domingo v. the national government (National Congress, Chamber of Deputies) without including the Chamber of Deputies”, Judgments 324:3358 (2001), where the highest court ruled that “It is inherent in the functions of a court to interpret the norms that confer powers reserved for the other government branches, to determine their scope, provided the issue is not a political matter exempt from the exercise of jurisdiction [...]. The conflict generated by the refusal of the Chamber of Deputies to incorporate the person who was announced to be a legislator by the relevant electoral authorities constitutes an actionable matter.”



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in which this institutional relationship takes place and how the parties participate in elections.

There are two different aspects to the legal nature of political parties: one is the civil association that creates them; and the other is the legal and political capacity granted by the National Electoral System to participate in elections, present candidates, and obtain public funding, in such a way that expiration of the legal capacity does not imply the termination of their status as a legal entity.

Article 38 of the National Constitution, including the 1994 constitutional reform, defines them as “fundamental institutions of the democratic system.” Similarly, the Supreme Court of Justice, even prior to the reform, described them as non-state organizations of public law, necessary for the development of democracy and hence instruments of government (Judgments 310:819 and 315:380, *inter alia*). The

National Electoral Chamber has emphasized the role played by political parties, stating that they are one of the most relevant vehicles in the manifestation of the will of the electorate and that “the very strength of the democratic system depends to a great extent on the strength of the party system” (C.N.E Judgments 3054/02, 3112/03, 3253/03, 3423/05, and 3743/06, among others).

Thus, political parties have “the duty to act to enhance the representative system and to strengthen a critical approach and active participation on the part of the voter” (C.N.E Judgments 2984/01, and 3054/02, among others). This is why Article 38 of the National Constitution, in exchange for the freedom it gives parties to engage in their activities, imposes on them the duty to respect the principles of the Constitution, since they are responsible for carrying out an important mission for the State; hence it is essential for their internal organization





to be adapted to the democratic system. Moreover, it is important to note that Article 2 of Law 23298 gives them a monopoly over the nomination of candidates for elective offices, a power that entails the unavoidable responsibility to respect democratic principles in their internal activities, even in selecting their own party officers (C.N.E Judgment 3112/03).

Although public laws govern both the formation and activities of political groups, control of which falls within the purview of the federal electoral courts,<sup>12</sup> everything related to internal affairs of parties is governed by their respective party statutes or articles of association, which form a true constitution governing the internal life of each party. They determine how officers are elected, establish the laws governing the activities of their members, and generally regulate all of their operations. The case law of the National Electoral Chamber has prepared as a standard the principle of “functional regularity,” according to which the slightest interference in the internal affairs of parties is subject to legal action, since it is their own organs that determine their operations, except in the case of serious or flagrant violations of the law. It is important to bear this in mind when considering the interaction of the courts with political parties.

Our federal party system has two types of political parties, with different powers: First, there are district parties, which are the first to be formed in a federal court with electoral jurisdiction in each district, and they may nominate candidates for national legislative office for that district. Secondly, there are national parties that are made up of at least five district parties, and they may present candidates for President and Vice-President. There is also the option of merging or forming confederations of parties at either the national or district level, and the possibility of forming electoral alliances, which have the sole purpose of proposing common candidates

for a specific election yet disband once the election is over.

At present<sup>13</sup> we have 706 parties that are recognized at the federal level as legal political entities. Of these, 37 are nationals and 669 are district parties. In the 2009 legislative elections (June 28th 2009), to seat 127 national deputies and 24 national senators, 713 political parties participated, of which 414 formed electoral alliances and 175 participated on an individual basis.

### **Model for interaction between the National Electoral Justice System and political parties**

In this context, it is important to note that the Argentine legal arrangement governing the organization and control of electoral processes<sup>14</sup> is based on the active participation of political parties,<sup>15</sup> vital in all stages of that process.

Political groups that compete in elections have access to all the relevant parts of the process through

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<sup>12</sup> Minimum number of members, affiliates, adherence to democratic principles listed in a declaration of principles and in political action programs or guidelines, financing controls, etc.

<sup>13</sup> To 12-04-2010.

<sup>14</sup> National Electoral Code, Organic Law of Political Parties and Political Party Financing Law.

<sup>15</sup> This is the case, by virtue of the fact that in Argentina, political parties have a monopoly over selection of candidates (see Art. 2, Organic Law of Political Parties N° 23.298). Before the 1994 constitutional reform, the National Electoral Chamber and the Supreme Court, in the “Antonio Ríos” precedent, set aside the possibility of accepting independent candidates, arguing that the parties perform the function of reducing the different electoral candidates and ideologies, and that the participation of citizens is not undermined by the possibilities available to all to affiliate freely with and participate in political party activities, and to be elected as candidates for a party. The 1994 constitutional reform, by including Art. 38, did not find that the parties had a monopoly over candidates, but rather established that they have the authority to nominate candidates. The Chamber had an opportunity to issue its opinion on this point in the “Padilla” case, where it ratified the decision in “Ríos”.



their representatives and candidates. Firstly, they are fully authorized to oversee the composition of the electorate by reviewing voter registration lists, which are delivered to them sufficiently in advance to check the lists, and if applicable, to lodge relevant complaints (Arts. 28, 32, 38 and 43 of the National Electoral Code [CEN]). In addition, the Chamber has decided to publish the lists on the Internet to facilitate their dissemination and oversight of their content. This decision was included in the recent electoral reform (Arts. 26 and 30, CEN, amended by Law 26571).

Then, after the official approval of candidates, and in view of our unique balloting system, according to which the ballots are prepared by the political parties themselves, the electoral boards convene all the participating parties in a hearing in which each one must show a sample of the ballot to be used in the elections in question. On that occasion, the boards officially determine whether these instruments are in compliance with the law, and parties exercise reciprocal oversight over their respective models (Arts. 62 and 64, CEN). To this end, by virtue of the fact that the boards are not permanent entities but instead are established for each general election, the law provides for electoral judges to submit to the boards in advance the list of recognized parties and their representatives as required for their participation in the electoral process (Art. 55, C.E.N.).

As for the logistics of preparing and arranging election materials, although legislation did not establish oversight of political parties over these activities, the Chamber decided that they should be able to be observed by political parties, in order to enhance the overall transparency of the process. The location of the polling stations and the designation of officials are also reported to the political party representatives (Art. 80, C.E.N.) so that they can be monitored.

As for the voting process itself, the parties have access to all operations through election monitors [*fiscales*] who represent them at the polling stations and voting establishments (Art. 56, CEN). At each polling station, every party has an election supervisor who is responsible for checking operations from the opening of the polls to completion of the vote count, and who can file complaints on the process (Arts. 57-59, CEN). These supervisors, together with the president, must sign the document to open the polling station. If they refuse to do so or were not present at the time, the president of the polling station must indicate (Art. 83, CEN). The president of the polling station is also required to consult with the election supervisors when he checks the identification of voters (Art. 89, CEN), and they are authorized to sign the envelopes together with the president of the election (Art. 93, CEN). In addition, both the vote count of the polling station and the overall total of the votes obtained by the parties are carried out in the presence of the election supervisors (Art. 101, CEN), who sign the certificate of the vote count, or if they refuse. (Art. 102, CEN).

On many occasions, the National Electoral Chamber has indicated that “it is the duty of the parties’ election supervisors to oversee and verify throughout the electoral process if the legal provisions governing it are being fully observed, and in the event of presumed noncompliance, to lodge the appropriate protest with the president of the polling station, indicating the irregularities believed to have been committed or that are being committed in its operations” (C.N.E Judgments 3283/03, 3285/03, 3615/05, among others).

The parties may also monitor postal workers and security forces in transmitting the results and the electoral materials (Art. 106, CEN).

As for the results, we should recall above all that in Argentina, the preliminary counts take place under



the authority of the National Electoral Department of the Ministry of Interior.

We are all aware of the impact of the preliminary results count on public opinion, and of the problems inherent in publishing results that may later differ from the final count. Therefore, the Chamber has adopted various decisions designed to ensure the access of political parties to all of the procedures involved in processing, moving, and counting cast votes in order to ensure effective oversight of the elections by the political parties (Art. 108, 2° para., CEN).

First, the Court urged the Ministry of the Interior to present the software to be used to the Chamber prior to each election (C.N.E Ac. 35/03) so that parties could check it. Then, it developed a procedure so that this oversight, determined in Art. 108 of the National Electoral Code, could be done more efficiently, and established that the software should be presented with its source programs. Finally, the Court fixed deadlines for lodging complaints (C.N.E Ac. 96/06).

In addition, the Chamber decided that the authorities responsible for the vote count—the National Electoral Department for the provisional count and the electoral boards for the final count— should make available computer equipment that would enable parties to follow the operations related to these processes in real time (AC. cit). Measures similar to those for the provisional count were established by the Court for the final count. The political parties are also entitled to assist with and analyze the documentation (Art. 108, 1° C.N.E.)

As noted, the electoral courts interact with the political parties both in terms of oversight functions, and in the actual organization of the electoral processes. As is also clear from what has been said, the policy of the National Electoral Chamber has not been restrictive with regard to access of parties to the electoral process; on the contrary, it has been expanding their

legally recognized powers. In view of this situation, and to learn of the concerns, views, and perspective of the political parties, the Court has created a “Consultative Council of Political Parties,” made up of the national parties. Similar to those in other countries (Panama, Costa Rica, Honduras, and Nicaragua), this Council generates a space in which parties can play an active role, by providing information, suggestions, and opinions on matters related to administrative and electoral affairs (Decision 86/07 C.N.E). In adopting this measure, the Court considered that in decision-making processes of this kind, it is important to facilitate a wide debate in which—as a key guarantee of the republican and democratic system—those who are competent or versed on the issue in question can express their opinions and be heard.

According to the operating plan of the Council of Parties, the opinions and proposals of political parties are debated in “Consultative Hearings,” which are convened with a previously set agenda of the issues on which the parties’ opinions are requested. The topics to be discussed are communicated sufficiently in advance of the consultative hearing, together with the working documents prepared by both the Court and the political parties that have taken the initiative to do so. The presidents or official agents of the parties comprising the Council attend the hearings, but the competent party organs can designate another representative to attend.

Parties interested in proposing a topic must present it to one of the secretariats of the electoral court, which will circulate it to the other parties sitting on the Council, and, if appropriate, will convene the corresponding hearing. In the event that the Chamber has scheduled a meeting to discuss a particular topic, the parties interested in discussing another issue must request its inclusion on the agenda. In this case, and depending on the Secretariat’s decision on the appropriateness of the suggested matter it is circulated to the other political parties.



Proposals made by the parties in consultative hearings and the opinions expressed in them are not binding for the National Electoral Chamber. As a result of the concerns expressed at meetings of the Consultative Council, the Court has issued a series of measures to strengthen the purity of electoral processes. For instance, it required that the Ministry of Interior “at the time it circulates the provisional results in the media, that it also transmits a clear explanation of the nature of the information, the methodology used to obtain the preliminary results, the difference with the final count, and the legal relevance of the latter” (Acord. C.N.E N° 113/07).

In recent elections, various political parties came before the Court to request an international observation mission. The Chamber processed the request, and emphasized the value of this type of international participation (C.N.E Dec. N° 18/09). Another important feature of the interaction between the Court and the political parties is the policy of disseminating information to continuously improve the electoral processes.

In the first place, we have adopted the practice of holding seminars to evaluate the electoral process after the elections, where the parties, their leaders, candidates, and experts on political and electoral matters express their views on the process and offer their suggestions for strengthening the system. The conclusions of these seminars are published and circulated, and constitute a valuable technical tool for thinking about the process and proposing improvements.

In this context, the Chamber has created a “Data Compilation and Production Unit” to produce information relevant for the political parties, legislators, and other players involved in designing the electoral system and parties. Data are presented on the basis of records maintained by the Chamber that are used by the political parties to assess their position on different core issues (levels of representation, elec-

toral flow, voter participation procedures, etc.). This type of interaction, based on the production and dissemination of information on the party system and on each of the political parties, has also been strengthened with the use of the Internet, as the key data for identification and development of their activities are published on the Court’s web page. Finally, there is also interaction in the area of planning and training activities.

On the subject of party financing, the Court, for instance, established an accounting plan that parties must follow in their campaign financing reports, and it gave them the software to write up and publish required reports on the Internet (Ac.95/05 C.N.E). It then organized a series of seminars on the subject geared to party representatives and account managers that were held throughout the country. As for oversight of the electoral act, the Chamber has designed and disseminated a training manual for the parties’ election monitors that show the primary duties they must carry out in order to perform their role efficiently.

### Challenges of the interaction model

The preceding chapter highlights the role that political parties play as protagonists in electoral processes and shows how the electoral justice system channels this participation by adopting specific measures and encouraging lines of communication to strengthen the quality and transparency of the processes.

Thus, following a series of setbacks<sup>16</sup> reported by many political parties in the 2007 presidential elec-

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<sup>16</sup> Delay in the establishment of polling stations, a great diversity of ballots, the lack of them in the polling stations, lack of prosecutors in many political groups, long lines of voters to vote.



tions (although the legitimacy of these elections was not questioned, measures to improve various stages of the electoral process were demanded), the National Electoral Chamber adopted various decisions to prevent a repeat of these problems and called for the cooperation of political parties for correct development of the electoral process (C.N.E Dec. N° 77/09).

These measures included the following: the creation of the “Public Registry of Candidates and Polling Station Officers” (C.N.E Dec. No. 129/08 and 49/09), in which 15,000 voters were signed up via the Internet alone; the “training manual” for polling station officers; the Internet training program, which provides for the registration of persons who take the course, checks to make sure that the entire content is read, evaluates them, and answers any questions raised; and, an instruction manual to accompany the notifications of the appointment of polling station officers (C.N.E Dec. N° 107/06 and 22/07).

In addition, it was recommended that the electoral boards designate “delegates” at voting places to help set up the polling stations in a timely manner and to assist voters and the polling officers, as well as to work with political parties in their responsibility to replenish ballots (C.N.E Dec. No. 57/09). It was also suggested that the federal electoral courts reduce the number of voters per polling station to increase the average time that each voter has to select his political preference, given the diversity of the ballots.

The recent electoral reform law, N° 26571, poses new challenges to the model for interaction between the electoral justice system and political parties. For instance, we could refer to the adoption of the system of “Open, Simultaneous, and Compulsory Primary Elections,” that gives political parties the authority to approve the lists of pre-candidates (Art. 27 of Law 26571), with appeal to the competent

electoral courts (Art. 28, Law 26571), to control the endorsements required to present pre-candidates (Art. 21, Law 26571), and to approve the voting ballots (Art. 38, Law 26571), which will then be submitted to the electoral courts for their official approval (art. cit.). Moreover, it establishes that in the case of national senators and deputies, electoral boards of each political party will be responsible for announcing the candidates in accordance with the final vote count by the federal electoral courts. In the case of the election of national deputies, the final list will be established in accordance with the post distribution system established in the respective charters (Art. 44, Law 26571).

It is expected that, in light of these changes, the National Electoral Chamber will have to strengthen interaction with party stakeholders in order to guarantee adequate oversight of this electoral process. In past elections, the Chamber published on the Internet the lists of candidates presented for approval, in order to inform the public and allow them to pose questions (C.N.E Dec. No. 32/09), thereby opening judicial justification of the candidates for challenges, as part of the candidacy approval process (For more information, see “The Barcesat” case). The primary elections law does not specifically include citizen control of the qualifications of pre-candidates.

To conclude this point, the recent electoral reform did not stipulate a “Consultative Council of Political Parties”, but it did create in the National Electoral Department of the Ministry of the Interior a “Council for Monitoring Primary and General Elections”, made up of the legal representatives of the national parties and the district parties that are not part of a national group. These are not permanent groups but are formed for each election, from 10 days after the primary elections are convened until the announcement of elected candidates. The National Electoral Department must report periodically or



whenever the council so requests on the status of procedures related to political campaign financing, assignment of space in the media, and modalities and dissemination of the provisional results of both elections (Art. 104, Law 26571).

### **An appeal to the political parties**

In recent times, the Chamber, as the guarantor of electoral processes, has been compelled to direct its pronouncements to politicians and public authorities to avoid a repeat of practices or situations that undermine our democratic system.

As an example, it indicated -in a case of political party defection- “its concern over the repeated public conduct that [...] has a negative effect on our citizens and progressively erodes confidence in the republican, representative system of government established in Article 1 of the National Constitution” (C.N.E Judgment 3738/2006).

It has also maintained that “the consequences of having a splintered party system were seen precisely in the [...] national elections of October 28, 2007. In fact, the multiplicity of candidates and the enormous number of official ballots led to a series of mishaps. Even though they did not jeopardize the legitimacy of these elections, they should lead us inexorably to a debate on the instruments established by the legal system to channel electoral candidates and exercise the right to vote”.

More specifically, it stated that it was convinced of the need to study possible modifications to the law that would strengthen the quality and the transparency of electoral processes and avoid a repetition of situations such as the ones referred to (C.N.E Judgment 4072/2008).

With regard to the advancement of the last legislative elections, it maintained that “it is quite clear

that by moving the elections forward to June 28 of this year (see Law 26495), the candidates proposed for elective offices by political groups were prevented from arising from the internal electoral process as stipulated in Article 38 of the National Constitution, because of the tight electoral deadlines, in flagrant disrespect for the principle of political participation that guides our representative system of government” (C.N.E Judgment 4171/2009).

Recently, this Chamber had an opportunity to rule on an issue that touched off a broad national public debate, which even had repercussions in other countries. The origin of the case had to do with the fact that various politicians who held executive offices, such as provincial governors, mayors, or ministers, among others, had their names put at the top of lists for legislative elections to give the parties prestige, but without the intention of assuming such offices should they be elected. This conduct gave rise to the expression “testimonial candidates”, which is still used by the politicians themselves. In view of this delicate issue, the Chamber ruled on the constitutionality of these candidacies in a specific case. In my dissenting vote, I considered that “testimonial,” “possible,” or “conditional” candidates are clearly inadmissible, since they are a breach of the representative system instituted in the National Constitution (Arts. 1°, 22 and 33).

The list of electoral candidates presupposes a political commitment on the part of those candidates, and although the legal-political link of representation is perfected in the voting process, the consequences that have to do with the rights and expectations of citizens that are also derived from it cannot be ignored. Although failure to carry out campaign promises given in a political platform is reproachable, it is even more reproachable to put forward a candidate that does not intend to accept the office, and this commitment is part of the political process



whose legitimacy the electoral system is responsible for protecting and preserving.

Strict compliance with constitutional norms and knowledge of the rules of the game governing the electoral process are an obligation on the part of all the participants in democratic elections. It happens repeatedly in our country that whenever an exceptional practice is adopted, it takes on a life of its own and is replicated on various occasions. Testimonial candidacies are a new version of these practices that this Court will not accept or tolerate, as they are contrary to the National Constitution. One must not forget that it is the fundamental mission of the National Electoral Justice System to ensure strict compliance with what has become known as the “due electoral process”, as an unnamed guarantee of political representation or the rights that are the legal underpinning of representative democracy.

In this regard, the words of Carlos Nino are eloquent, when he said that “this responsibility cannot be delegated to the democratic process itself, since the function of monitoring would simply be influenced by noncompliance with the rules and conditions on which its epistemic value is based. This is why legal scholars such as John Hart Ely, who take the counter-majority problem very seriously, perceive the judiciary as a sort of arbiter of the democratic process. The central mission of this arbiter is to ensure that the rules of procedure and the conditions for debate and democratic decision are met”. (See *The Constitution of Deliberative Democracy*, Ed. Gedisa, Barcelona, 1997, page. 273).

## **ERROL BETHEL**

### **Parliamentary Commissioner, Parliamentary Registration Department of The Bahamas**

*Mr. Bethel is the Parliamentary Commissioner in the Commonwealth of The Bahamas. He has held that position for the past fourteen years. Mr. Bethel is a former high school teacher and principal. He was educated at the Bahamas Teachers College, the University of the West Indies (UWI) and the University of Miami. He holds a Bachelor's Degree in Government and a Master's Degree in Education. As Parliamentary Commissioner, Mr. Bethel has been responsible for the conduct of three General Parliamentary Elections and five General Local Government Elections. He has also served as an election observer in a number of countries for both the Caribbean Community and the Commonwealth of Nations. He has also participated in numerous international conferences and workshops.*

### **The structure of The Bahamas electoral body**

The Bahamas is a Constitutional Monarchy with a Governor General and a bicameral parliamentary system. The Lower House is made up of single member constituencies, the members of which are elected by universal adult suffrage, using the first-past-the-post system. The Upper House is an appointed body.

The electoral management body in The Bahamas is called the Parliamentary Registration Department. This is a department of the central government and comes under the oversight of a Cabinet Minister. The Parliamentary Commissioner heads the Department. Unlike other department heads, the Parliamentary Commissioner is a constitutionally appointed officer. The terms of his appointment and service are set out in the Constitution and the electoral laws.



The Constitution states that:

- (i) There shall be a Parliamentary Commissioner whose office shall be a public office.
- (ii) He shall be appointed by the Governor General, acting on the recommendation of the Prime Minister after consultation with the leader of the opposition, by Instrument under the Public Seal.
- (iii) He shall hold office until he attains the age of 65 years; but there is provision for the extension of the age limit to 68 years.
- (iv) The Parliamentary Commissioner may only be removed from office for inability to discharge his functions, or for misbehavior, following a recommendation to the Governor-General by a Tribunal specially appointed to review his behavior.

#### **Duties of the Parliamentary Commissioner**

- 1) The Parliamentary Commissioner shall have general responsibility for and shall supervise the registration of elections for the election of members to the House of Assembly and the conduct of elections for such members and shall have powers and such other functions relating to such registration and such elections as may be prescribed.
- 2) The other prescribed duties are outlined in the Parliamentary Elections Act and the Local Government Act.
- 3) The Parliamentary Commissioner maintains the electoral register. This means that he must see to it that there is always a register ready should an election be called. The Act says that a register of voters shall be prepared and shall thereafter be revised and amended from day to day, in accordance with the outlined stipulations.

- 4) The register in The Bahamas has a life of five years. This means that a new register is prepared every five years. Not only is a register prepared, but electoral boundaries are also changed or adjusted every five years.
- 5) The Parliamentary Commissioner also organizes and conducts Local Government Elections. These elections are held every three years. In these elections Local Government Town Committees and District Councillors are elected in the various Family Island Districts in The Bahamas.

#### **Structure of the Department**

It is the duty of the Parliamentary Commissioner to structure his office in such a way that it can effectively carry out its various functions. Geographically The Bahamas is a large country, with over 100,000 square miles of land and sea. There are many islands with varying population sizes. The Department must be staffed and organized in such a way that it can effectively carry out its mandate.

The Act states that, in the performance of his duties, the Parliamentary Commissioner shall be assisted by such number of Deputy Parliamentary Commissioners and other officers of the Department as the Governor General, acting in accordance with the advice of the Public Service Commission, may appoint from time to time.

In effect, this means that the Parliamentary Commissioner must develop an operational structure and identify persons to perform particular tasks. The appointed officers are public officers, so understandably they are drawn from the general pool of public officers.

The selection and training of staff is key to maintaining a healthy electoral system, because, in all circum-





stances the conduct of an election must be accomplished effectively and impartially. The quality and training of the staff can have a profound impact on the conduct of voter registration and the elections.

The amount of staff in the Department varies depending on the task at hand. When a voter registration drive or an election is approaching the staff numbers will increase. After these events the numbers fall. This places a particular burden on the Department because there is always the need to ensure that deployed persons are specially prepared for the tasks they have to perform.

The Parliamentary Commissioner makes recommendations for the selection of persons he wishes to have deployed into the Department. This situation becomes particularly acute when selecting persons to work in the two major population centers of Nassau and Freeport.

The national office is based in Nassau and that office is responsible for the overall structural setup of the Department. In that office you will find the administrative base and the computer centre.

That office would also be responsible for dealings with political parties, the media, non-governmental organizations, interest groups and international organizations.

The Freeport office is a regional office. It works in conjunction with the national office in carrying out the national objectives. In the other islands, the Parliamentary Commissioner works through the various Family Island Administrators Offices. Through these offices he is able to reach all sectors of the country and can organize and control voter registration and elections.

Once staff have been identified and deployed then begins the task of training. This has to be on two

levels. Firstly, personnel must understand the nature of the work they are involved in and secondly, they have to be fully conversant with the duties they are expected to perform.

The Parliamentary Commissioner therefore has to have a proper training program in place and that program has to be presented carefully and deliberately. Persons must come to understand that they are servants of the people and as such there must be no semblance of partisanship in their attitude or behavior. The Department is accountable to the entire electorate within the laws and must act accordingly. Their conduct must be transparent and open to scrutiny and they must always work to lift the standards of the Department and to protect the integrity of the System.

The training of staff must be relevant to the roles they will have to play. Revising officers, for example, must thoroughly understand the requirements for voter registration. Applicants for registration must be able to prove that they are citizens of the Bahamas and must be able to describe exactly where they live because people can only vote in the area where they reside.

Persons performing the roles of Returning Officers and Presiding Officers at an election must fully understand their duties and must comply with all the relevant provisions of the law

### **Interaction with political parties**

The Parliamentary Elections Act does not set out any particular regulations regarding the establishing of political parties or what type of relationship should exist between the election management body and the parties.

For a long time in the history of the country, there were no political parties. All candidates offer-



ing themselves for elective office did so as independents. After elections, elected persons would work together, depending on individual interests, to make decisions for the country. Political parties came on the scene in the 1950s and since that time they have become entrenched in the political system.

To date there are two major political parties and a number of smaller parties. The two major parties normally contest all Parliamentary seats and it is almost a given that at the end of the day one of them will form the Government. Needless to say, they are very much concerned about what happens in the Department and are in constant contact.

The Department understands that the political parties play an integral role in our political system. They are important and special stakeholders and play a vital role in authenticating and legitimizing the electoral process and are free to offer ideas and suggestions.

During the period leading up to the 2007 General Elections, meetings were convened between the Parliamentary Commissioner and the Chairpersons of the various political parties.

The major purposes of the meetings were:

- (i) to ensure that there was an open avenue of communication.
- (ii) to provide updates on what the Department was doing regarding voter registration and preparation for elections.
- (iii) to hear their views and get input on what they thought should be happening.

The participants appreciated the holding of meetings and suggested that the communication should continue. The interaction is ongoing.

Having open communications provides benefits for all concerned. The parties use voter registration information to direct their campaigns and to get out the vote. It also helps the Department by assisting in verifying the accuracy of the register.

The political parties, through their efforts, can:

- (i) Ensure that the name of every person who is registered appears on the list.
- (ii) Help to guarantee the accuracy of the information on the list.
- (iii) Discover persons who may be ineligible but whose names may be on the list.
- (iv) Encourage eligible persons to register if they had not already done so.
- (v) Inform people where they can go to be registered and to vote.

The voter registration process in The Bahamas is quite open. The list of persons added to the register is always available to all political groups or interested individuals. Names are added on a daily basis and challenges can be raised against names that should not appear on the register. If such challenges are raised, the challenged person must show reasons why his name should not be moved and the challenger must defend his challenge.

At the time of election, all parties have access to the polling stations. They monitor the process from start to finish, they know how many ballots are received, how many are used or unused and they monitor the count. After the count, they accompany the ballot boxes to the places where they are stored. They may also get certified copies of the count from each polling station.

Needless to say, the political parties have input in the drawing of all political boundaries and the enactment of electoral laws. During the process of registration and elections, all the parties desire



is equality and fair play in the application of the law.

The Parliamentary Registration Department recognizes that as the custodian of the Bahamian democratic system, it must retain the confidence of its public, so it works hard to maintain the confidence of all parties and stakeholder in the electoral system and to deliver good elections.



# DISCUSSION PANEL I

## QUESTIONS

**Carlos Cortez Castro**

**Vice-President, National Electoral  
Council of Ecuador**

Let me begin by congratulating our speakers. These interventions reveal the differences, characteristics, objectives and the efforts that each and every one of these organizations has been doing, and that we have done, indeed, to strengthen democracy and ensure for the public the transparency of suffrage and elections. Dr. Lucena mentioned a great truth<sup>17</sup>: each of our countries has its own characteristics, their own political systems, electoral systems, so the idea of standardizing a single model for all is impractical and inapplicable.

When I listened to Dr. Dalla Vía, I thought he was talking about Ecuador, because those things he said reminded me of my country. For example, he mentioned the issue of party defection. In Ecuador, we call it party defection. When someone is a candidate for a party, is elected for that party and then, due to political expediency, changes his or her political organization. They are seeking a penalty for such *crossing of the aisle*. In our country, some people seek to find a way to separate those politicians from their duties, but so far we have no results.

Another thing that we have in common Dr., is the number of movements and political parties. In Ecuador, we call political parties to those that have national coverage in all provinces and we understand for political movements those which are cantonal or provincial. In Ecuador we are making a process regarding “internal democracy”, this is to say primary elections, a process that strengthens democracy. The Constitution establishes not only the registration of political organizations by the National Electoral Council, but also criteria for them to participate in the election: parties must be registered six months beforehand and hold primary elections.

What I’ve heard in the case of The Bahamas is surprising. They will seek their own path and find the solutions they find relevant. But the common de-

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<sup>17</sup> Se Annexes.



nominator is that we are all committed to strengthening democracy. With this kind of gatherings, meetings, seminars, I think we found the right path.

**Erasmus Pinilla Castellero**  
**Chief Magistrate, Electoral Tribunal of Panama**

I agree with our colleague from Ecuador that these forums enrich our knowledge in electoral issues and also, as with the beloved president Tibisay Lucena, in the sense that many experiences can be shared and assimilated into our country but each of us has their own medicine for some of the problems that arise in the electoral world.

I wanted to make some specific questions to Dr. Dalla Vía, considering that they just approved an electoral law which brings new features to them and that are also new for us. It would be interesting to know how many voters there are in the voter's list in Argentina and Bahamas, and how many voters are required to form a political party in both countries, both at the national and district or cantonal levels. Dalla Vía mentioned that there are mechanisms for advertising oversight in election campaigns. Does the Argentinean law have any action for political party defection?

Also, I would like further explanation about something I think is very Argentinean: testimonial candidacies. I am not clear about how many parties are there in the Bahamas or what is the number of registered voters. I am impressed, though, that it is composed of 700 islands and the logistics of administering an election in an island territory of this magnitude must be something quite complex.

## ANSWERS

**Alberto Dalla Vía**  
**President, National Electoral**  
**Chamber of Argentina**

Nowadays, Argentina has a voter registry composed of almost 30 million voters. We are a federal country and that explains why we must have district parties first and then, many districts to form a national party. This division that catches your attention and ours too, has to do with political practices of recent times when different local parties made agreements with major national parties, especially towards presidential elections.

We all know that, in presidential systems, the effect produced by presidential elections. This situation broke off historical party discipline and at least in Argentina, it changed the idea that the President of the country was at the same time the president of the party. This happened with Alfonsín and with Menem. It doesn't happen anymore. Later on, the President made arrangements with different parties whatever their political tendency was. The Law was very auspicious to party constitution because before the reform, it was not necessary to have affiliates to stand for an election; having adherents was enough. The law gave the party time to have its first assembly and to present a specific number of members; but it didn't require them from the beginning. Also, laws had become very flexible to maintain representation during the elections. The current Law has tightened these requirements. And we are having a controversy: we have a lot of protection orders in first instance. Some of them will reach the Chamber. I cannot tell how this will end but we have a lot of protection orders and precautionary measures requested.

Currently, the law states that to be a political party, one must have affiliates. Adhesions are only re-



quired at the beginning, but you must have affiliates. There is a deadline for new parties to register members, and those members should be 4 x 1.000 of the registry of the voter's list district where the party is established. This is the starting point and obviously leaves out many small parties, which are the ones presenting protections orders.

When the law was discussed in Congress, it established a temporary provision until December 31, 2011, a sort of pardon or amnesty, but that was vetoed by the Executive. So at this point, the protection orders we have in the first instance not only boast the familiar principle of political participation but also the legitimacy of the presidential veto.

Of course, the Electoral Chamber will have to resolve these issues. The debate is representation, governability. Obviously, many parties think that participatory democracy should be broad. Though respectful of that principle, we deem it reasonable to establish stricter rules, because you will understand how difficult it is to manage a system with such a large number of parties. Membership requirements have also become stricter. In the past, parties had a lot of freedom to affiliate people.

Now, when affiliations are presented, we are requesting photocopies of identifications. We are establishing more stringent oversight requirements and even resignation of party affiliations before joining another. We have established the use of telegrams for those purposes. We suspect that many of the party affiliations were not entirely verifiable. The use of new technologies will allow us to know how many members the parties actually have.

In Argentina it is said that the Partido Justicialista is the biggest party with 3 million 400 thousand members and the Unión Cívica Radical, the party that follows, has 2 million and a half. But we think this may

not be real. This situation might occur or be replicated in other parties.

Regarding crossing the aisle, there are no rules. We have no rules that prohibit it. In general, at least in comparative law, parliamentary systems are usually very strict in party discipline and fighting party defection, because in parliamentary systems, who gets to Congress will form the government.

In a presidential system, at least in the form that we have in Argentina, where the legitimacy of Congress is different from the Legislative Power, the traditional debate including the jurisprudence of the Supreme Court, has been the representative mandate until now. This means that the deputy's seat belongs to him, not to the party, unlike the case of the Senate, where the Constitution is explicit stating that the seats belong to the party.

Under this principle, we find no constitutional or legal basis for punishing a person who accessing to a seat, then decides to make an agreement or accept an offer from another political sector. There is no regulation on this matter. In this sense, for example there was a renowned physician who was elected by a particular party. Later he was offered the chairmanship of the Health Committee in Congress. He said he was a distinguished physician and had no reason to reject the Health Committee and also that he had not resigned from the party. He didn't: it was the party that did not want him anymore.

As judges, we had no elements to sanction this. We said in a judgement, though, that we considered these practices really bad and that they distorted the citizen's vote. Our problem as judges, many times, is that if we focused only in the struggles between political parties, we lose the whole vision, which is to protect the people's vote and to protect the expression of the will of voters.



We haven't found another way to do this rather than urge. But we don't have any rules prohibiting this. I think in Spain, for example, even though there is no specific prohibition, the legislator that gets to Congress and then crosses the aisle is left virtually unprotected from all the advantages that the congressman who belong to coalitions have: like having secretaries, advisors or support. And of course that sets some sort of penalty. We do not have it in our system.

**Errol Bethel**  
**Parliamentary Commissioner, Parliamentary**  
**Registration Department of The Bahamas**

We have two major parties and then we have a number of other parties. There are only two parties represented in Parliament and even though we have a number of parties contesting elections, in recent elections no third party has come close to winning a seat in the Parliament. So basically, the Parliament is divided between the two major political parties. I think the closest you will get to somebody in Parliament who is not a member of one of those two parties, would be if somebody would get elected as an independent, which has happened, or for somebody who is a member of the party to leave his party and to either join the other party or not to join a party at all and just remain as an independent. But basically the election is between the two major parties.

In terms of the number of voters, we have fewer than 200,000 voters on the list. As I said, that is spread through all the country. About half of those are in the major island, where Nassau is, that's New Providence; about 20% on Gran Bahamas, where Freeport is, and the others are spread through all of the other islands.

In terms of monitoring all this, I think we have a system in place. So we know exactly where all the polling stations are throughout the islands and we make

arrangements for all of the polling stations. Some of them are very small. I think in the smallest one we would have about maybe 15 voters. So that's the sort of situation we have.

But we have to make sure that we have a system that we can get material to every single island and when we are having elections, on Election Day, everybody must have their material in advance. And when you say that polls are opening at 8 o'clock in the morning, the polls must open in every single island of the country in every poll division at the same time.

## QUESTIONS

**Hugo Sivina Hurtado**  
**President, National Electoral Board of Peru**

My question is for Mr. Dalla Vía. He mentioned that there is a law, 26,571, which is now regulating the electoral system in his country. I have noted some topics. First, for example, it is interesting that after elections, workshops are organized to assess the political outcome, very interesting.

I am a member of the Supreme Court of my country and I chair the National Jury of Elections. The electoral system is composed of three bodies. My concern is related to what the contribution of the electoral court must be to the electoral system in my country.

One specific topic is related to the gender quota. You refer to the gender quota for women, which must be about one third. Then, why not to include a quota for young people, because young people's participation is an important change our country must have. We believe that there must also be a quota of young people, in this case it is 20% not more than 29 years of age. And also, in the case of our country,



there is a situation where the State does not reach all people, all citizens, and therefore we believe that there must also be a quota of native communities and native peoples, which is the 15%. I wonder Mr. Dalla Vía if you have also considered the possibility of having quotas for young people and for indigenous people or communities, in this case of 15%.

On the other hand, you spoke about *crossing the aisle*. In my country, a person linked to the regime of the 90's to 2000, filmed those who were interested in talking with him in the intelligence service. They detected that indeed there were political figures who committed to change their political party, subject to an economic condition. These people were prosecuted and convicted. We have condemned partisans *crossing the aisle* when it involves a bribe.

I would also like to know if you have worked on, politically speaking, *migrating voters*. I mean, that there are political parties or candidates which require votes from people that they need to transport from their resident area to the one where they want to win the elections. Back in my country, we condemn that conduct. Consequently, there cannot be a candidate who takes people from one place to another, making them to identify and locate with an incorrect address and consequently win the election. We had eliminated this situation by severely punishing people who transport citizens from one place to another.

Also I want to know if voting is compulsory or voluntary in your country. Nowadays, the trend is to make voting voluntary. Consequently, the trend is headed in the sense that it must respect the popular will but not demanding that the law be punished forever.

**Tibisay Lucena**  
**President, National Electoral Council of Venezuela**

I want to go back a little to the central theme, which is the relationship between election officials and political organizations, while recognizing the other issues as tremendously important. Once again, that recognition means we all have and suffer from the same problems or challenges. Some are larger than others, only because of the number of registered voters. As for the migrating voters, in Colombia there is another name. We call it *relocations in violation of the law*.

We all have similar problems. In Venezuela we also have the issue of *crossing the aisle*, as some parties called it, and it is known as *el salto de talanquera*.<sup>18</sup> As an unresolved issue, the electoral authority in Venezuela has not taken part in the debate that has been very controversial. The National Parliament has been debating this without having any suggestion to solve it. It has generated some discussion and debates and I like having heard the different topics because I also take note of what can be debated by us, enrich the internal debate within the electoral power, while addressing the issue.

Something very important mentioned by Alberto (Dalla Vía) is related to the number of parties and the issue that parties are registered with a number of members who then call upon a number of militants. Almost two years ago, in Venezuela we re-registered the political entities. We have three kinds of them: the political organizations, meaning the national and regional political parties; groups of electors that can also apply because it is allowed by Constitution, which removes the monopoly of non-

<sup>18</sup> The name for party defection in Venezuela.





ination to political organizations; and electors, who have the right to run for themselves.

When we did the re-registration of regional political organizations, out of 800 registered, we went to a little over than 400; and when reviewing national organizations including the list of active political organizations, we went from a little over 400 to 90 that really have members and voters. Another thing is that because of the small political organizations which are running in the elections not only raise the costs of electoral administration but also the electoral bid becomes quite attractive. However, in terms of how many votes they get, we often find that many of these tiny organizations don't achieve more than 0.005% or 38 votes, five votes, 15 votes, 60 votes.

This is very complex issue, because they accomplished all regulations needed to legalize; however, at the end, during election time there are too many small parties and the citizens don't vote for them.

Dr. Dalla Vía talks about institutional dialogue and Dr. Bethel tells us about the *open communication* with political organizations. In Venezuela we have called this the *Democratic Dialogue* since 2006 with relevant national parties, national authorities and political organizations or their national representatives, with our regional representatives throughout the country. We went a little beyond what is established by law as to what generally all have: such as *fiscales* or *electoral witnesses* at different stages of the electoral process, including the polling station and to pick up the record, that is also set by law.

Through this *Democratic Dialogue* we wanted to go further on and in depth with that relationship. And with a lot of effort and many debates, this *Democratic Dialogue* established with national and regional political authorities at all levels, we accomplished the acceptance and trust from the political organizations. As an example of this, we are having

parliamentary elections on September 26<sup>th</sup> and we already did the primaries for all the parties, something that happened for the first time.

We did them all automated as if it were an electoral process, with strong participation for both political sides of the country which had a great support. My question is: Who leads this *open communication* model and the institutional dialogue? In the case of the Chamber: Does this have to do with logistical issues and not only with legal matters? Does it have to do with technical aspects? Does it have to do with different aspects that go beyond those which are established by law?

The case of the Bahamas is very particular as he said. I cannot imagine the complexity in terms of logistics and even political to the voters and political organizations. I find it very interesting to know the legal matters and in all other aspects of who conducts the dialogue and if you could tell us in which terms they are made. Because all these things help us to further improve those relationships that have a direct impact in terms of improving the quality of electoral processes, the political system, and democracy in general.

This, according to the experience that we have had in Venezuela with this big effort we have done and after these four years, we are reaping great rewards in regarding the acceptance of the trust we earned with political organizations.

**María Eugenia Villagrán de León**  
**President Magistrate, Supreme Electoral**  
**Tribunal of Guatemala**

My questions are addressed to Dr. Dalla Vía. I would like to know how far in advance do you hand over the electoral list to the political parties and to what degree the results are optimized after publishing the register on the Internet. The second question is



in relation to *testimony candidacy*: Why do ministers and government officials submit nominations if they are not actually going to opt for the positions to which they are running?

**Steve Surujbally**  
**Executive Chairman, Elections Commissions**  
**of Guyana**

I accept and recognize that each country has its own peculiarities. However, I think our focus should be on the commonalities. As I come to these conferences, I recognize how many common aspects there are. Whether it is on voter registration, voter education, the last government elections, governing rules and a whole realm of these things.

I would like to suggest that perhaps the OAS Department of Electoral Cooperation and Observation look at those common aspects and of course list those presently unsolved problems and let's have a look at those and see how we can help each other.

I would like to ask Alberto (Dalla Vía) notwithstanding the laws governing the political parties, does the National Electoral Chamber of Argentina have female representation? And the question goes to all of you, because that's the spirit in which the law was formulated in first place. As I go around, I find that we as EMB do not act to the very principle that was established for the political parties.

**Ginette Chérubin**  
**Member, Provisional Electoral Council of Haiti**

I would like to know if the exchange mechanisms with the political parties are permanent or if they occur only during the election period. If permanent, which are they? The second question is for Mr. Dalla Vía. For the federation of political parties, it seems that he indicated a maximum accepted number of parties for the group.

In regard to the gender quota, I would like to know if their country's share is 30%. Haiti's electoral law has measures to encourage political parties to approach this goal. In the case of Argentina and the Bahamas, does the Constitution only recommends gender equality or the quota is well specified? I would like to know also if it is a criterion for the recognition of political parties.

**ANSWERS**

**Alberto Dalla Vía**  
**President, National Electoral Chamber of**  
**Argentina**

The President of the National Electoral Board of Peru raised the issue of the quotas. There is debate about quotas. In Buenos Aires, a city with good participation rates, some people have raised the issue of establishing a quota for young citizens. Personally, since I think your question is rather theoretical or doctrinaire, I think this is an issue that must be handled with balance because quotas are by definition contrary to the representative system. In the case of Argentina, the Constitution established the gender quota, expressed in the provisional clause of the Constitution is 1/3, as 30% of the positions. So establishes the second transitory provision of Article 37.

In Argentina which is a federal country, there are provinces that have higher gender quotas such as Córdoba, which has established 50%. Some also requested them inside the political parties.

Gender quotas are fundamentally positive measures designed to balance historical inequalities and based on the premise that women have been neglected, which is true. Male suffrage in Argentina appears with the law of 1911 and recently women could vote by 1951 with an initiative of Eva Perón.



But shall this be permanent? It is difficult to remove regulations which are already established. I must also say that, because this is a serious debate, if we are fighting about *crossing the aisle* and we are talking about patronage as one of the political ills in Latin America –we already talked about migrating voters- nepotism is also something to be worried about. And gender quotas encourage it because one political principle is to place loyal people on the lists so they can respond. The risk of gender quotas is that they build family business inside politics. And we will have to define whether this is good or not for the representative system.

It seems that at least from the point of view of representation theory, in classical terms, it is against the possibility of voters within the parties themselves to choose freely. So personally I must quickly say that if we add native people quotas and youth quotas to already existing gender quotas, for sure we are going to do too much constitutional engineering and the electorate decision is going to be very restricted in terms of their choice.

I agree with the concern of the president Tibisay (Lucena). In Argentina the National Electoral Directorate (DNE) and the National Electoral Chamber, are working hard on electoral geography and I think that new technologies can help us with the allocation of votes within the territory, but it is evident that the location is one of the elements encouraging clientelism.

As for the institutional dialogue, I have to be honest: the fragmentation of parties makes dialogue difficult when the party splits into many internal groups. At the Tribunal we always speak with the parties. We welcome everyone, so often we have Advisory Council meetings. The problem is whether this ties into the Constitution. We have no initiative regarding draft laws, it is not contemplated under our legislation, so we can only give an opinion. We may collect the opinions of the parties and they are only an

opinion. The experience of a new Act of an Advisory Council within the Ministry of Interior is also new and we will have to see how it works.

We believe that dialogue is always positive, but to the extent that this dialogue should be consultative. Neither can we get into the internal affairs of the party, nor appropriate for us to be regulating the parties, although on some issues we did it, such as the financial control issue. That is something that has been developed by jurisprudence and we had a dialogue that has been very fruitful. We have given software to the parties to see how they present their own bill, we listened to them to improve the system by all and this dialogue has been fruitful. But I think we should broaden this type of mechanism, it would be easier with more stable organic parties.

I think that in this crossing the aisle issue -and this is personal, that is to say that I do not want to involve my colleagues in the electoral courts or courts of first instance, Dr. Tullio and other people- we have held the theory of a representative mandate because this is the classic constitutional doctrine. But it is very difficult to make laws banning crossing the aisle. Some countries have tried. Some see crossing the aisle as a positive form of political expression. But perhaps thinking about on the imperative mandate and its importance to strengthen political parties is worthy of academic debate. Coming back to that, because this division which weakens the party also weakens the drive belts in society.

Regarding the voters list, we do not give it to the parties. These primaries are by law open, compulsory and simultaneous, will take place with the general voters list and not with partisan registries. This voter list, in the electoral code, is given a period of time to be reviewed which is called the period of the provisional registry, where people can make corrections on their data. However, the election is conducted with the final general voter list.



*Testimony candidacies* were a special feature from the last election and I think they will not happen again. Sometimes there are epiphenomena. I think it will not happen again because those who invented them failed. This phenomenon started in some areas of the ruling sector during the last parliamentary election and consist that some governors, mayors, head of government cabinets, were running elections even though they had said that even if they won, they would not assume their positions.

After the public opinion's reaction, ambiguous phrases were said. Justice condemned them. The National Electoral Chamber said they were harmful because they broke the representative system. This decision was taken with some dissent between judges regarding if this phenomenon happened or not, because some judges considered that it was not our duty to get into the consciousness of the views or opinions of candidates; and some of us thought that it was something against constitutional system. The condemnation to such phenomenon was strong in

the sentence but also in the elections, because the results were against those practices. I believe that, ultimately, what is the best solution in political and electoral issues.

**Errol Bethel**  
**Parliamentary Commissioner, Parliamentary Registration Department of the Bahamas**

First, let me mention that communications between my office and the parties would be myself or the Deputy Parliamentary Commissioner communicating with the party chairperson or party coordinator who is appointed by the chairperson. So there is a structure, they will know who to contact and we would know.

In terms of gender, there's no gender quota in the Bahamas. But generally speaking, in most senses, women dominate anyway. We have no campaign finance laws and we have no regulations at the moment governing political parties.





## PANEL II:

### “THE ROLE OF THE MEDIA DURING ELECTORAL PROCESSES”

MODERATOR: Cynthia L. Bauerly,  
Vice Chair of the U.S. Federal Election Commission

**MARC MAYRAND**  
Chief Electoral Officer  
Elections Canada

**M**arc Mayrand's appointment as Chief Electoral Officer of Canada was unanimously approved by the House of Commons on February 21, 2007. Before heading Elections Canada, Mr. Mayrand served as Superintendent of Bankruptcy since May 1997. Before joining the federal public service and the Office of the Superintendent of Bankruptcy, Mr. Mayrand was a full-time professor at the University of Ottawa, Civil Law Section, where he taught Insolvency, Corporate/Commercial Law, and Public and Administrative Law. Mr. Mayrand holds a Bachelor's Degree in Law from the University of Ottawa and a Master's in Law from the London School of Economics and Political Science. He has been a member of the Quebec bar since 1977.

The media has been recognized as being the 4th Power. Besides the Legislative, Judiciary and Executive, there is this other power which serves democ-

ocracy quite regularly and quite substantially. The Canadian system is based on free, open and diverse media that are governed by certain rules.

It is assumed that a key requirement for a healthy democracy is open communication between citizens and those who aspired to govern them. In Canada, a concept that has been not written in law but certainly used repeatedly by the Court, the requirement for a healthy democracy in relations to media is that there's no single voice that dominates debates. And it is from this principle that has been entrenched by a case law, there have been all sorts of consequences that governed media activity during electoral campaign.

While we have a diverse media industry, political parties, candidates and third parties must be able and are able to communicate their ideas and their platforms to electors. But there are not only political parties, there's also what we refer to as third parties, which are not necessarily political entities, but certainly wish to influence the political discussion in the country.



It is important also that the electors, in addition to hearing about political issues and ideas are made aware of the electoral process and how to properly cast their ballot. And that's where electoral bodies are relying on the media to do that.

So what are the rules for us in Canada? Well, they flow from, first, our Constitution which embodies a charter of Rights that includes three essential fundamental rights that relate directly to democracy.

The first one is the right to vote. The right to vote is more than the right to mark a ballot. The courts as they went through various hearings determined that the right to vote more substantially means the right to meaningfully participate in political debate. And that let the courts to rule for example that yes, it was appropriate to restrict temporarily some aspects of the freedom of expression so again that electors can hear all the voices that are in the election. So, the right to vote is the cornerstone of democracy for us as well as the freedom for expression and the freedom of association.

That means also, in terms of media, that media have to provide access to all political parties. That's an issue again of fairness, that's an issue also that is directly linked in the mind of Canadian courts to the right to vote.

The other piece of legislation that governed media is the Broadcasting Act, which provides the mechanism to license broadcasters. And those licenses are issued subject to severe codes of conduct, codes of ethic that governed media. Not only in relation to the electoral process in their ongoing activities. During an election, the organization responsible for broadcasting licenses tracked the coverage that's offered by media to various political entities and ensured that this coverage remains fair.

The Canada Election Act itself does govern the pro-

cess and activity of media during the election. Again, it provides a regime that allows political parties and candidates access to media in two ways.

First of all, it provides free time. All broadcasters in Canada have to provide free time, a limited period of free time to all political parties. In addition to that, the legislation provides privileged access to pay times, which required to broadcasters to provide broadcasting time and *primetime* at the lowest price available in the market. That has caused certain issues and disputes between broadcasters and media outlets and these disputes are arbitrated by what we called the *Broadcasting Arbitrator*, which resolves disputes between outlets, networks, broadcasters and political entities who wish to access the airwaves.

The other aspect of the Elections Act in Canada is that it provides a number of blackouts. Towards the end of the campaign, in the last two days of the campaign, there is a prohibition to release new polls during those last 48 hours. And the idea there is that electors should have a bit of quiet time to decide about how they will cast their ballot without being influenced by polls.

That matter has gone to the Supreme Court again and in the end, the Supreme Courts ruled that a short period of blackout that limits against freedom of expression was acceptable to ensure meaningful participation in the democracy. So again, it's a balancing act that in this case is tilted towards the right to vote and the strengthening of democracy.

The other blackout regards results. Canada has a very large geography as many of you know. We cover six time zones so when electors are finished voting in the East and we've completed counting their results, there are still electors voting on the West coast. So one of the issues was electoral results from the East coast were known by voters that had not yet cast



Panelists at the Seventh Inter-American Meeting of Electoral Management Bodies.

their ballots. And Parliament, after much debate, adopted the rules that prevented the release of the results from the East until all polls are close.

That has cost some concern again as being in attack or an infringement on the freedom of expression and that has gone to court. And no more than two years ago, the Supreme Court ruled that this right to vote meant meaningful participation, extended to a right to have equal information when you cast your ballot. So on that basis, the Supreme Court justified the blackout rules for polling results on polling day.

This is just to illustrate some of the legal issues that are around the involvement of media in electoral campaign in Canada and the sort of balance that was structured by the legislation and by the Courts over time.

### How does the process work?

In terms of free time available to political parties, there is a quantum of minutes that are made available by statute to all political parties. And the arbitrator, depending on the number of political parties,

will determine the allocation of this amount of time among political parties.

For the pay time, there is an allocation of almost four hours for each network that the networks must make available to political parties under the basis of an allocation made by a broadcasting arbitrator. Since it is paid time, not all parties have the resources to purchase the paid time. So it's not rare that the smaller parties will not even get an allocation simply because they don't have the funds to purchase the time. And that wave time will be allocated among those who are willing to pay.

I should mention that this is besides allocation, there's no limit. Parties can still purchase additional time but that would be at the market rate or even at a premium rate if they have to displace other advertisers.

That's very roughly how the media involvement is regulated during an election. As for the Electoral Management Bodies, of course we do rely on the media to inform and educate electors about the electoral process. We have a wide range of programs that seek to rely on media to reach various groups





of electors. We will for example publish of course in the two official languages of the country, French and English, but also in 10 aboriginal languages. We will also publish in various ethnical languages I think it's over 26 languages that represent the diversity of the population in Canada.

We run those things throughout the campaign and again basically to provide essential information helping electors to understand how they can register, confirm where they are registered, to where they can find information, where they can cast their ballot, what are their options if they are sick or unable to attend a polling station. So that's all part of an advertising campaign that's run through the media.

In addition to that, we also have a program that we called Media Advisers that is distributed across the country and these advisers are really there to help journalists understand the calendar, the events in the election and the various specifics of the electoral process. And that had served us well in the past because it's been very effective in correcting misreporting in the media. We were very effective in bringing correction within 24 hours of any misreport and it has been also very effective in helping journalists understanding for example some changes to the law and explaining them to their auditors.

We are also focusing, of course, on special media agents that deal with youth and students to make sure that they get the information on where they need to cast their ballot.

We also run a major advertising campaign more and more in new media. For example in Facebook or even on Google on Election Day, anyone that went to Google in Canada on Election Day would see the logo of the election telling them information about the election and quickly bringing them the needed information about the election as where to vote or when does the poll station close. They had a quick link that

brought them directly to that type of information.

In the future, we are exploring taking advantage of course of new social media such as Facebook, YouTube, Twitter, trying to make sense of them and see how we can use them to better inform electors.

### Some issues that we are facing

One of the things about the Canadian regime is that there are absolutely no rules that govern debates, yet leaders debate. However, even candidate's debates have taken on a great role over the last 30 or 40 years. And right now in Canada, the regime for debate is organized entirely privately between consortiums of media. Media get together in a consortium and then negotiate with the political parties who are going to attend the debate and have been the topic of much public discussion.

Who is going to attend the debate, what is going to be the agenda for the debate, which is going to be the format, all decided and determined privately in agreement between the parties. That's why they never show up although they have a debate. Leaders always threaten to pull out of the debate if it does not meet their certain expectations. That's causing more and more of a problem because traditionally debates have involved four leaders out of 20 registered parties. So you can understand that those who are excluded are pressuring to expand the organization of those debates. That's an issue that we are facing and that so far legislators have not dared to tackle.

Outside the regulatory regime, I think there are issues of the new media that are going to take more and more importance. I think we've seen it around the world, everybody is seeking to take advantage of the new media, which basically are not governed the same way as the Mainstream Media, the traditional media. And that's going again to raise interesting issues.



There are limitations for example from broadcasting from outside Canada during an election. That is very difficult if at all possible to control when that communication is happening through the internet. You don't necessarily know the source or where the broadcast had gone through before it reached your computer.

The other phenomenon, with those new media, is something that occurred in the last general election. New media has brought the discussion and the phenomena of strategic voting to another level. During the last election we had a Facebook site that attracted thousands and thousands of electors who started to negotiate among themselves how they were going to vote and agreeing between themselves that "I'll vote for party X if you vote for my favourite candidate and writing why".

That caused quite a bit of concern in terms of the possible impact of those strategic voting in terms of a close election. And at the time we looked at it closely and we found that as long as they were no trading of favours there was nothing illegal. In fact, it was interesting to see citizens so engaged and caring so much about and changing ideas and views on the various political platforms and on how they would cast their ballot. The other aspect of it is that those arrangements are not really enforceable, because the vote is secret, you never know whether whoever you took an agreement with will actually cast the ballot. That illustrates the sort of issues that we will see

I think more and more in terms of new media influencing the conduct of the electoral process. This is a relatively new phenomenon. It does impact fundraising, it does impact campaigning and it seems also to have an impact on elector's behaviour. And it is something that we will be monitoring closely over the next few years to see whether there is a need to regulate the media which operates in this environment as we did for traditional media or whether

we need to deregulate simply even the traditional media.

### **JUAN IGNACIO GARCÍA RODRÍGUEZ** **Director of the Electoral Service of Chile**

*Mr. García Rodríguez holds a Law degree from the University of Chile and has served as the Director of the Electoral Service of Chile since 1986. During his term, he has organized numerous electoral processes in his country. At the same time and because the Electoral Service of Chile belongs to the Quito Protocol and the Inter-American Union of Electoral Organisms, which Secretariat belongs to the Center for Electoral Promotion and Assistance (CAPEL), he has participated as international observer of electoral processes in almost all Latin American countries. Besides working in elections, for the last 40 years he has taught as a professor of Constitutional Law at the University of Chile, Catholic University and Universidad Central.*

The media plays a key role in electoral processes, as the access that have to the process depends on the candidates and political parties. Democracy requires that the media be inclusive to be universal vehicles for information and also to comply with their role of political comptrollers. The above always keeping in mind freedom of expression.

### **Media legislation**

Before analyzing the issue that brings us together, it is important to consider what types of legislation to regulate the media in different countries and which at the very least, should guarantee public access to information, while also rejecting censorship and protecting journalist sources.

In addition, legislation should guarantee media pluralism through norms that regulate media property and ensure their transparency regarding ownership.



It is not our role to analyze legislation, but it is important to have it present as the basis of discussion for this issue.

### Governmental media

It is important to develop various ideas on the role of governmental media. There are cases where governments have exclusive or some property rights on media and others with free access to certain types of media, both of which contain governmental responsibility.

#### What kind of role should governmental media play in electoral processes?

It is redundant to mention that the main topics that make up an election should be communicated by governmental media. This basically includes information on political parties and candidates participating in the process, questions of debate, the voting process, and any other elements which encourage a friendly process for voters.

Consequently, the media must be impartial and balanced in their election news coverage and should not present programs or articles that favor one particular candidate or political party. Governmental Media should also educate voters on the general and particular issues of the electoral process.

Taking the above into account, one can say that governmental media should fulfill similar functions as that of the EMB. We are currently delving into a very interesting issue, the difference between public and private media vis-a-vis an electoral process. It seems that governmental media has greater responsibility with respect to impartial information and objectivity, and set apart from electoral intervention provided by other media resources.

### Other factors on the media in general

With time the media has gained a greater role in determining political agendas, setting issues of public interest, obligating political parties and candidates to follow these agendas, and in many cases, against their own interests. From this point of view, the media has in practice developed to be a great power within any electoral process.

We are not criticizing partisan media, which is legitimate, only when it does not distort or omit news. It would be unjustified to think that partisan media could be completely disconnected to the interest which guides it. That being said, this is not applicable to an editorial page which precisely reflects the institutional voice of the media.

In addition, media which greatly reflects one party or candidate is not necessarily a test of a determined preference. This may be a result of the candidate's numerous activities or their interesting personality, which is inherent to the informative process. Apart from what has been said on the role of the media in electoral processes, it is clear that electoral management bodies (EMB) should maintain a constant and permanent relationship with the media in order to inform them on the background of the process. There should also be a space within each EMB to do so.

The media also has an important responsibility in reporting irregularities that could arise during an electoral process and, in turn, holds a supervisory role. This situation is viewed more frequently with respect to information that is extended to electoral processes by the EMB, such as EMB websites. This allows uploaded data to have an indefinite duration of time on the web, permitting longer access to information. This situation becomes more complicated with information provided by EMBs with respect to political party and candidate financing in addition to its monitoring.



## Electoral polls

Various media outlets carry out electoral surveys, which are important in any electoral process since they tend to sway public opinion towards certain candidates and political parties. Although these surveys are not directly contracted by the media, they tend to give them important coverage that has become highly important within the electoral process.

Ideally, when publishing surveys, the media should be transparent in explaining how the poll was carried out indicating, for example, how interviews were conducted and the margin of error of their results.

## Other media technologies

The use of media technology has come to be an important issue in electoral processes. The growth of the Internet has been significant during the last few years, especially in its role of informing voters on electoral issues.

A survey published by International IDEA,<sup>19</sup> outlined the following benefits of the internet:

- Improves information on electoral processes.
- Speeds the transmission of electoral results.
- Facilitates the exchange of information between EMBs and other users.
- Reduces the costs of information and increases its efficiency.
- Strengthens participation in democratic processes.
- Can be used for electoral registration and voting.

The benefits of using the Internet in electoral processes are evident. An admirable example of electoral information, not only at a national but international level, is the SINE<sup>20</sup> program of the Electoral Tribunal of Panama which provides electoral information to practically all countries of Latin America and most

recently Asia, Europe, and Africa. The Internet has allowed electoral information to be considered global due to its easy access.

It is important to mention that in Chile these technologies have been used to increase the array of information for voters. Using the Internet, users can find various mechanisms to participate in the electoral process, such as the location of the polling station, times, maps, and other electoral news.

The Electoral Service of Chile has used the following networks:

**Vote better (Vota Mejor).** This program summarizes all the information that voters need on how, where, and when to vote in addition to many frequently asked questions. In addition, on the same web page, there is a space where voters can register their ID number and find information on the location of their polling station, as well as maps using Google Maps, with an option to find the most convenient route to their station. The data is provided by the Electoral Service, where you can also find the polling center's address.

**Mapcity.com** is a complimentary service that easily facilitates finding the location of a polling station using Twitter and the program Mapcity (@mapcity) by sending private messages which say "SERVEL" (Servicio Electoral) followed by the ID number of the voter. In seconds, the voter can receive a response with directions to the polling station and a link to a map of the area.

Prior to voting, one needs to know whom to vote for. In order to better inform voters on their selection, there are websites that connect different instru-

<sup>19</sup> Institute for Democracy and Electoral Assistance, IDEA

<sup>20</sup> Sistema Internacional de Noticias Electorales, SINE



ments such as surveys, interviews, or information on the programs of each candidate

**Votainteligente.cl** is an independent “a-political” initiative that works to promote public policy and proposals that improve the development of democracy. On the web, voters can find documents and opinion columns. If voters are still unsure of their candidate selection, they can run through a test that guides them to find their ideal candidate.

**Electoral.cl:** is a similar proposal, which is also independent, and comprised by professionals and experts in the area of electoral processes, as explained by the web page. Here voters can find news and a complete look at electoral surveys and studies, in addition to electoral laws.

**Tedoymivoto.cl** is a website created by the Foundation to Alleviate Poverty, where using slogans such as “If my child will be able to finish school I will give you my vote”. The page looks to emphasize social policy as proposed by a particular candidate.

**National Library of Congress** also provides special electoral information by collecting data on the “regional panorama” on each of the administrative divisions of the country.

**Elecciones.gov.cl** is a government website where voters can find a complete record of elections since 1989.

**Emol.com (El Mercurio newspaper)**, developed its own special edition on the 2009 Presidential Elections, where voters were able to find the latest election news in addition to other important information. For example, voters found interactive features on the profiles of each of the four presidential candidates as well as an electoral map for the candidates to Congress.

## The media as a recipient of electoral propaganda

Electoral propaganda, created by political parties and candidates to present their platform to voters, has been regulated by electoral legislation for quite some time. This legislation seeks to guide the media in providing pluralistic access and set reasonable tariffs for the corresponding propaganda. The work of the media is important to determine whether its role will be active or passive in the electoral campaign. In general, electoral propaganda is limited to specific campaign times and entails traditional media outlets such as television, newspapers, and radio.

Regarding electoral propaganda in television, there are two main models. The first one, where candidates or political parties pay to get a spot; the other one, that is being used a lot, establishes free television time for a specific period of time so that all political parties and independent candidates can have access to the media in a proportional manner determined by the amount of votes received in the most recent election.

There is no doubt that this system significantly reduces election costs since it is the most expensive medium to use. In the Chilean case, this period of free access was fundamental to electoral processes, especially when one recalls the plebiscite in 1988.

In addition, it seems to be that traditional mass media is losing the importance that it used to hold. The main reason for this step back is the gradual incorporation of media technology through Internet networks that have been transforming this process due to the free and easy access they provide to political parties and candidates. This issue should be considered in future electoral legislation reforms, as has been done in some countries.

Another current and future issue is the role of the media in primary elections. In practice, this issue



and that of electoral political propaganda conspire against time limits time for electoral propaganda.

### JENNIFER VAN DIJK-SILOS

#### Chairperson, Independent Electoral Council of Suriname

*After graduating in the Netherlands earning her Bachelor's Degree in Spanish, she graduated from the University of Suriname earning her Master's Degree in Law. In July 1997, she received her Ph.D. in the Science of Law. For 17 years, Ms. van Dijk-Silos worked at the University of Suriname as an associate professor and as the Dean of the Faculty of Social Sciences. She also participated in numerous trainings in Guyana, Florida and the Netherlands. From 1993 till 1994 she served as the coordinator for RAIIO Training for Judges in Suriname and has worked as a Lawyer since 1998. Dr. van Dijk – Silos has researched topics related to gender inequalities in the Caribbean and Property rights in Suriname. Since 2004 Dr. Jennifer van Dijk – Silos, has been the Chairperson of the Independent Electoral Council of Suriname and in that position she has been a CARICOM Election Observer for the elections in Trinidad and Tobago and in Antigua and Barbuda.*

I will explain to you what the Independent Electoral Council is, what it means in our elections and what cases, what happened and how the media handled it. I will also explain the structure of elections in Suriname.

The Independent Electoral Council of Suriname duties are established in the Surinamese electoral law of 1987. The Surinamese Constitution explicitly mentions the Electoral Law as the instrument that establishes the structure of elections in Suriname. If we look at the structure of elections in Suriname, we see that the government is the organizer of the elections through its Ministry of Home Affairs which is in charge of the organization.

Our country is divided in 10 districts and on the district level we have Main Polling Stations which are the authority in that district. It is more or less an independent authority.

Then, there is an institute called the Central Main Polling Station that is one of the mentioned electoral authorities in our law and then we have the Independent Electoral Council as the supervisor of the elections, the one that certifies the results of the election.

In 2005, we had mainly observed only the Election Day. And it is accustomed to do that. After what we saw in 2005, we made the decision of having observation in 100% of the polling stations in 2010. For that reason we had assigned about 700 observers, domestic observers, to be able to have a 100% presence during this election process.

The observation of the election process of the next 25th of May is divided in two phases: we have the pre-electoral phase which started last January and February. And we have the electoral phase, the voting and the counting. That will be on the 25th of May.

Because of that, we have different types of domestic observers. We have the pre-electoral observers that observe everything concerning the organization of the elections and the mass campaigns of the political parties. We have the Media Observers, we have the observers for the polling stations, the observers for the Main Polling Station and we have the coordinators of the observers. We as the members of the Electoral Council also are district coordinators. So in every district you have a member of the Electoral Council at the top, and then the coordinators and then the observers.

On Election Day, we have a Crisis Center situated at our headquarters and where we complete the noti-



fications, where all our observers will come and the Council will be able to take a media action there. It is good to know that in the law we have the authority to solve problems. If there is something against the law, we are authorized to take every measure to solve the problem.

As part of the pre-electoral observation period we also have Media Observers. The media in Suriname fulfills a very important role during election processes. All mass campaigns are seen on television, sometimes even live. The political organizations buy air time to expose their campaign to the people in order to reach more voters. Also, the media is everywhere in order to capture the most recent developments in the campaign and election processes.

Nowadays, there is no free air time on television for political parties. Before '98 there was free time. I think that is something that we have to discuss in Suriname because you have rich parties and you have poor parties. All the big rich parties give us a lot of "food" to consume every night and we don't even hear something from the small poor parties. We have to discuss in Suriname how equal is the game and the fight to win. So there is a constraint in Suriname in the coming years.

The government also uses the media to educate voters on the necessities they have and also how to vote the day they need to colour the ballot paper on both levels, the Parliament and the lower institution, the County Council and the Research Council.

During this election process the government had bought or received air time from almost all the media for voter's education. The voter's education is presented to the people in all the different local languages to make sure that everyone is informed. I can tell you as observer of the voters, education on TV is the best we have in years; very good programs, very informative, on a very good level, not too high, not

too low and in every language that is spoken in Suriname. It could be an example I think for the region.

It should be noted that a while ago the Minister of Home Affairs, Hassan Khan, publicly stated in a two day training of journalists that politicians at the beginning of their political career need to be trained in how to associate with journalists. He also noted that there should be a code of behaviour for politicians. The minister also stated that journalists need to be more responsible when publishing information. They need to do the research first because there is too much incorrect information that is published due to lack of research. The minister also said he would facilitate the media the information they need.

In Suriname, every story will be published without checking with the other source if it is true or what has actually happened. It is very destructive for the people because rumours are published and most of those kinds of stories are based on a 50% lie and a 50% truth, and that is very destructive for the people and the institutions.

That was the reason why the minister stated that there has to be some kind of code for journalists to make sure that they will do some research and hear the other part, before they published cases.

We had noticed in 2005 that the language used on political campaigns was against ethical norms. It was very rough and personal. That's why we had decided to assign Media Observers and these observers observe the mass campaigns through what is published in the media. According to our observation, the media in Suriname sometimes does not handle their responsibility on distributing correctly unbiased information very well.

That's why it is also necessary to have a code for journalists in Suriname without violating the freedom of press. Of course there will be tension be-



tween the ethical code and the freedom of press. But it is important to discuss it. They need to know the limits on what to publish and how to publish and what the reason is for publishing things. And those discussions will help us all.

We had a very difficult problem. It was not a problem for the Electoral Council but it was presented like it was our problem. This year, on April 9th, we had the deadline for the nomination of candidates. The law says that political parties can nominate their candidates anytime between 8 o'clock and 3 o'clock in the afternoon. Immediately after 3 o'clock, the Main Polling Station has to start reviewing the documents related to candidates.

What happened is that the coalition party had some internal problems and for that reason, they were late because one of the leaders refused to sign also the list of the candidates so they could not nominate their candidates. I think about 12 o'clock in the afternoon, there was a kind of understanding and the documents were signed. What happened is that the President of the country recommended that some of the Main Polling Stations remained open to wait for that party to submit their documents, but one refused: the Chairman said "no, we close at three o'clock and three o'clock is three o'clock time". One waited until 3.30 pm and another one until 4.30 pm.

At that moment, I was in the west of the country and one of my members called me to tell me that they had polling stations refusing to close. Regarding Article 2, we are authorized to take any measure. So I asked my colleague to go to the police and to close the Main Polling Station. When I asked the chairman of the Main Polling Station if she was still open and how could she still be open, she said "if the President asks me to do something I have to do it". I explained to her that we needed to close because it was against the law, against the security that the law wants to give to political parties regarding de-

mocracy. She refused. At this phase of the electoral process, we can only observe and note things that are going wrong or take those necessary measures. Because I was starting to call all my staff to check what was happening, in the whole country, the Main Polling Station closed and the party was still not there.

The political party was convinced that it would be possible for them to nominate their candidates because the President said it and they tried to point their finger to the Independent Electoral Council. This was really a constraint.

For us it was like a gift from God that the OAS was at that time in Suriname. They made a statement of course that the law is the law. That's why I think that the President said that he is not authorized to interfere in these things so they had to go to court.

I really experienced that as a gift from God because the pressure from the party was very hard on the Council, the press brought this bigger than it was, and it was also difficult for me. But with the OAS watching our back, we felt very strong. Thanks for that.

And what did the media do? They had a sensationalistic behaviour in this matter, distributing unconfirmed and biased information to the public so that provoked a lot of confusion. As a result of that, the Independent Electoral Council thought it was extremely necessary to come to the people and clarify the situation.

We printed up a press release, which was neutral, short and with our opinion and why. We gave it to the press so they had good information but nevertheless the media still managed to release incorrect information.

The media observers have started to do their tasks and they will work until the end of May. They have





the responsibility to listen, read and watch all media in Suriname, political propaganda and Mass campaign news. They also see how responsibly the media handles their role in distributing information to the people.

We started this project and assigned one of the best journalists in Suriname as one of the coordinators of the media Observers. We aim that the Media Observers will give us a report and after that, we are thinking about holding a workshop using that report.

The Independent Electoral Council trained the media Observers to pay attention to the language that is being used by politicians and if a politician provokes or stimulates or encourages discrimination or if a politician sabotages the other's peace or uses his public speaking just to attack his political counterpart. We hope that after the workshop, we can formulate a kind of ethical code for campaigning.

In Suriname we have all sorts of ethnics groups. During election time there are ethnic emotions rising with the politicians that want to play with the ethnical emotion of the people; and that's the problem.

We need to realize that Suriname is in a state of development and that people are still getting used to our watchful eyes. The Independent Electoral Council of Suriname has the intention to observe in the most comprehensive way, everything that has to do with our elections. We acknowledge that is our duty and authority is to see that elections take place according to the law and under the principles of democracy.

## LEONARDO VALDÉS ZURITA

### President, Federal Electoral Institute of Mexico

*Mr. Valdés Zurita earned a degree in Economics from Anahuac University and a Doctorate in Sociology from the Center for Sociological Studies of El Colegio de México (The School of Mexico). He was Professor of the Department of Sociology of Izatapalapa University where he taught various courses at the undergraduate level in political science and at the graduate and doctorate levels in social studies. He was Executive Director of the Federal Electoral Institute (IFE for its abbreviation in Spanish) from 1996 to 1998. He also served as a member of the Commission of specialists studying voting patterns of Mexicans living abroad, set by the General Council of IFE in 1998. From 1999 to 2005 he was the Electoral Adviser of the Electoral Institute of the Federal District, where he presided over the Organization Electoral Commission. He was President of the Directing Council of the Mexican Society of Electoral Studies (SOME for its abbreviation in Spanish).*

## NEW POLITICAL COMMUNICATION MODEL: IMPLEMENTATION AND ACHIEVEMENTS

### Background: 2007 Electoral Reform

Electoral reforms have been implemented around the globe as a result of the political changes that took place during the 80's. Throughout Latin America, these reforms are a consequence of hegemonic party systems and the end of dictatorships.

Mexico has always taken part in these changes. The political regime has been transformed through a long democratic process. Since 1988 Constitutional and electoral reforms have been implemented to strengthen the new party system and to help make the electoral process more transparent.



In Mexico, 20 years ago, elections were still overseen by the government in office. This meant the competition conditions were not equal and results had low credibility.

Since 1990, electoral reforms have taken place to help develop a complex, but credible electoral system and an accredited referee. Those reforms led to the creation of the Federal Electoral Institute (IFE), a public and autonomous authority, responsible for organizing federal elections; that is Presidential elections and those in which the House of Representatives and Senate are elected (Lower and Upper Chambers).

The IFE was created as a response to citizen requests of having an impartial electoral authority, which would implement certainty, transparency and a legal framework for political parties throughout the electoral race. One of IFE's main contributions has been eradicating illegitimacy, doubt, distrust and suspicion from electoral processes.

Since the creation of the IFE, the constitutional and legal frameworks have gone through many important changes, which have impacted its integration and attributions. Some of the most important ones are:

- The 1994 reform implemented a citizen electoral authority. Citizens participated as head of voting stations as well as part of the General Council, the IFE's highest decision-making body.
- The 1996 reform consolidated the Institute's autonomy and independence. A set of rules was designed to contribute to a fair race and to consolidate political parties as public interest entities.
- In 2002, legislation on gender equality was passed, for both political parties and electoral processes.

- In 2005 a law was passed to allow Mexicans living abroad to cast their vote for Presidential elections.

Nonetheless, the 2006 elections posted a fundamental opportunity to promote urgent modifications for electoral processes. These elections represented the closest and most competitive elections in our history.

This election was a true test of the electoral laws set in place, as there was a lack of regulations for the use of mass media, radio and TV by political parties and the candidates. Political parties and candidates were allowed to purchase radio and TV air space to be used to promote their campaigns and propaganda in an attempt to win the citizens' votes.

This was one of the closest elections in history, in which the difference between the winner and the loser was less than one point. This, in addition, to a political communication model which came along with unfairness in TV and radio air time, as there was no regulation on limits to buying this time. This resulted in a polarized political scenario and society.

Negative campaigns, full of lies and disqualifications among the main political parties, in their attempt to obtain more votes, dominated the political campaigns during 2006. A lack of fairness during this election was also centered in the budgetary differences among the small parties and the three dominant ones. The purchasing power of the later obviously harmed the participation of the smaller ones.

The influence of TV outlets grew as parties based their communication and promotional strategies to reach their constituents on this outlet. Parties invested an average of two thirds of their budget on TV ads.<sup>21</sup>

<sup>21</sup> Democracy: Media and Elections in Mexico. Mexico, FUNDAR, Center for Analysis and Investigation: 2009.



Further, the IFE was not legally capable to prohibit government officials from intervening in electoral processes. This resulted in the participation of the President in office in the political campaigns.

As the numbers failed to favor him, the candidate who lost the elections challenged the results. After the final vote count and declaration of the Judicial Electoral Tribunal Superior Assembly (Sala Superior del Tribunal Electoral del Poder Judicial de la Federación) – which is the highest ranking body tasked with settling electoral disputes – a winner was announced, and he took office in December 2006.

The political setting was tense and a labor of conciliation and negotiation had to be implemented. After the elections, political parties, legislators and all stakeholders involved, fostered electoral reforms needed to make the electoral competition more issued-based and less dependent on mass media.

For Mexicans, electronic media (radio and TV) had played a strategic role during an unfair and partial electoral race. An arbiter, who could observe and punish excess of political parties and candidates, was necessary. A parliamentary debate began, which resulted in the passing of Constitutional and Electoral Reforms. These new laws were implemented as of 2007.

The Mexican Parliamentary passed an unprecedented reform. These modified the Mexican electoral system and renewed the competition rules under which elections take place. It specifically transformed the conditions in which candidates and parties could do propaganda through TV and radio during electoral campaigns.

These reforms were a response to citizen and political requests brought about after the 2006 elections. The main reform, and for which the 2007 elector reform is better known, is that relative to mass media communication outlets.

### Characteristics of the new model of political communication

The IFE became the only authority who could administer government radio and TV air time to be destined to political parties and to the electoral authority.

No political party, person or organization, other than the IFE, is allowed to buy air time or promote electoral messages on radio or TV. It is also important to state that it is forbidden to broadcast these types of messages even if they have been contracted abroad.

Therefore, the relationship with the media changed and a new relationship was established among the IFE, mass media outlets, political parties, local electoral authorities, governments, public entities who would buy air time and the people in general who intervened with the media during elections.

Under this new political communication model, electoral competition conditions were modified and the opportunities of this new scheme were transferred into guaranteed participation and access for political parties to the media. These new regulations controlled the political influence of mass media and avoided government publicity to influence citizens.

This new communication model complied with the set up for the 2008-2009 electoral process and has to do so for the upcoming Presidential election in 2012:

1. Guarantee that all radio and TV propaganda must be part of the government's air time.
2. Prohibit and sanction all contracts and acquisitions of air time used for electoral purposes.
3. Establish air transmission patterns according to fair assignment of space on media outlets.



4. Sanction, per request, attacks among candidates or parties.
5. Verify that TV and radio spot transmissions abide the law.
6. Monitor news programs.

Mexico is now one of the Latin American countries, such as Brazil and Chile, that prohibit parties and candidates to purchase political ads on electronic media. Chile, for example, has a long standing tradition on these issues; since 1965 it established free TV air time exclusively for political parties. Nonetheless, parties are free to buy airtime on radio. The Television National Council (a multi-party body proposed by the President and approved by the Senate) is responsible for time distribution.

In Brazil, for instance, political propaganda was banned from radio and TV since 1988. The State is responsible for administering public air time for all political parties. As well as in Mexico, negative campaigns are prohibited.

The IFE is also responsible for supervising the political parties' budget. All information is public.

Air time on electronic media is prohibited. In Mexico, we monitor news programs in which we take into consideration news pieces as positive, negative and neutral. We then report the impact of what we monitor.

To thoroughly comprehend the communication model which the 2007 reform brought about, it is important to state the following:

1. The IFE does not limit freedom of expression or previously censured the contents of the ads sent by political parties to be aired. The electoral authority receives the ads- which have been developed by political parties- and verifies, through an acoustic fingerprint that

these are correctly transmitted according to the transmission patterns established by the electoral organism.

2. The IFE will only intervene or takes part as requested – by citizens or political parties– by those who consider that their rights have been violated or the law has been broken. The IFE will only apply the law and settle controversies under its own authority.

### Performance and achievements

As the IFE is the only authority capable of administering and distributing, among parties, the government's radio and TV air time, it has also acquired the responsibility of monitoring these spots. To perform this duty it has:

1. Established institutional relations with radio and TV outlets for federal elections throughout the country.
2. Installed a large technological infrastructure (150 monitoring centers were established throughout the country) to verify that outlets applied the new regulations.
3. Established a procedure with fixed deadlines, to sanction those who do not abide by the new regulations.

The IFE established a technologically novel solution, not only in reference to electoral issues, but in terms of engineering. As there was no such instrument with the specific characteristics needed, the IFE needed to install an appliance that was not available in the international market, so one was manufactured ad hoc to allow the IFE to apply the law. This new system is known as the Integral System to Administer Government Time (SIATE is its abbreviation in Spanish).

This system automatically produces the transmission pattern based on the fairness established by



law (all parties and their candidates have radio and TV air space guaranteed); it establishes the audio and video technical quality; it sends them via satellite or Internet to local radio and TV stations; it detects their transmission, it records them and saves them to verify if they abide by the law, and finally; it generates reports on the posts transmitted.

As you may well realize, this titanic process was implemented in only a few months. We were in need of human, technical and material resources to establish sufficient spaces to mount all the equipment, and the knowhow of the procedures which were not very well known by the IFE collaborators or the political parties. All this was necessary to administer the 48 minutes that the IFE was provided daily on TV and radio for the purposes of electoral information and political communication.

Just to give you an idea of the hard work that this represented, the administration of 48 minutes daily on radio and TV for the 2008-2009 electoral process, involved the transmission and verification of close to 33 million party and authority propaganda, from January 31 (primaries) and July 5 (Election Day) on radio and TV.

When the process ended, August 2008, as a result of the verification process, 563 reports were filled on probable non-compliance in the transmission of spots. Of these, 376 were related to radio stations and 187 were TV channels.

As you may observe, we have been able to put together our collective knowledge and a step by step adjustment to the new TV and radio constitutional regulations.

One of the most outstanding results of this process was the progressive regularization of electoral transmissions on electronic media, reaching 95% of observance for pre-campaigns and campaigns.

The AH1N1 virus unexpectedly emerged during April 2009, amid the electoral process. This represented a new challenge for IFE, as it was the radio and TV authority during those specific dates. The public airspace was also to be shared by the health authorities.

The IFE- being the only authority permitted to disperse air time - allowed the Secretary of Health to use public TV and radio air time to inform about the virus and strengthen sanitary actions and protocols, to successfully manage the sanitary risk.

Because of the monitoring, it was possible to obtain a picture of the effective behaviour of electronic media throughout the country. IFE's media monitoring was able to demonstrate irregularities in the transmission of radio and TV spots. It had the foundations to apply sanctions to those who overlooked and broke the law. All formal complaints were backed up with information from the media monitoring records.

Although the SIATE had an effective and integral behavior in the past elections, we are now in a stage of consolidation and adjustment. The past experience requires that we make some changes and modifications to make it a more flexible and user-friendly use system.

By 2012, we expect to have a better system and we hope by then, government offices, public and private universities and all international organizations can also use our system to help verify and measure the impact of political propaganda for specific issues. This could be done through the signing of agreements on both parts.

During 2010, Mexico will hold 15 local elections. Monitoring and verification of these processes is key to obtain the same results we were able to achieve in 2009.



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Reaching a fair electoral race in Mexico, as a result of the presence of political parties and candidates on radio and TV, has become a main element in the consolidation of democracy in Mexico.





## DISCUSSION PANEL II

### QUESTIONS

**Steve Surujbally**

**Executive Chairman, Elections**

**Commissions of Guyana**

**T**his topic is of such importance in countries, especially in countries with underlying tensions whether the tensions be racial, ethnic, religious, economics, that we do not have the luxury of just documenting that there is a dilemma and then do nothing about it. And I can't rely on the grace of God as in the case of Suriname.

In Guyana, the elections in the past have been surrounded and characterized by blood, death and miscellaneous mayhem. Nothing in the magnitude of the deaths in Eastern Europe in Bosnia, Croatia, Serbia, and surely not those that emanated from the Media in Mill Colline, a 1.000 hills in Rwanda, where after seven months of propaganda 800.000 people died.

When we speak of the role of the media, during electoral periods, we are really talking about the immediate pre-electoral period, the peri-electoral period and the post-electoral period.

We tend to commit all lists of considerations of the

role of the media in the inter-electoral period, that period between elections. Now, any political party, any serious political party will tend to begin preparation to the next elections soon after the current elections are finished. It is during this period between the elections that the fundament for so much rhetoric posturing and general nonsense is prepared and anchored. They are preparing themselves for the next elections.

It is for this reason that I am proposing something that has components of what many of the panelists had said. I am proposing a mechanism that should be established to remind and to alert the media of their duties and their conduct. Not just those duties that are captured in the law. Now, that mechanism –I feel- must be located in the EMB.

With the aid of CIDA (Canada) and UNDP, our elections commission has brought all the media houses, all the publishers and all the practitioners together to sit down, to establish together a self regulatory system not deregulatory, as we heard. However, a





self regulatory media code of conduct sponsored by the EMB of Guyana.

Now those media practitioners and publishers and media house owners together define the rules and regulations compatible with the law under which they are prepared to operate. They are putting together this media code of conduct.

And in this way, the dilemma reflected by Mark (Mayrand) could be resolved in certain countries in the Caribbean and elsewhere. Concomitantly you must establish a media monitoring unit similar to the one the colleague of Mexico spoke about. Under the EMB in which trained and professional personnel will be there to constantly monitor those programs and remind anyone who's stepping away from this code of conduct established.

Now the media monitoring unit monitors all the TV programs, all the radio programs and all the newspaper articles. It has been used successfully and a colleague from the BBC in fact helped us to get these media houses together. It has been used successfully in Nepal, Malawi, in Bangladesh and now in Eastern Europe, in Bosnia.

I am saying that the self-regulated mechanism with some cloud not lastly from the light itself, will make that difference. I think that the media practitioners want to be genuinely noble. They just don't want, as people think, to sell newspapers. They want to be professional in their work. And I think we should be helping them.

**Tibisay Lucena**  
**President, National Electoral Council**  
**of Venezuela**

I think we should make a proposal: that at our next meeting we can discuss this issue as central because it is very important and has too many nuances. It is

a problem that goes from -if we could say- two extremes: some political organizations that become captive of the agenda of the media; and others where the political organizations or even the media seek through the media to take advantage over smaller organizations.

And that is the question for the three: In Chile, when you distribute TV air time for presidential and parliamentary elections, on which basis is that distribution done? Is it done nationally or regionally? How many parties are there in Chile? I think these are extremely difficult things to resolve.

In the case of Suriname with the figure of media observers who participate in the *Crisis Center*, how does this *Crisis Center* work? Does it work nationally or regionally? Where does the observed material end up? How are those claims resolved?

For Leonardo (Valdés Zurita), they have this prohibition to buy air time for campaigns because they already have 48 minutes for that purpose. How is all the time distributed? Those are challenges that we've had. We've had two experiences in two elections where we've tried with a lot of trauma to control the TV time prohibiting contracting. We have been successful only when blocks are fully defined and the small organizations are not included.

Those parties with fewer votes, which are much smaller, have the same amount of time as large organizations. I think the criteria applied to assigning those minutes and distributing them in the media to all the parties when there are so many parties, is a very big challenge.



**Alejandro Tullio**  
**Director, National Electoral Directorate (Ministry of Interior) of Argentina**

I will make three main reflexions and raise some questions. I want to say that as explained by Dr. Dalla Vía, Argentina just reformed its electoral legislation incorporating a system of dissemination of advertising campaigns by political parties at the federal level similar to Mexico. There is an absolute ban on the purchase of spaces by political parties, distribution based on an arithmetical formula, and a draw for the amount of space and the allocation of those spaces for campaigning.

As stated by Tibusay (Lucena), one thing is to say it, another is to write it down and another one is to gain votes in Congress. But the worst is yet to be seen and this has to do with how we do this in countries with different realities from each other. I think we have much to learn and also a long way to go. We learn not only from each other's experiences, but from our own mistakes.

I think this is a long route that each country reforming its legislation regarding what is looking in that sense. There are others that are satisfied and it's quite respectable to have another model. However, those who play the campaign theme, they are doing it in this regard and I think it requires a regional analysis.

The resistance to change by corporate actors, actors at the level of corporate media, can have many origins. Undoubtedly, market issues, business lost with these changes are important. Maybe, and I leave it posed as a question or a challenge for other meetings, there is also a matter of political positioning and even dominant ideologies in public discourse. There are some ideas that if the State doesn't place them, they are not in the media agenda. And I think we need to think about it.

Twitter, MySpace or Facebook are tools which get to people where the spontaneous interest does not. Some important parts of population, mainly youth and adolescents who do not have a spontaneous interest in electoral matters or civic issues, can approach them through this social media, because these tools may get where television or newspapers cannot, encouraging their interest.

We are constantly receiving information on issues. Twitter is a much politicized tool. At this point, people are trying to redefine it not as a social network but as mass media. Therefore, I would like to know, I would like us to exchange papers on strategies used in connection with the dissemination of electoral matters by Twitter, Facebook, MySpace and such messages.

Finally, coinciding with our Guyanese colleague, we still have a question, which is the contradiction between the right to freedom of expression that not only people but institutions like political parties and election regulations also have. Our colleague from Canada explained it and it is understandable -and our country has progressed in this- which is to have a spending limit, time limit and in allocation of space during electoral season.

But what happens during non-election time? No regulation? It is possible to regulate? Shall we regulate? Are the parties entities whose access should be guaranteed through the state? Or should they have freedom of communication during non-election periods? That's another question that I would like to hear some thought about.

**ANSWERS**

**Juan Ignacio García Rodríguez**  
**Director, Electoral Service of Chile**

I think we are all interested in the subject. First of



all, what happens during the non-electoral period has been addressed here repeatedly. I think the non-electoral period is important because if we have political party primaries, it is clear that there is a problem that involves media. In non-electoral periods for general elections there are primaries, so it is clear that there is a problem of whether media and advertising should be included in regulation depending on each country.

Chilean law, for example, establishes the coverage of political parties and their campaigns. A political party can campaign during non-electoral periods to educate their militants. In that sense, Mexico gives us an example of the possibility to have something similar in non-electoral periods. In Chile, that is not regulated at this time.

I agree that the coverage in non-election periods should be studied as an issue, and as Alejandro Tullio puts it very well, mainly in terms of civic education. Our countries have great difficulties, at least in the Chilean case, our youth is not interested in politics. Well, necessarily we have to have more accurate and precise civic education, whether in educational programs and media outreach programs.

Regarding the question of free allotted advertising slots, ours is very limited in television time. It is only awarded in the last 30 days of campaigning prior to the process. It is a campaign that only affects television. Television has a national free allotted advertising space that all available over the air broadcast television should provide. The over the air broadcast television should provide this allotted advertising time.

The media have practically become either the major collaborators of the electoral body or its greatest enemies; enemies in the sense that they will surpass us in many aspects. How do we make the right relationship, not to be outstripped and to be better connected? That is an ongoing task for us. We cannot

think that the media is going to be our enemy. But of course that requires a whole process of good relationships and friendship with the media.

The allotted advertising slots are set by the National Television Council, which is an independent government agency, according to the votes won by parties in the last general election. It is proportional; half an hour on two shifts. So the schedule is set by the Television Council. There is a schedule in the morning and at night, during primetime at 9 pm.

It is distributed in such manner among the parties according to votes obtained; a big party will have more space than a small one. For example, there was a very small party that was from the South and its symbol was a rooster. In 10 seconds, only the rooster appeared (on TV). Or even an independent candidate who has a very small space, that person can say "hello how are you" and that's it. It seems that I am exaggerating, but I am not. The majority party has more space in that half hour.

It is different during the presidential campaign. In the presidential campaign all candidates are equal, because then there is nothing to compare with. But in any case depending on the application too, because a party candidate has more room than an independent candidate, that aspect should also be kept in mind. But it is based on votes and no more than that half hour or 40 minutes for presidential campaign. So, that's all there in the field of free slots in Chile.

Also, regarding what Alejandro Tullio said, this tiny strip of television was challenged in courts of law by the television companies and in three protection orders that had been discussed in ordinary courts of law in Chile, who ruled in favor of the strip. The strip represents an order from the state in granting the radio band and that was the argument used by court to rule in favor.



**Leonardo Valdés Zurita**  
**President, Federal Electoral Institute of Mexico**

How is time distributed in Mexico? We apply the same criteria used to distribute public funding to political parties. From total time to distribute, 30 percent is allocated to the parties equally. In our case, in last's year electoral process, there were 8 political parties, one lost the record, so we now have seven, and 70 percent is allocated in proportion to the votes obtained in the previous election. This is for electoral campaigns.

In Mexico, a complex mathematical formula is used with the same criteria as applied to state elections; the distribution is made for the campaigns in the states, depending on the results of the election in each state of the Republic.

Therefore, one of the most complex aspects of SIATE<sup>22</sup> is the design of the advertising guidelines not only to assign every party the right amount of time but also to implement a cyclical procedure that allows political parties to appear in every time frame of every TV and radio station. In such a way that we have a sort of loop, so all political parties have access at all times regardless of the number of repetitions that involves the time it for each one of them.

During non-electoral periods, the State still has 48 minutes and it uses them. The law states that 12% of that time should be devoted to political and electoral issues. This means that during non-electoral periods when there are no campaigns, we have six minutes to distribute among the electoral authority and the political parties. The criterion is 50% for election authority to broadcast civic education programs to encourage political participation of citizens, and the other 50% is distributed among political parties, in equal proportion. Because there is no political contest in this period and therefore all political parties should have the same possibility to present

their ads, they are all assigned the same amount of time.

In Mexico, because it was established by law that messages are 30 seconds long. This means that 48 minutes become 96 daily spots. There is no possibility to accumulate those minutes and there is no possibility of longer programming. There are 30 second ads. Perhaps this is one of the elements on which we must think in terms of whether this is the best format for electoral political communication to citizens, because the truth is that it looks a lot more like advertising communication than to electoral politics.

Regarding the attitude taken by the media in regards to this type of regulation, it was well expressed by the president of Chile's electoral body that it behooves us as electoral bodies to have a friendly relationship with the media. I would say not only with them but also with citizens, parties and many other political actors. What happened is that in Mexico they went from being friends to regulated entities. And like all the regulated entities, the media is subject to a statute. And the law must be applied to ensure accountability. In that sense, we stopped being such good friends as we were in the past, and today they are regulated entities that have to observe the law in the terms that it establishes.

And I connect that with the concerns of our Argentine colleague because effectively what has been revealed in the Mexican case is that it is not just the business, which was plentiful. The amount of resources they obtained by selling political propaganda, the TV networks essentially was very large. But the problem was not merely economic. The problem actually has to do with political and ideological ori-

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<sup>22</sup> Sistema Integral de Administración del Estado, SIATE, for its abbreviation in Spanish.



entation of the media themselves. Because through the sale of time on free trade, free markets, they could decide to sell to certain parties, certain candidates, but not to sell to other parties and other candidates. And this already exceeds the limit of strictly business realm and belongs to the political sphere and the role of media in a campaign to also be actors of the political power struggle. In Mexico it's over. Today they cannot sell and are obliged to transmit the messages from all political parties in the terms established by law.

On the issue of alternative media, the Mexican legislator luckily did not think of the Internet, did not think to regulate Twitter or Facebook. It was very difficult to jump-start the system for regulating radio and television and if it had asked us to monitor these other alternative media, I think we would not have been able to actually do it with the commitment. I think that while the Internet remains a means of private communication, we should think it might be too much to try to regulate these media but I think that a code of ethics for political-electoral affairs should also apply to them.

Here I will turn to the fifth question raised by our colleague from Guyana. I think that it is the most important in conceptual terms, because it has to do with one of the values of democracy. Obviously freedom of expression is a fundamental element of democracy. In Mexico, the debate when this constitutional reform passed was aimed at whether this new model limits the freedom of expression in the electoral political fights. This is primarily because the prohibition against political parties buying time on radio and television was also extended to individuals. The legislator was, I think, very clear in the logical application of the reform because they decided to ban parties but also to individuals. Because if it didn't prohibit the purchase of radio and television time to privates, it was very likely that political parties would buy TV and radio air time through par-

ticulars. Luckily it is also forbidden for individuals. This led many people, intellectuals and even the media, to talk about a limitation on freedom of expression.

I have the impression that what was limited in Mexico was the freedom of trade. Not freedom of expression. Individuals can write articles, they can buy a page in the newspapers, can express themselves for other media but cannot buy time on radio and television. What was decided was to limit the freedom of trade in that very important element in political and electoral campaigns. And in a free market economy, there are limitations to free trade in other products too, not just the time in radio and television. In Mexico the issue has nothing to do with a limitation to freedom of expression. Freedom of expression is still in effect. Mexican citizens can express themselves through various forms but what has been limited is the freedom to trade this public good for the elections and therefore for the consolidation of democracy. It is important to discuss it, in our experience we had a total absence of fairness in political competition. This is the reason why we made this effort to create conditions to make this competition democratic.

**JENNIFER VAN DIJK-SILOS**  
**Chairperson, Independent Electoral Council of  
Suriname**

The Crisis Center is a center only for Election Day. Complains from all over of the country can come in via e mail, or telephone, mobile or radio. Complains can also come in from the interior. I, myself, work at the Crisis Center with a team of five other lawyers and four administrative assistants. So when complaints come in and they are serious enough, then I will handle them myself. But if one of the other lawyers can solve it then they go in the field, to check and see.



# SECOND DAY OF MEETING - INTRODUCTORY REMARKS

## “SUPPORT FOR ELECTORAL PROCESSES IN THE AMERICAS”

**MARÍA OTERO**

**Under Secretary of State for Democracy  
and Global Affairs  
United States of America**

*M*aría Otero was sworn in as Under Secretary of State for Democracy and Global Affairs on August 10, 2009. She oversees and coordinates U.S. foreign relations on a variety of global issues, including democracy, human rights, and labor; environment, oceans, health and science; population, refugees, and migration; trafficking in persons and avian and pandemic influenza. In June 2006, Ms. Otero was appointed by UN Secretary General Kofi Annan to the UN Advisors Group on Inclusive Financial Sectors. She is a member of the board of the U.S. Institute of Peace, a position to which she was originally appointed by President Clinton and now holds as the State Department representative. Born in La Paz, Bolivia, Ms. Otero is currently the highest ranking Hispanic official at the State Department, and the first Latina Under Secretary in its history.

I would like to recognize the Organization of American States, the U.S. Federal Election Commission and

the U.S. Election Assistance Commission for co-hosting this important meeting of electoral authorities from across the Americas. I especially want to thank the Organization’s Department of Electoral Cooperation and Observation for your help in facilitating this meeting.

Those gathered here know that democratic political systems are built on a foundation of free and fair elections. We know that the promotion and protection of human rights requires governance based on the consent of the governed. We know that elections also enable the free exchange of ideas and encourage healthy public discourse. And we know that, in order for the democratic process to be truly legitimate, broad political participation is essential.

Democracy is about more than elections; it is also about freedom of expression, of assembly, and of the press. President Obama has said that democracy depends on a well-functioning society which promotes liberty and equality and fraternity, but a well-



functioning society does not just depend on going to the ballot box.

I would also add that respect for human rights and the peaceful, regular transfer of political power are mutually reinforcing. These are core principles of the Inter-American system. Indeed, the American Declaration of the Rights and Duties of Man expresses the importance of “popular elections, which shall be by secret ballot, and shall be honest, periodic and free.” The Inter-American Democratic Charter articulates a similar vision for representative democracy. In this context, we are here today to recognize and enhance opportunities to protect our citizens’ access to levers of power.

Not only do free, fair and transparent elections foster the functioning of stable societies, they also can play a critical role in returning a country to stability following a devastating disruption to the political or physical order. In our own hemisphere, we have seen how Hondurans clearly signalled their desire to move forward with new leadership through their robust participation in the November 29, 2009 presidential elections. We look forward to the time when Honduras returns again to the OAS, consistent with the principles, practices, and purposes of the Organization.

In Haiti, well-run elections, supported by the UN, the OAS, and CARICOM, could be an important stock-taking and unifying effort to help provide stability and a return to normalcy following the devastating January 2010 earthquake.

Now, electoral processes involve all aspects of society, and they go well beyond Election Day itself. We must work to foster open discourse—on an ongoing basis—in all of our societies. Of course, we know this is not easy. But it is crucial to the sustainability of democracy. It is this openness; this stability; this foundation for trust and respectful dialogue that the United States seeks to support internationally.

In light of the recently celebrated World Press Freedom Day, I think it is important to underscore the importance played by the press in electoral processes. We all know that support for a free, accessible and independent press able to operate without political censorship is critical for transparent elections. In this regard, the United States is committed to working with our civil society partners and the institutions of the Inter-American system to help foster an environment in which the media can do its job well and freely. Such freedom is crucial to our access to information, which in turn helps better inform voters of their choices.

With regard to vulnerable groups, the Department of State’s Bureau of Democracy, Human Rights, and Labor (DRL) has supported a project in my native Bolivia that is improving the ability of Quechua-speaking and Chiquitano citizens to participate in elections and exercise their civic rights. The program has provided legal resources to indigenous populations in their own languages; and raised awareness of electoral processes and civic rights.

Through the Department of State and USAID, the United States supports efforts to include persons with disabilities in the work of strengthening democracy, supporting civil society, and promoting and protecting human rights worldwide. The United States also strongly supports efforts to promote political participation for persons with disabilities “in all matters of interest to the community.”

With regard to the media, we are supporting a capacity building project in Nicaragua to strengthen the ability of local and regional journalists to report on a national and local level, human rights and democratic process issues, including the ability to monitor harassment and/or intimidation of journalists. We are also building the capacity of NGOs to become both sustainable and effective in their pursuit of human rights and democracy.



Panelists at the Seventh Inter-American Meeting of Electoral Management Bodies.

The US Agency for International Development is also engaged in numerous efforts to improve access to the ballot across the Americas. In Nicaragua, USAID helped the Consejo Supremo Electoral draft and implement administrative regulations, train municipal election officials, and execute civic education campaigns to reach voters with disabilities.

At the United Nations, the United States continues to support UN electoral assistance in Haiti. I note that the President of the Provisional Electoral Council, Gaillot Dorsinvil, is in attendance for this Meet-

ing, and I welcome continued collaboration with the Council in turn.

I thank each of you for allowing me to participate in this Seventh Inter-American Meeting of Electoral Management Bodies. I am very pleased that the United States was able to co-sponsor this event with the OAS this year. I look forward to working together to make real the promise of the Inter-American Democratic Charter for the benefit of all of our Member States' electorates.







# PANEL III:

## “ACCESS TO VOTING FOR PERSONS WITH DISABILITIES”

MODERATOR: REBECA OMAÑA, SPECIALIST OF THE DEPARTMENT  
OF ELECTORAL COOPERATION AND OBSERVATION, OAS

### JIM DICKSON

**Chairman, U.S. Election Assistance Commission  
Board of Advisors**

*Jim Dickson is Vice President for Government Affairs of the American Association of People with Disabilities (AAPD). He leads AAPD’s non-partisan Disability Vote Project, a broad coalition of 36 national disability-related organizations whose mission is to close the political participation gap for people with disabilities. The project focuses on voter registration and education, Get-Out-The-Vote drives, election reform and polling place access. Mr. Dickson played a central role with the Leadership Conference on Civil Rights (LCCR) effort to pass the Help America Vote Act (HAVA). In 1987, Mr. Dickson became the first blind person to sail a boat alone from Rhode Island to Bermuda. His objectives were to have a good time and to stimulate public discussion on the abilities of people with disabilities. Mr. Dickson is a graduate of Brown University and he resides in Washington, DC.*

Election officials in your countries and in this country and, in fact, in every republic in the world are truly the guardian angels of our freedom. I do know that often for candidates and the public running an election looks easy. I have a friend that works on elections in this country and often he says running an election is not like brain surgery: it’s much harder.

Since 2004 I have been able to vote all by myself. And I have to tell you when I think about it, that it is still a very powerful feeling. Having been blind since childhood, I’ve always had to have other people mark my ballot. We have a lot of elections here and I vote in every election. I have had some pretty horrible things happen getting assistance and I had some funny things happen getting assistance.



In one election I told the poll worker who I wanted to vote for and her response was *"You want to vote for who? That person?"* On another occasion, the poll worker (in this country our poll workers, God bless them, average about 71 years old) helped me with the candidates quite appropriately but then we had referendums, which were very small print. And she struggled with it for about a half a minute and then said *"that print is too small for me to read. You don't mind skipping the referendums, do you?"* Well, of course I minded.

The funniest experience I had was with my wife. She was marking my ballot, it was paper, and she said *"Jim, I know you love me, now I know you trust me because you think I am marking this ballot for that idiot"*.

I know that when you all think of disability, you are probably thinking for visible disabilities. And we are going to talk about different types of disabilities but before I do that it is very important to be aware that the whole notion of disability is a very powerful emotional feeling for people with disabilities, for able body people and for family members. And as you are working to improve accessibility for voting in your countries, besides focusing on the technical pieces it is very important that you be sensitive to all of the kinds of emotional turmoil that you will experience, your staff and colleagues will experience and the people with disabilities will experience.

In the United States, we defined disability as the inability to do one of life's basic functions: walk, eat, see, hear, feed yourself, go to the toilet, etc. Most people with disabilities actually have an invisible disability though their disability is as challenging and difficult as someone whose disability is visible. It's pretty easy to tell that somebody is using a wheelchair that they have trouble walking. There are a lot of people with different diseases who do not want to be seen as depending on a wheelchair so they will

choose to walk but the amount of effort and discomfort that they experience walking or -in case of the election standing in line- can be huge.

One of the things that election officials do in this country is offer people with disabilities a place to sit and wait their turn. For that to really work, somebody has to be walking down the line of voters waiting to vote to say *"we have a place for people with disabilities if you would like to use it"*.

As you can see, there are a lot of conditions that most people, do not think of as being disabilities. Here are some of the invisible disabilities, and they can be quite profound:

Learning disabilities. There is a direct connection in the US between people who have learning disabilities and who are either illiterate or can barely read. And in the case of voting, that literacy question will often keep them from coming to the polls. You can't look at them and tell that that's the case and many of them would be mortified if people knew. That's one of the reasons why we like touch screens because they provide a picture, the print and an audio output.

I mention this amazing connection between disability and illiteracy. And it doesn't just affect people with learning disabilities. All across the spectrum -deaf, those with types of paralysis, people with intellectual disabilities (which we used to call retarded), people with psychiatric disabilities- it is not that they do not have in most cases the capacity to read. It is that their experience in the schools did not teach them how to accommodate.

I will tell a quick story. We actually did a scientific test, checking to see who makes more voter errors on a long ballot. We compared people with disabilities, specifically learning disabilities such as difficulty processing information, of which dyslexia is a com-



Participants at the Seventh Inter-American Meeting of Electoral Management Bodies.

mon form. As I said, it is probably the larger single group of people with disabilities.

In this study, which was conducted at Columbia University and was co-sponsored by the Massachusetts Institute of Technology (MIT), we discovered a remarkable thing that we had expected. People with learning disabilities tended to make more mistakes on the ballot than people without learning disabilities.

The pleasant and significant surprise was that for that group of people with learning disabilities who have been taught how to accommodate their disabilities, who have been taught how to read in ways that would work for their brains, those folks have a higher accuracy rate than the able body public. So the point I am making is literacy or other types of invisible disabilities should not be confused with the capacity or worth of the individual.

There is another important fact to keep in mind in a way for you, to some degree, identify those communities where there will be a large percentage of people with disabilities, including people with invisible disabilities. And that is the poorer the community, the higher the rate of disabilities. Mississippi is our poorest state, 38% of all Mississippians have a disability.

The Help America Vote Act is a law passed in the United States Congress in 2002 and it passed in a requirement that every polling place offered people with disabilities the ability to vote privately and independently. Congress also provided funding—about three quarters of a billion dollars- to purchase one voting device in each polling place. I should add the states had to match 10%.

We use a concept of people first language, which is very important. I am a person who is blind; I am not



a blind man. Mrs. García might use a wheelchair; we would never say that Mrs. García is *confined* to a wheelchair. Language is very important in conveying respect or stigma.

There are some simple guides, but the basic rule is: ask the person, “*how can I assist you?*” An example would be one of the gentlemen here, I came in the building this morning, and he asked “*how can I assist you?*”. Blind people don’t like to be taken by the hand and led by a child. It is both time consuming and demeaning and we don’t like to be sort of pushed from behind. So, we used the idea of, we going to use a sighted guide: the blind person would hold the individual’s right elbow and that person will walk beside and slightly in front of me. And we can walk more efficiently.

With other types of disabilities, there are other kinds of accommodations. I think that the most common mistake that we see poll workers make, which is demeaning to voters, is that the person with the disability presents to vote, poll workers would often ask somebody they are with or somebody around them, *what does he/she need*. You should always address the question to the person who has the disability.

We are very excited that the U.S Election Assistance Commission and the United States Congress has appropriated 8 million dollars and there’s about to be some research and development paid for with federal money to design and improve the accessibility of equipment.

We’ve been working to make voting accessible in this country for two and half decades. We took a major step forward with the Help America Vote Act. These numbers come from the United States census: 2 and half decades ago, the voting participation rate among people with disabilities was consistently 20% or more lower than the general population. Because

of the accessibility, our turn out in the last presidential election was only 7% behind the rest of the population.

In 2000, the famous Bush-Gore election, compared to the 2008 Obama election, the turn out of Americans without disabilities grew by 25% over those eight years. For people with disabilities, we grew by 34%. Another way to say that 3.8 million of the 14.7 Americans who voted for President voted for the first time. Accessibility clearly increases participation.

It is very important to train the poll workers. I mentioned asking the person how I can assist. We strongly recommend that whatever the voting system is that the able body is using, that should be the same system for people with disabilities.

We run into a major problem with the poll workers who do not know how in some cases to turn on the accessible voting machine. We’ve gotten way too many reports like “*here is a 4 or 6 thousand dollars piece of equipment, there are disabled voters at the polling place and the polling workers don’t know how to turn it on?*”.

That can all be made to go away by training the poll workers. And the most important single step is for the poll workers to use the device themselves. It is much more efficient to have them practice on the machine when the machine is set up, if that conforms with your electoral law.

Our Department of Justice developed a polling place check guide. It’s a document that you or your colleagues can take to polling places and it walks you through step by step what a barrier might be for people getting in and out of the polling place. There are other resources that can be helpful in terms of poll worker training and communicating with people with disabilities in general.



I will end by emphasizing a new point: voting is a process, not just the casting of the ballot. The whole process needs to be accessible. By that I mean if you provide materials to your voters about the election in print, to be accessible you need to provide that information in Braille or large print or in an audio tape or a CD.

Web sites convey a lot of information in this country. Web sites, if they are designed properly from the beginning, will be very accessible. Which means: I could take my laptop and go to a web site and read what's there. If the web site is developed without disability in mind, and then you go back and try to retro feed it, it is expensive and it never quite works well.

**MARIO SEING JIMÉNEZ**  
**Magistrate, Supreme Electoral Tribunal**  
**of Costa Rica**

*Mr. Seing Jiménez studied Law at the University of Costa Rica. On August 8, 1966, he graduated as a notary lawyer, authorized by the Supreme Court on August 23, 1966. He has been an active instructor in electoral issues for seven electoral campaigns for Cantonal Boards, polling centers, agents for polling stations and general oversight agents. From May of 2000, he served as the Assistant Magistrate of the Supreme Electoral Tribunal and was re-elected for a six year term in March of 2001. On March 5, 2007, Mr. Seing Jiménez was, again, re-elected for another six year term until May 2013.*

I will present on access to voting for people with disabilities in Costa Rica but first I will introduce the Supreme Electoral Tribunal as the official organism in charge of ensuring it.

The 1949 Constitution establishes a Supreme Electoral Tribunal (TSE for its Spanish acronym) with the rank and independence of the other Branches of

Power. Its exclusive and independent responsibilities include the organization, administration and oversight of electoral processes, as well as safeguarding the exercise of the political rights and duties of Costa Rican citizens.

Articles 9, 99 and 102 of the Constitution make evident that the Supreme Electoral Tribunal has the legal authority to organize, manage and oversee electoral processes, with independence, and thus has the power to interpret the Constitution equally towards all (*erga omnes*) in matters related to elections.

Its decisions and interpretations are binding except for the Tribunal when it wants to make changes in its own jurisprudence. Effectively and by law, the Supreme Electoral Tribunal in Costa Rica is the fourth branch of government.

The Constitutional Hall in ruling number 3194-92 of 4:00 P.M. on 10/27/1992 reiterated in numerous resolutions the following:

“This is equivalent to saying that it is the exclusive and mandatory duty of the Tribunal to interpret the Constitution, exercising its constitutional and legal authority in electoral matters. Thus, this interpretation cannot be overseen by any other jurisdiction, even constitutional, because even if the interpretation violates constitutional norms or principles, it would be, as a tribunal of its rank, declaring the meaning of the norm or principle, at least as there is no legal remedy in our laws against such a violation”.

Of course we have never violated the Constitution or its principles but we are entitled by the Constitutional Court to reach that extreme.



Participants at the Seventh Inter-American Meeting of Electoral Management Bodies.

### Legal recourses

Based on the jurisprudence of the Constitutional Hall and of the Tribunal, electoral jurisdiction has been developed and strengthened through “Procedural Electoral Law” and “Electoral Jurisprudence”, thus creating legal instruments that aim to defend citizens’ fundamental rights in electoral matters and for an effective safeguarding of the political and electoral rights of Costa Rican citizens, particularly in situations when these rights could be threatened or endangered. Such instruments include the following: appeals on the grounds of unconstitutionality, electoral consultations, repeals of statutory norms due to unconstitutionality, actions for annulment, rights to appeal, complaints regarding political bias or belligerence and removal of elected public officials from office.

However, among these, the electoral legal protection order is the most suitable, safe and efficient

mechanism to guarantee the adequate protection of fundamental political and electoral rights.

We just had a case that could not be resolved because there was a challenge to the constitutionality of a provision of the new electoral code, and therefore, according to our legislation, if a law is challenged on constitutional grounds, a resolution based on that law cannot be issued. And what we were contemplating was the possible cancelation of the credentials of a Member of Parliament for her unauthorized use of a small airplane – which according to her – she needed in order to retrieve a passport she had forgotten.

### Political participation

Political participation is a fundamental right of all citizens over the age of 18, and it is enshrined in the concept of popular sovereignty. Moreover, it is the only legitimate source of political power. Article 93



of the Constitution defines suffrage as a “primary and mandatory civic duty” and it is expressed in the following two ways: As the right to elect/vote (active suffrage), which takes form when citizens cast their ballots on Election Day; and as the right to be elected (passive suffrage), which takes form when a citizen runs for public office. Therefore, all Costa Rican people over 18 have the right to elect and be elected on equal terms. I warn you that in Costa Rica, by Constitution, voting is mandatory but there is no penalty if you don’t vote.

The Supreme Electoral Tribunal has added safeguards to guarantee the equal participation of all men and women without discriminating due to race, age or any other condition that may place any citizen in a disadvantaged position, such as a disability or imprisonment.

It is worth noting that women were granted the right to vote in 1949, and they exercised this right for the first time in 1950. Nowadays, in the recent presidential elections held on February 7, 2010, the first female President of Costa Rica was elected, with more votes than the candidates in the second and third place combined.

In Costa Rica, regarding quotas for women, this started a few years ago legally with the establishment of a 60-40 quota: 60 percent men and 40 percent women. With the new Electoral Code which came into force on September 2, 2009, gender parity was legally established, meaning a 50-50 balance. In the February 7, 2010 general elections, gender parity could not be required because the deadline for candidate registration had already passed. So the 60-40 rule remained in place for that election, except—if I remember properly— for one party that had gender parity in its statutes.

In the elections that will take place in December for mayors and other municipal officials, the 50-50

gender parity will be applied. How is that done and overseen? When candidacies are presented, they are reviewed, and if they are not 50-50, the candidacy registration is rejected.

The Supreme Electoral Tribunal protects citizens’ political rights through its laws, policies and through concrete actions, such as the implementation of a Program to make equal Conditions to Exercise the Right to Vote, the Institutional Accessibility Commission, the Gender Commission and the Indigenous Affairs Commission, all of which aim to provide equal access to civil and electoral services.

Concrete actions, such as maintaining auxiliary registration sites in the nation’s central hospitals, as well as a program of mobile voter registration booths, and visits to distant areas, indigenous territories, hospitals, prisons, homes for the elderly, and even domiciliary voter registration, for people with disabilities.

In Costa Rica, the Civil Registry is an office that depends on the Supreme Electoral Tribunal. When a person is born, they are registered in the Civil Registry and are ready to be entered on the voters list when he or she turns 18 years old.

For those who are interested, I brought several protocols. The first is the Accessibility Protocol for prisoners. In Costa Rica, prisoners are allowed to vote and polling stations are installed in prisons. All prisoners can vote except those who have an additional penalty which deprives their right to vote.

The other protocol is accessibility for indigenous population. We have very small indigenous population but it is located in a very inaccessible place. However, polling stations are always established there. The place is called Talamanca and the most accessible way to get there is by helicopter. We must both deliver and retrieve the electoral material by helicopter.





I would like to make a parenthesis: in the presidential electoral vote tally, we realized that there were a lot of errors in the voters' lists in the poorest areas in the center of the city. Incredibly, we were surprised that in the indigenous area of Talamanca, all the political parties' poll workers attended and there was not a single error in the voters' list.

And then we have the protocol that relates to people with disabilities and the elderly. We establish polling stations in nursing homes. What we are trying to do but have not been able to so far due to difficulties with the voters list, is to include everyone that is hospitalized. However, we hope we can do this in the future.

### Disabilities

Responding to the stipulations of Law Number 7600 on Equal Opportunities for People with Disabilities, passed in 1996, as well as Law Number 8661 – Convention about the Rights of People with Disabilities and its optional protocol, and with the support of the National Council of Rehabilitation and Special Needs Education, the Supreme Electoral Tribunal includes in election administration the Program to make equal Conditions to Exercise the Right to Vote.

One of the Program's main objectives is to equalize access to the vote for senior citizens and people with disabilities, in order to uphold the principles of equality, non-discrimination, participation and self representation, so that all citizens may exercise their rights and duties before, during and after an electoral process.

Similarly, Article 29 of Law 8661 Convention on the Rights of People with Disabilities and its optional Protocol, ratified by Costa Rica's Legislative Assembly in August 2008 and published in the Official Journal Number 187 in September of the same year,

sets forth the obligation of guaranteeing the political rights of people with disabilities, and allowing them to enjoy these rights in equal conditions than other citizens. Each signatory agrees to make sure that people with disabilities can participate fully and effectively in political and public life in equal conditions as other citizens, directly or through freely elected representatives, including the right and the possibility of people with disabilities to vote and to be elected. This, through the following mechanisms:

- Guaranteeing that voting procedures, facilities and electoral materials be adequate, accessible, and easy to use and understand;
- Protecting the right of people with disabilities to vote in elections and referendums upholding the secrecy of the vote, and without any form of pressure or intimidation, as well as the right to run for office in elections, to hold public office and work in the public service at all levels of government, facilitating the use of new technologies when relevant;
- Guaranteeing that people with disabilities freely express their will as voters, and when necessary and at their request, this includes their right to request assistance to vote in an election.

Having a disability is understood as: "people who have physical, mental, intellectual or sensory disabilities, who may be confronted with diverse barriers that may hinder their full and effective participation in society, in equal conditions as other citizens". It is worth noting that disabilities may be short-term or long term.

People with disabilities or the elderly should be asked about how they would like to be assisted and how they required it and above all, it should be flexible in providing this assistance.



It is worth noting that all votes are equal and that all citizens, including people with disabilities, both young and old, have the right to:

- i)** Participate in public affairs
- ii)** Access public services, in equal conditions
- iii)** Run for office
- iv)** Vote by universal, free, direct and secret ballot, in equal conditions and without any form of discrimination.

It is worth mentioning that a political party elected a representative who had a visual disability/impairment and whose term ended on April 30. In the most recent election this candidate's political party, without spending any money on political campaigns and without having political party representatives in any of the 6.617 polling stations, was able to have four representatives elected, thus publicly stating that he recognized the transparency of the electoral process organized by the TSE.

According to our Constitution and Electoral Law, all registered voters have the right to cast their ballot in the voting center, in a direct and secret manner. In case that a person with disabilities or senior citizens cannot exercise their right to vote in this manner, the Electoral Law sets forth procedures to follow in cases of public, semi-public or assisted voting.

There are programs of special electoral materials in place to assist people with disabilities, including magnifying glasses, ergonomic pens, flashlights, and special clips to hold the ballot in the voting table, as well as Braille ballots, among others. In terms of special adjustments to voting centers for people with disabilities, this includes building ramps and hand-rails, among others, in the main voting centers.

I want to point out that poll workers are proposed by the political parties. The poll workers must be sworn in before they can exercise their official duties. This swearing in implies that they automatically become

electoral officials with all the corresponding rights and obligations. From the moment they are sworn in, they cannot be detained by the police for any reason, except for two situations: that someone is flagrantly caught in the act of committing a crime, or by virtue of a judicial order. In order to be sworn in, they must take a training course. And that training includes how to assist people with disabilities.

There are four ways to vote in Costa Rica:

- I.-** The majority of people, who do not have disabilities and vote simply.
- II.-** People who have some kind of disabilities of the types we have mentioned, and they use special electoral materials (Braille stencils, for example).
- III.-** Two types of special voting are allowed. One is called assisted or semi-public voting, which means the person with disabilities is accompanied by someone he or she trusts so that person can cast the ballot in his or her place.
- IV.-** The most unusual is called the public vote. This is where the person with a disability stands in front of the poll workers and the president of the polling booth asks for which candidate or party does he or she would like to vote. Then the president of the polling booth, after hearing this vote, marks the voter's preference. The same procedure is used for presidential, parliamentary and local elections.

With regards to this matter, Leo Segura, a journalist with a visual disability, stated the following in a document sent to the Supreme Electoral Tribunal:

"I was pleased to note that aside from the Braille ballots and other such special voting materials, the polling station officials were trained and able to help voters with disabilities, which made me happy. This



was the third time I used the Braille ballot, and I was very excited to do so, almost as if it would have been my first time using it. This way democracy works well... I will always recognize the Supreme Electoral Tribunal for offering this service during this historic and accessible referendum”.



# DISCUSSION PANEL III

## QUESTIONS

**María Eugenia Villagrán de León**  
**President Magistrate, Supreme Electoral**  
**Tribunal of Guatemala**

**M**y question is for Judge Mario Seing of Costa Rica. In your presentation, you spoke about electoral appeals. Who adjudicates appeals against the resolutions or sentences that are made by the Supreme Electoral Tribunal of Costa Rica?

**Errol Bethel**  
**Parliamentary Commissioner, Parliamentary**  
**Registration Department, The Bahamas**

I want to find out if in any country there are people who are deprived of the right to vote. And, if so, what would be the reasons for depriving persons to the right to vote.

## ANSWERS

**Mario Seing Jiménez**  
**Magistrate, Supreme Electoral Tribunal**  
**of Costa Rica**

In Costa Rica, all persons who acquire political citizenship, which means they turn 18, have the right to vote. The only ones who cannot vote are those who have been sentenced for committing a crime and as a complementary measure are deprived of the right to exercise their citizenship. It is possible, for example, that someone commits a crime of electoral fraud, and therefore in addition to establishing the penalty, they are denied the right to vote.

The electoral appeal is adjudicated by the Supreme Electoral Tribunal with regard to any threat or damage to electoral and political rights. It has expressly been established that there are no appeals that can be made against decisions issued by the Supreme Electoral Tribunal. There is no higher court.



**Jim Dickson**  
**Chairman, U.S. Election Assistance**  
**Commission Board of Advisors**

To answer the question about people not being allowed to vote, this is my opinion, there are a number of very disgraceful laws as well as some practices that exist in the United States. I think only two states are as progressive as Costa Rica in allowing people to vote from prison and I would add that our data tells us that at least 40% of our prisoners are persons with disabilities.

We have a decentralized election system. So every state has a different way of allowing a person who has either finished jail, or is on parole to go through a process to be able to re-register to vote. In some states, that process is so outrageous that for example in the state of Florida, 28% of African-American males cannot vote. By law.

We also have examples in this country of state law that will not allow a person with a psychiatric disability or who -in some cases- has been put into a hospital for severe disabilities, to vote. We are in the process of overturning those laws.

I think now there are maybe only 15 or 12 states that prevent certain classes of people with disabilities from voting.

## QUESTIONS

**Javier Palomino Sedó**  
**Chief Adviser, National Electoral Office of Peru**

My question is for Judge Mario Seing, regarding poll workers. You had stated that these individuals are nominated by political parties. In Peru, the poll workers are randomly appointed from those on the voter registration list and are going to cast their ballot in the polling station.

Does the nomination in Costa Rica based on political parties' proposals generate some uncertainty about poll worker actions or impartiality on Election Day? As they are proposed by the parties, obviously there could be some degree of party influence.

**Carlos Cortez Castro**  
**Vice-President, Electoral National**  
**Council of Ecuador**

In Ecuador, people with disabilities are not obligated to vote. However, in the meetings of representatives of the National Electoral Council with associations of persons with disabilities, one of the most interesting things I have noticed was the claim made by the representatives of these associations that voting should also be compulsory for them. That is, the Constitution and the laws say their vote is not mandatory, but they demand the obligation of the vote.

And finally, we were told that Mississippi is the poorest state in the country, because 38% of people there have disabilities, as though the identification of the poorest state was determined by the persons with disabilities. Or is that Mississippi is also the poorest state for other reasons, mainly social and economic, among others?



## ANSWERS

**Jim Dickson**  
**Chairman, U.S. Election Assistance**  
**Commission Board of Advisors**

On the first question about exempting people with giving people with disabilities the option to opt out of voting, we would have a great deal of trouble with that idea. We have a kind of saying that there are really only two problems that face all people with disabilities: stigma and guilt. We strongly believe that every citizen with disability or not should have the same rights and the same responsibilities. We think it's absolutely not right to expect rights and services without having the responsibility of a citizen and participating.

The criterion for Mississippi was not disability. It was income. We have looked at the income data by state and compared that with the disability data and what we see – I just used that as dramatic example- is the poorer the state, the more people with disabilities. Poor meaning economically defined. Mississippi's poverty has lots of reasons for it.

We also find that there will be more people with disabilities in the poorest parts of any community, whether that is rural or in a big city, or even in a suburb. Poor people tend to cluster and among those pockets, disability would be very, very high.

This is a phenomenon that cuts across race. There are some differences among the races in terms of incidence, but as a community organizer I spent a lot of years when I could see a little bit better knocking on doors, talking to people, and in our poorest cities, and in our poorest rural communities, behind every other door there was will be somebody with a disability.

**Mario Seing Jiménez**  
**Magistrate, Supreme Electoral Tribunal**  
**of Costa Rica**

My colleague asked about the risk that the poll workers are appointed by the political parties. That was established in the beginning because the intention was that the same political parties would supervise the election, all with the goal of transparency in their actions. In correlation with that right and after they are sworn in, they cannot be deprived of their liberty. This carries with it a corollary obligation that, if you like, is that they are temporarily and legally converted into electoral officials. That implies the obligation of neutrality. No polling booth worker, despite being proposed by a political party, can publicly express their political preferences. Also, they are unable to attend meetings or the political party which nominated them or of other parties. And they cannot participate in any activity that identifies them as such, under penalty of being prosecution for an electoral crime.

They are obligated to be neutral. Of course, it is very difficult to erase from the mind of a poll worker his or her background and political interests. Now we have what is called an electoral assistant who is directly appointed by the Supreme Electoral Tribunal. This is the person that advises the polling booth and is particularly chosen to not be involved in partisan politics. These are advisers and overseers of the voting booth. Moreover, if none of the poll workers arrive, the electoral assistant assumes the opening and closing of the polling station because you do not want to have any unopened polling booths. All must be functioning on Election Day, so this electoral assistant figure was created.

I want to tell you, as an example, that there is a political party in Costa Rica that sees everything as negative. The various party agents are present when the ballot counting starts. Once, when opening a



polling station, I noticed that there was just one political party poll worker from a different party from the agents who were present. It was a girl. She became very tense because she said “surely, someone acted badly, right?” It happened that in her designated polling booth, her party won the election by a huge difference. There were two null votes. So due to curiosity, I asked the electoral assistants to see the envelope with the null votes. The girl stood up and came to check them. It turned out that the two null votes were invalidated by a poll worker from her own party and not from the opposing party. So then I told her “See?” In Costa Rica more or less it is about civic thinking. It has almost always been neutral in that sense. And yes, of course, there always is a latent possibility that you mention, that we are trying to neutralize now with the electoral assistant, an official of the Supreme Electoral Tribunal. In addition, each political party has their agents there to overseeing the process.

## QUESTIONS

**Francisco Zuniga**  
**Acting Assistant Chief Elections Officer,**  
**Elections and Boundaries Commission of Belize**

I would like to first of all commend the panelists for their excellent presentations, and would also like to commend them for giving us a clear definition of disability. In many cases or experiences in Belize, especially when training the public officers, we will usually tell them it is up to their discretion to use the word disabled or handicapped persons. So to me, by having a clear idea and understanding about the word disability, I believe this would be very helpful for us to even guide legislators so that they would be able to put something more proper in place when coming into an election.

When I also looked at this entire presentation on dis-

ability, it also comes to mind that regarding persons, public officers or election officers, that they’ve been given what they call a proxy, to vote by proxy. In Belize we have this voting by proxy practice. I believe that we haven’t really had any instances where we give the opportunity for public officers to vote independently because of voting by secrecy. Then proxy is also a variation of that secrecy.

**Juan Ignacio García Rodríguez**  
**Director, Electoral Service of Chile**

There is a problem that maybe is related to voting for people with disabilities, which is that professional assistants can take advantage of a person with disabilities. So, is there a need to limit, for example, the number of people who can assist a disabled person? That has been a problem in our country—the point up to where that should exist without of course limiting the right of persons with disability to vote.

**Steve Surujbally**  
**Executive Chairman, Elections Commissions**  
**of Guyana**

Pursuant to the appeal that I made yesterday to focus on commonalities and mutual assistance, at the end of the day, it is the training of the polling day staff to make the call relative to the help. Now, that training is anchored in manuals.

We have a pretty comprehensive manual on the issue of assistance of people with disabilities. I hate that word disabilities! People who are specifically impaired. I noticed we don’t even mention pregnant women. All these terms are medical terms, I know because I am associated with medicine, but not social terms.

It is listed in the manual as a guideline to the polling officer so that it doesn’t become as the Belizean colleague just said: discretionary. It is there in that



manual. Now, we are prepared to share this manual with the OAS for distribution and perhaps you can improve upon it and see where we are lapsing and we can gain in terms of the laws that we have dictating our manuals.

## ANSWERS

**Jim Dickson**  
**Chairman, U.S. Election Assistance**  
**Commission Board of Advisors**

Regarding assisting voters with disabilities in the polling place, we absolutely think that multiple people should not provide assistance. That kind of turns it into a spectacle and this is something that should essentially be private.

Our law allows any voter with disabilities to select one person who will assist the voter in the voting place. They can bring a person with them, or they could ask for assistance from a poll worker. Once I just randomly picked somebody out of the line and said “would you help me?”. The only restriction we have in the law on who can provide assistance is that the employer or an agent of the employee cannot provide assistance voting, and if the voter is a member of a union, a union officer cannot provide voting assistance.

We look forward to the day when we will have technology that will allow us to totally eliminate the use of proxies.

**Mario Seing Jiménez**  
**Magistrate, Superior Electoral Tribunal**  
**of Costa Rica**

In Costa Rica, only one person assists others with disabilities to vote. Also, I want to point out that in Costa Rica it is totally forbidden to establish polling stations on the second floor of polling centers. They must be on the first floor and have easy access ramps. The Boy Scouts, who have chapters in all countries, are requested to provide assistance, and they are trained to help people with disabilities, the elderly and pregnant women to help them enter and locate the polling booth where they have to vote.

In Costa Rica, each polling booth has 500 voters. Previously there were many problems, but now every voter has a number because the list of voters is posted outside the school entrance and outside every classroom. Once the booth is located, it is easy for the poll workers to find where to sign.

In addition, I would say that among the items used to vote is an ergonomic crayon that is used by all voters but was designed specifically for people with disabilities. This makes it easier to vote.

Costa Rica is trying to pass a bill which will obligate every public office to hire between 10 and 15% of persons with disability as part of their staff. I don't know in your countries, but in Costa Rica it is very hard for someone with disabilities to be hired. That is the reason why the reform is being proposed.







# OAS INITIATIVES IN THE ELECTORAL FIELD

## PABLO GUTIÉRREZ

### Director

### Department of Electoral Cooperation and Observation OAS

*P*ablo Gutiérrez has been the Director of the Department of Electoral Cooperation and Observation since August, 2007. Prior to working at the OAS, Mr. Gutiérrez served as Chief of Staff for President Ricardo Lagos Escobar of Chile. From October 2003 to May 2006, Mr. Gutiérrez was Chief of Staff in the Office of the Vice-president and the Ministry of the Interior of Chile. Before his position as Chief of Staff, from April 2000 to October 2003, Mr. Gutiérrez served as special advisor on social conflicts in the Office of the Vice-president and the Ministry of the Interior. Mr. Gutiérrez received his law degree from the Central University of Chile, and holds a degree in National Security and Defense from the National Academy of Strategic Studies of Chile. Mr. Gutiérrez is currently pursuing a Master's degree in Constitutional Rights at the Universidad Católica de Chile.

As we have traditionally done at this meeting, I will give a brief presentation on the work of the Department in the past year to update the programs and

projects that we are developing. First, I would like to remind you that the Department of Electoral Cooperation and Observation works primarily in three areas: electoral observation, electoral training and education, and technical cooperation.

In terms of electoral observation missions, in the past three years we had a very important presence in the hemisphere. In addition to being present for a large number of elections, there have been two very interesting new phenomena. The first is that, along with observing the general elections that were traditionally part of our work, we have also been observing primaries, municipal, and regional elections. The second relevant aspect is that two countries welcomed electoral observation missions for the first time in their history in 2009: Dominica and Mexico.

In that context, we have also been working on perfecting objective tools for electoral observation. Here I will be very precise and self-critical in the sense that we are breaking the old myth that obser-



vation missions were totally perfect and fair. This is very difficult without objective methodologies, and as a result we have been filling this gap. The methodologies we have been developing are tools based on international instruments such as the Inter-American Democratic Charter, or the Declaration of Principles for International Election Observation. Thus these methodologies are based on instruments that are mandatory for us.

Many of you already know the election observation methodology, which is basically a methodology for Election Day. In that sense, we have recently launched a Manual for OAS Electoral Observation Missions which sets out the roles and stages of an observation mission, along with the structure and responsibilities of those who comprise an Electoral Observation Mission. This manual also contains the set of standardized methodological tools, questionnaires, and reports, with which, regardless of the country or particular election, an OAS Electoral Observation Mission must comply.

We have also developed a Manual for Observing the Use of Electoral Technologies, which coincides in great part with the Caracas meeting. This arose from the consideration that advances in electoral technology required a precise instrument that would allow us to observe the use and operation of these technologies in any particular election.

Using funds from the United Nations, the Electoral Department has also created a method for observing the media during electoral campaigns. We believe it is crucial that a powerful institution such as the media, which in many cases is not adequately regulated by the state, deserves a specific instrument that permits us to observe their behavior. This methodology was first piloted in Bolivia's December 2009 elections and the second pilot will be held a few days from now in the Dominican Republic.

In the technical cooperation area, we have worked primarily on auditing electoral registries. As you know, there was a re-registration process in Bolivia. While the previous electoral registry was comprised by 3.8 million voters, in 72 days more than 5 million Bolivians were enrolled in this process. This was really a very important phenomenon, and the only international body that accompanied this process was the Organization of American States. In addition, we are currently working in Paraguay on auditing the voter registry. This effort was also carried out in recent years in Bolivia and El Salvador.

The second project, that I will briefly mention is the creation of a space for the systematization of electoral law. The idea is that this will be the first phase of a more extensive project that could lead to a greater level of Inter-American expertise on the implementation of electoral law.

The third project is the implementation of the International Organization for Standardization (ISO) 9001 norms. I would like to highlight that within a few weeks the Electoral Tribunal of Panama will become the first electoral authority at the national level to be certified in quality management. We have already provided the baseline study to the Court of Costa Rica, and we will shortly initiate work in this regard with the National Electoral Jury of Peru as well.

Our intention in this area is not only to obtain certification for the existing norms. Based on conversations with Costa Rica, we are looking to create working teams with the courts that are involved in the certification process to create a Electoral ISO standard at the global level.

Finally, in regards to electronic voting, we are working with ONPE in Peru, where they are creating their own electronic voting system in compliance with a legal mandate approved by Congress.



Panelists at the Seventh Inter-American Meeting of Electoral Management Bodies.

In terms of training and education,, we will be holding the Third Inter-American Electoral Training Seminar in September. I would like to highlight the interest of the electoral bodies in this initiative, as more than 40 officials participated last year. In this event, we have not only achieved training, but the event also provides a forum for the exchange of practical experiences and the facilitation of the development and monitoring of opportune projects to improve participants' electoral organisms. As a result, we worked on two specific projects: in the case of Argentina, on matters of campaign financing, and in the case of Costa Rica, student electoral tribunals. Those were just two projects from the 40 that were submitted.

In addition, based on a request that came from the electoral body in Suriname, we will create a new category of National Electoral Training Seminars. Based on the Inter-American Electoral Training Seminars, and tailored to the specific requirements and par-

ticularities of the electoral management body that requests additional training, we can concentrate this work just on a specific country that so requests.

We are also conducting three online courses in the areas of campaign financing, voter registration, and electoral participation. Of course we will expand this portfolio over time.

In alliance with the Mexican Federal Electoral Institute and FLACSO Chile, we will launch an academically accredited Certificate program on electoral processes. While it may seem strange, the market for academic specialization in electoral matters is smaller than what one may expect. It is rather surprising. To date, what we have found available is in Spain or Europe, and so we feel that this is an interesting initiative because it stems from our context in the American hemisphere.

In this same context, there is a series of meetings



where this Inter-American cooperation has also been emphasized, called the Association of Caribbean Electoral Organizations (ACEO), which will be holding another meeting this year. I would like to emphasize here that ACEO did not only return to holding regular meetings, not only established a Secretariat, but the Association has also been very useful in multiplying the effects of horizontal cooperation in the Caribbean. I think that is extremely relevant work.

Regarding political financing, we have developed two simultaneous projects with International IDEA. On the one hand, we are working to develop a snapshot of political financing in Latin America that will aim to establish a methodology for its observation. On the other hand, in the Caribbean we have been working on a study on the situation of this region that is focused mainly on developing a model law on political financing which will be released in July in Jamaica.

The Department of Electoral Cooperation and Observation has brought together specific Inter-American programs that allow us to have major areas within which we can develop specific projects. These areas are the Inter-American Program for Political Financing, the Electoral Methodology Program, everything related to institutional strengthening and capacity-building –academic Certificate programs, Electoral Training Seminars and Inter American meetings-, the Program for Electoral Studies, and the Program for Inter-Institutional Electoral Cooperation.

This last program is very relevant because it has allowed us to send two technical missions to Africa for the 2008 elections in Angola and the most recent elections in Togo, allowing us to make concrete results from the exchange of experiences and lessons learned. One very simple example of this was the first request for help that a mission in Africa made to us, consisting of a request to provide identification

vests. We have been able to note the needs of the African Union and this collaboration seems important to us. In addition, we are trying to establish a peer alliance with the Organisation for Security and Cooperation in Europe (OSCE) in regard to how they train electoral observers in Europe.

In conclusion, I would like to briefly describe the objectives of the remaining programs. The Inter-American Program of Voter Registries seems very relevant, given that it allows us to collaborate with the electoral institutions in terms of eliminating voter registries from the agenda for political debate. I think that this work is fundamental. The Inter-American Program of Quality Management seeks in the long-term to create an electoral ISO. Finally, the Institutional Improvement Program is based primarily on electronic voting, and there is the project on judicial sentences.

Thank you very much.

### **PEDRO ESTÉBAN PENAGOS LÓPEZ**

#### **Superior Chamber Magistrate**

#### **Electoral Tribunal of the Federal Judiciary of Mexico**

*Mr. Penagos holds a Law degree from the National Autonomous University of Mexico with a specialization in Legal Protection Law from the Legal Specialization Institute of the Supreme Court, where he also received a Diploma in Constitutional and Legal Protection Law. He served as a Judicial Officer, Clerk and Secretary of the Fourth Administrative District Court for the Federal District. He has also served as Secretary to the Third Collegiate Court of the First Circuit, Secretary of the Study and Account of the Supreme Court of Justice of the Nation, Second District Judge in the State of Oaxaca, Assistant Secretary General of Agreements of the Supreme Court of Justice, Magistrate to the First Collegiate Court in the work of the First Circuit, Judge to the Fifth Col-*



*legiate Court in Administrative Matters of the First Circuit, Judge of the Eleventh Collegiate Court in Administrative Matters of the First Circuit, and Judge of the Fourth District Regional Chamber of the Electoral Tribunal of the Federal Judiciary. He received judicial tenure under Art. 97 of the Constitution on May 4th 1993.*

I appreciate the opportunity to present in this meeting the project on the systemization of judicial sentences on electoral matters. This project seeks primarily to help strengthen electoral judicial institutions at the continental level.

This project is of vital importance because it is intended to lay the groundwork for cooperation between legal organisms and share knowledge gained in the administration of electoral justice. The project is a five year joint effort in which judges from various electoral tribunals have agreed on the importance of creating a comparative system of sentences, precedents and case law based on Inter-American principles.

This initiative has been discussed in various forums, including in Mexico in 2004, Costa Rica in 2007, Argentina in 2008, and most recently here in Washington D.C. last April 13th.

At the last meeting of electoral authorities convened by the OAS, at the initiative of the Electoral Tribunal of Mexico, a pilot working group was formed by representatives of the electoral courts of Argentina, Chile, Costa Rica, Panama and the Dominican Republic. This group was formed for the purpose of exchanging views on regional interest to systematize judicial sentences on electoral matters.

During this event, I presented this project to the participants and as a result, some agreements were made: approval to form a working group on American electoral law that was initially composed of

judges from the attending electoral commissions. A rotating annual presidency of the group was determined. Judge Maria del Carmen Figueroa Alaliz, from the electoral tribunal of Mexico, was elected as the first president of the group.

It was also agreed that the OAS would be responsible for the technical secretariat and that at the next meeting of American electoral authorities, in which we are now, the project would be presented to all participating countries and they would be invited to join.

As a general goal, in democratic systems of law such as ours, judicial activity takes on predominant importance. It is therefore relevant to establish a program of Inter-American electoral judicial cooperation to enable us to understand the different legal criteria and forms of interpretation from specific cases before jurisdictional institutions in the field.

We consider this project very important because constant awareness and improvement of the work of the courts is a priority, as democratic judges are not only guardians of legality, but also guarantors of countries' constitutional principles and values and of citizens' fundamental rights.

It remains to point out that the database that I am talking about would be a legal instrument that would aid the important functions carried out by those administrative bodies in electoral matters. It would also be very important to establish the institutional memory that serves those who follow us in the position and as a source that could support academic research.

In exercising our interpretative work, as democratic judges, we should be and are commissioned to increase the minimum set of fundamental rights as laid down in our Constitutions. In light of international treaties, for example, that allow the expansion of



rights to better safeguard respect for citizens' rights.

It is therefore particularly important to implement a project that systematizes sentences, precedents and case law, because knowledge of the interpretative criteria sustained by other electoral tribunals is a legal instrument that can help maximize citizens' rights and freedoms, which is the fundamental basis of democracy.

This is not to ignore that some Constitutional models show more openness in terms of fundamental rights and their maximization. I note that the South African Constitution, in article 39, provides that when interpreting the statement of individual rights, judges not only may consider international elements, but also apply foreign law, provided that they maximize the fundamental rights established in the Constitution.

To the extent that other normative systems and their corresponding interpretative criteria are known, the administration of justice in electoral matters will improve, and similar or common interpretation criteria may be generated to promote the creation of community law within our continent.

Therefore, the creation of this project is of utmost importance and will be carried out through the creation of a website that will primarily contain relevant sentences, precedents and case law made by various electoral tribunals.

This project redoubles its importance as we are aware that currently there are multiple coincidences between our countries on a range of constitutional and electoral issues. There are also possible solutions circulating, making it basic or illustrative for electoral judges to be able to turn to comparative sentences, precedents or jurisprudence and to analyze the experience of others to resolve specific cases.

This, of course, does not mean that criteria from other courts should be considered binding for others, because it is necessary to take into account normative differences and particularities, freedom of interpretation, and the argumentative settings of each judge that are derived from their particular function.

Nonetheless, it is necessary to have efficient tools to optimally systematize the available information on the subject. These tools, known colloquially as search engines, should provide security to gather the information and manage logical connectors. In other words, they will allow the user to improve the search for information by getting the user as close as possible to the hoped for result. This is achieved through sophisticated systems that can search by word, phrase, concept, topic, or specifics of a sentence. This is in relation to each country.

The Mexican electoral tribunal has the technology that will serve as an input and is currently used to share this kind of information in terms of the federative jurisdictional entities in electoral matters in Mexico. We made this tool available to the group in case it could be used as the basis or start of the project, and it was approved with the understanding that it would be adjusted according to the characteristics and databases of each country while paying attention to the substantial differences in each system. For example, in Mexico, the concept of jurisprudence refers to compulsory compliance criteria derived from the application or interpretation of positive law issued by the electoral tribunal. The Mexican model is unusual because it formally removed ratio esenti, in other words, the interpretative criteria exhibited in the sentence. That is what shapes the jurisprudence in Mexico.

To form the database, a proposal was put to the consideration of the group. This proposal will incorporate a list of issues that will be divided into subtopics, for example, with sections related to the principles



of electoral interpretation, fundamental electoral rights, the electoral process, administrative electoral bodies, electoral justice, and political parties, including all opinions, all rulings, and all precedents. These topics will be broken down into sub-topics, which you may find are already adequately defined.

As I mentioned, we will also have a further breakdown for the sub-topics. There is also a thesaurus to facilitate the search for information by establishing regional linguistic categories to differentiate the content of documents. It will also refine the search from a semantic or thematic perspective. We'll now look at, if I may, some examples from the Mexican case regarding local electoral tribunals.

The system of legal consultation on the local Mexican courts contains headings from which you can look up key aspects of those courts. In the system, it is possible to look up the electoral calendar for each state, the election date, type, start of the electoral process, candidate registration, Election Day, and other administrative data. The system is user-friendly because it is accessed through a map of the country. From there you can enter the sections for each country which also contain various elements such as an historical overview of the tribunal, the law of that country, the rulings that have been issued by the court, case law, their statistics, the directory of the electoral tribunal, information about how the tribunal is organized, and some identifying features.

Also, of significance for legal organisms, for each state level court it is possible to search not only for the sentence but also the legal precedents that relate to the federal Mexican system. I should let you know also that the Electoral Court of the Federal Judicial Branch has in its database more than 40,000 directly accessible sentences. This is because the Mexican electoral law specifically requires that verdicts be made public the same day as they are issued.

This type of data is proposed for the continental database. In this example, the map of the Mexican Republic appears with the various Mexican states, and in the database the map of the Americas will appear with each of the countries. In other words, the system will be adapted for this new purpose.

In terms of how to enter the system, here is an example of a search by word. This type of search engine is used to search rulings from simple criteria and concepts. In this case, the query is done using the word, by concept, by the data, by a sentence from the ruling itself.

Having a database of rulings, precedents and case law is undoubtedly a useful tool for our continent's courts, for our work in the field of administration of justice, and, fundamentally, to help strengthen electoral institutions.

The efficient realization of this project requires the participation of all judicial institutions in the region. In the name of the group, I extend an invitation to all institutions with jurisdiction in electoral matters to join this common effort to systematize rulings, precedents and case law. The OAS will monitor the incorporation of each of the institutions that considers participating in this important project, and they must designate a representative to the working group.

In conclusion, it should be noted that Latin America is currently experiencing an unprecedented moment in which democratic consolidation and the fundamental rights of citizens stand out. Precisely because of this, I would like to pledge that this project –which is a result of the efforts of judges from different countries of the region and the invaluable support for this effect of the OAS- will form another element of cooperation to strengthen our electoral jurisdictional institutions and that it will promote respect for and oversight of the fundamental rights of citizens, which form the backbone of our democratic system.





## GARY CORT

### Chairman

### ISO Technical Committee 176: Quality Management & Quality Assurance

*Dr. Gary Cort currently chairs ISO Technical Committee 176, which is responsible for the continued evolution of the ISO 9000 family of international quality management standards. He is the founder and principal at Exxeos Group, focused on helping its clients achieve operational excellence through flawless execution. He has led large-scale initiatives for NASA, the U.S. Department of Energy, and the Los Alamos National Laboratory, where he also served as Quality Officer. He co-led the world-wide CMMI deployment effort for Intel Corporation. Prior to forming Exxeos Group, Dr. Cort was Vice President of Software Quality at Research In Motion, the maker of the legendary BlackBerry smartphone. He holds a Ph.D. in Physics from Texas A&M University. He is a senior member of the American Society for Quality (ASQ) and is an ASQ Certified Software Quality Engineer. He is a former Adjunct Professor of Software Engineering at the University of New Mexico and currently serves on various standards and advisory boards.*

It is a great pleasure to be here with this distinguished group, but I have to admit that I am not in any way an electoral expert and have been dazzled by the enlightenment that I have just received regarding all the details of a process that so many people take completely for granted.

I am here today to offer the partnership of the international standards community to work with you to help give some of the landmark efforts that are under way international visibility. Before we do that, however, I must make two comments. One is on a general nature of standardization. Standardization is one of the movements that, since the end of the Second World War, has allowed us to transform society at a rate that was completely unimaginable before

then. Through standards, not only do we communicate better, but we have the ability to work more efficiently, more effectively, at lower cost and with far fewer errors. Today, there is an added importance that standards bring to the table, and that's simply due to the fact that communities, be they local, national or international, are now demanding better governance and more transparency in their operation. Standards provide the basis for those very attributes.

The second point I would like to address before we turn to my proposal addresses a very common misperception about standardization that I think is largely held by the people in this group. Based on what I heard yesterday, there seems to be a great deal of concern that moving towards standardization as a process would require everyone to have exactly the same electoral approach. That is categorically not the case.

I will speak in a moment about the context of ISO 9001, the standard that I am responsible for, the standard that is most widely used in the world with over a million different organizations registered today. No two of those organizations use the same systems. The ISO 9001 standard merely provides a framework of imperatives that each and every organization can address within the context of their own legal, social and cultural norms.

So, with that preamble, allow me to tell you a little bit about the International Organization for Standardization, ISO. We are an international organization headquartered in Geneva, Switzerland. We have a 161 member nations as well as an associated membership of over 200 other organizations like non-governmental organizations and such.

ISO publishes today the most prestigious and widely used international standards that have ever existed. We have standards that go virtually into every do-



main of existence. In many addresses like this, we do a guessing game. Ask people to guess how many ISO standards actually exist. And without going to the tedium of putting hands up and getting answers, I'll tell you we currently support almost 18,000 different international standards. That is a large number.

Even more important, is the fact that ISO employs an extremely highly regarded consensus process for developing international standards. The ISO process guarantees that everyone has a voice at the table. It requires the use of acknowledged technical experts with an international reputation to do the work. And it proceeds to the point of formally obtaining international recognition and approval for those standards. We are the only standardization process that exists today that has all of those features.

ISO is structured into a number of what are called "technical committees". In general, a technical committee has responsibility for giving familiar standards. The largest technical committee in ISO today happens to be mine. It is the Technical Committee 176 (TC 176), which is responsible for quality management and quality assurance over all the family of ISO 9000 standards. This family currently consists of about 18 different standards, the most widely used, most popular, and most recognizable of which is ISO 9001, which currently, as I said earlier, has over one million organizations registered to it.

Mr. Gutiérrez mentioned in his address that very soon Panamá will register its electoral board against ISO 9001. Which is quite an achievement and certainly a notable and a formal recognition for Panamá.

Previously, up until probably about 15 years ago, ISO standards were focused on commercial success. The standards were there to help organizations do business better. Since that time, there has been a noticeable shift in primary emphasis of these standards. ISO is now focused on creating standards for

a sustainable world. And certainly it is hard to argue against the fact that better, more reliable, and more transparent electoral processes would do anything but make the world a more sustainable place.

So now let me talk a little bit about my technical committee, what I called the ISO 9000 connection. What are the advantages to the OAS of working with ISO TC 176 in bringing your standard to the international level? I remember the first one has to do with the authority that is typically associated with ISO standards. ISO standards are the cream, the gold standards if you like. Having gone through the ISO process brings a certain prestige and recognition as for the rigorous nature and the practical applicability of those standards. As I said, ISO 9001 is currently the most widely used standard in the world.

The second advantage of working with TC 176 has to do with the flexibility of the ISO process for developing your standards. We actually have four different tracks that we can take your standard down, depending on what your particular goals and priorities are. It's my understanding that you are looking for a standard that organizations can certify against. Three of the four tracks that I show here are certifiable tracks. But the point is based on the context that you want to operate in, and the scope of what you want to operate. We can customize the process and the outputs to your needs.

Now, it is very important when we talk about your needs to make absolutely clear the fact that ISO, to my knowledge, has no electoral experts on staff today. It is our intent and in fact our policy to turn the development of the standard itself over to your technical experts. You provide the people that understand how to build electoral systems. What we provide from ISO are interfaces into the ISO development process and a lot of support in going from station to station within that process.



The third advantage has to do with the effectiveness of the ISO process. We have worked from TC 176 and our secretariat, which is held by Canada, to develop the single most efficient process for developing standards that exists in the world today. The typical international standard for the advent of this process took from six to eight years to produce and approve. We can do this now in under two years. In addition, we can do that at about 8% of the cost that was formerly needed and with exceptional focus on the results that you would like to have. So we are very eager to invite you to engage in this process with us.

And last and very importantly is the focus on social responsibility. Within the ISO 9001 community, we have been very keen on reorienting our standards from the commercial world into the social responsibility world. We have been honored and privileged to work with OAS Member States who have taken leadership roles in doing exactly this. I refer in particular to the landmark work that President Uribe has initiated in Colombia around using ISO 9001 standards to certify local and other governments, and the work that has been carried out in Mexico, for example, to standardize or provide a standard for secondary education. These are fundamental initiatives that are incredible important. I recall another, and that's the work of Mayor Labbe in Providencia, Chile, in applying ISO 9001 to the operation of his municipal government.

We are very eager to work with other OAS Member states or the OAS in general on an electoral standard that we believe has the same promise for delivering on the social contracts that organizations like these have with the people of the region.

What's next? If you decide that you would like to bring this partnership to fruition, the first stage is to obtain what we call liaison status for the OAS with TC 176. This process is already under way. In the event you decide this is a direction that you would like to

go, we can finish it very, very rapidly. The second step is to establish a secretary organization, basically an interface between your technical standards development effort and the ISO process. I am personally very gratified to learn that Canada has offered to provide these secretariat services. And allow me to give you a few reasons why this is such an important thing.

Aside from the reputation Canada has already established for itself internationally as a promoter and facilitator of human rights and progressive change, Canada also already holds the secretariat for the two largest ISO standards in existence today: the ISO 9000 family, which is housed in my technical committee and ISO 14,000 family, the environmental standards, which are housed in another technical committee, number 207.

The point is that Canada has a tremendous experience and level of success in driving important standards forward. Their willingness to get on board as the secretariat makes a tremendous difference in reducing your risk.

After that, it is simply a matter of doing some up-front planning. There are some documents listed here. I will encourage you not to read too much into the semantic translation of any of the words in these titles. Suffice it to say that these documents create the terms of reference for the project that creates the standards. It helps set the goals for that project, it sets the scope of the project and it creates a basic project plan. This is a fundamental aspect of the development process that we have put together with the secretariat in Canada that makes this process so efficient and so different from other standards development processes.

And last of all, it is simply a matter of this secretariat submitting what is called the new work proposal to ISO which will then allow member bodies to nominate experts. As the proposing organization, the OAS



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would have a great deal to say in who those experts are, and then kicking off the work and conducting it largely in a virtual fashion that allows us to move very, very rapidly.

In conclusion, I want to thank you once more for sharing your time with me. I would like to tell you that ISO in general and TC 176 look forward to the opportunity to working with you in this incredibly important work that you have undertaken.





# DISCUSSION

## QUESTIONS

**Tibisay Lucena**

**President, National Electoral Council  
of Venezuela**

**F**irst of all, I would like to comment something to Pablo Gutierrez and then to Dr. Cort. First, I want to express my thanks for the publication about Observation of the Use of Electoral Technologies, because much more than being part of the work in Venezuela, I think it is based specifically on the use of high technologies. In the particular case of Venezuela, there is no other place in Latin America or the hemisphere that has automation as recognized in this book. I think it is very important and interesting, although unfortunately, the Brazilian case is not included, just the Venezuelan. I was looking at it, and in fact, it is very good. It has some inaccuracies, such as when it talks about the biometric system, and I would love it if you could correct that because it can lead to misinterpretations. It says that you must ensure that the voting machine is separate because it could compromise the secrecy of the vote.

That was not true in any case, even in Venezuela, and even in the case of Brazil they have an integrated voter registration system with the voting machine.

I think without those inaccuracies it is an excellent work, a good approach. I also feel very flattered that this job is almost exclusively made for electoral observation in Venezuela, since it is fairly simple to use.

In regards to Dr. Cort's case, the use of the ISO norms are extraordinary. I think the prestige of this organization is totally indisputable throughout the world. The norms are used to ensure the quality of products that are presented to consumers. That is extraordinary, because we need to guarantee good quality to consumers and I think that there is no company in the world that can do something with more prestige than ISO in any of the areas that it works on.

However, that being said, I want to make a differentiation between what it means to standardize and certify consumer products and what political rights and citizenship mean. Specifically, I would say that this difference has to do with issues of sovereignty. In the case of Venezuela, we made a breakthrough in democratic theory. Instead of three branches of government, we have five, one of which is the electoral



branch. By the Constitution, the electoral branch, the National Electoral Council, guarantees the sovereign exercise of the people's exercise of the vote.

On the other hand, even when it was very specifically said in the presentation that there is no search for a single model for standardization but that differences are recognized, I think that throughout the hemisphere we have differences in various aspects and stages. Things that are unthinkable in Venezuela, however, are perfectly normal in other places because they are based on the conditions, political and cultural traditions, and the characteristics of each country. There are also things that happen in other countries which are unthinkable to do in Venezuela, and that's fine, because that's part of the differences and that's the part of the democracies that our countries and our peoples have built over the years.

Particularly in Venezuela, and I put it in general terms, neither companies nor even international observers certify or guarantee the cleanliness of the electoral process. Rather, it is the National Electoral Council that does, and in recent years we have done so through a direct relationship and guarantees that we give to both political organizations that participate in the electoral process and to voters in general.

We do our audits not only on Election Day, but in each and every one of the steps we take to reach that Election Day to guarantee that the results perfectly reflect the popular will as expressed by the vote. There are not international bodies that do this, as I said, rather it is the National Electoral Council who guarantees to the participants, including voters, political organizations, and candidates, how the process is carried out.

And I will go a little further. In the invitation letter I received from Pablo Gutiérrez, he suggested to me that in Venezuela there is of course a special chapter of ISO, because it is a very prestigious, excellent and

desirable for consumers and for products, yet on the other hand we are not talking about consumers but rather citizens and their political rights.

In the case of Venezuela, for example, the suggested organization is composed of private companies and even the national executive is represented on the quality committee. In Venezuela this, of course, is unthinkable. It is unthinkable that private companies, not international, but rather domestic, certify the electoral process and, moreover, that the Executive participates. This is because in Venezuela, that is fully separated in the Constitution when establishing the electoral branch that is completely different from the executive. It cannot, we cannot, in any way participate when certification of the electoral process is given by private international bodies or even by the Executive branch.

This is part of the particular conditions in Venezuela. I close my remarks by recognizing the excellence that ISO holds for everything else. I think talking about citizenship, political rights and sovereignty in electoral processes requires quite a different treatment.

**Tania Arias Manzano**  
**President, Electoral Disputes Tribunal of Ecuador**

I would like to recognize and commend the initiative presented to us by Judge Penagos at the request of the OAS project related to the analysis of jurisprudence and the establishment of this Ibero-American legal analysis system.

As you know, in the case of the Electoral Disputes Tribunal, we are also part of the five branches of government, the electoral branch. The Electoral Disputes Tribunal is a constitutionally determined specialized court for protecting and guaranteeing that the rights of participation are exercised through the vote. And according to the Ecuadorian Constitution, which has only been in effect for one and a half



years, the Electoral Dispute Tribunal sentences are electoral jurisprudence that are mandatory and not subject to appeal.

In this regard, we have made a great effort, despite the youth of the court, to enter this process of analysis of jurisprudence. Based on the example and experience of Mexico, where our staff took on an internship, we are making static and dynamic analyses of case law, finding the rulings, opinions and precedents. In that sense, I wanted to share with you that this work is actually very far along in Ecuador in terms of court sentences issues over the past year. You can also find the sentences online and scanned versions of the complete text.

We comply with the principles and guarantees of due process, the principles of electoral justice which are also enshrined in the Constitution, and the principles on the administration of justice. Nevertheless, we believe it is important that these efforts we make in our respective countries are collected through a system such as the one you have proposed, Judge Penagos, and from this point we commit Ecuador's Electoral Dispute Tribunal to participate in the project.

**Alejandro Tullio**  
**Director, National Electoral Directorate**  
**of Argentina**

In relation to the quality accreditation process, I think we must distinguish between jurisdictional powers, dispute resolution powers, and the power to resolve conflicts and administrative power. Personally and institutionally, on behalf of the National Electoral Department, but with consideration for other countries' positions, I think that all those procedures that are based on the application of procedural rules can be subjected to quality accreditation.

Issues such as funding distribution, the distribution of media spaces that we were talking about, voting accessibility measures, cartography, even vote tallying – at least the provisional results—may be subject to external quality accreditation. And of course some issues related to voter registration.

I am not referring to validating the eligibility of a citizen to be a voter, that's a question of sovereignty, but rather to registration procedures and electoral information. Then, by differentiating administration from legal jurisdiction, I think we can overcome an obstacle. In Argentina, without going any further, the National Electoral Chamber, whose president is here with us, is accredited by the Argentine Institute of Rationalization of Materials -a subsidiary of the International Standard Organization- on the way that they register and issue citizenship papers.

This is a very important element, but it is a first step in a wider task being undertaken by the National Electoral Chamber on registration procedures for nothing more and nothing less than the electoral body. Since last year and stemming from the meeting held in Monterrey, the National Electoral Directorate began a process of quality accreditation based on implementing campaign financing regulations. We will surely continue by working on the new powers that the law attributes to the National Electoral Chamber regarding the distribution of media air time.

I think in the case of Argentina, this is not based on a discredit of our abilities, competence or exercise of powers that the Constitution provides the judicial branch and the Ministry of Interior. Rather, it is in favor of external accreditation or guarantees that we should provide the public on how we carry out our work, not just in terms of the results but, also in terms of the way we carry out the process.

I would like to congratulate you again for the annual goals and for the presentation, the summary of what





has been done since the last meeting – which we could not attend because we had an election a week later – and I think that this Department continues to increase the quality and quantity of its activities, which certainly satisfies the member states. We repeatedly made this known to our Chief of Mission, and to the Argentine Ministry of Foreign Affairs. I think that these meetings, without prejudice due to the fact that the administrators and electoral judges are given many opportunities to see each other, allow us to share common issues and concerns as well as respectfully inform ourselves about the issues that we disagree on while still being part of the same community.

In this light, thanks to Pablo Gutiérrez and his team for the work they have carried out. It only remains to ask them to continue their work at this level of quality.

## ANSWERS

**Gary Cort**  
**Chairman**  
**ISO Technical Committee 176 Quality**  
**Management & Quality Assurance**

We hear exactly the same concerns from businesses across the world who feel obligated to work within

their own context. The ISO 9001 standards, indeed all of the ISO management system standards, do not impinge or trespass on the prerogatives of the individual entities that use them.

Allow me to give you an example: one of the things that the ISO standards requires is that the organization has a record management system, basically, that the organization proclaim what records they must maintain for their particular system. Now, I am not an electoral expert, as I said already, and it is always dangerous to make examples in an area that you don't understand completely, but I would bravely proceed into that terrain. I am assuming that one record that everyone in this room would agree is necessary for a robust electoral process is voter registration lists. At the level of the ISO 9001 standards or whatever standard you create, there would be a requirement, for example, for voting registration lists. How you decide to implement that requirement is entirely up to the individual nations and electoral boards. So there may be very, very different implementations that respond to that particular overall requirement.

So I would only encourage you not to be too concerned about the infringement on national prerogatives. That will not happen; that you will have entire control over that domain.



# CLOSING SESSION

**ALBERT RAMDIN**

**Assistant Secretary General  
Organization of American States**

**F**irst of all, I would like to thank the co-sponsors for organizing this very important Seventh Inter-American Meeting of Electoral Management Bodies here in Washington, D.C. I think we should also thank the high-level representatives from the countries of the rest of the hemisphere. From my understanding, this conference has been very intensive, not only but also very useful in exchanging information between the Member States.

Clearly, an exercise such as this one facilitates not only bringing high level representatives from electoral bodies together, but also the opportunity to exchange information. One would hope, and from my understanding, the possibility exists, that in the near future, maybe the next meeting can be held in one of the sub-regions of this hemisphere and may be even in the sub-region where I come from, in the Caribbean community. So if there is endorsement, hopefully I will see you in another time in the Caribbean.

The reason why I felt it very important to share with you some of my own thoughts is that I have done

several Electoral Observation Missions to Member States and I have seen good practices, very good practices, very useful approaches to elections, but at the same time I have also seen not very good practices when it comes to election preparation or the conduct of an election on the Election Day. I think an opportunity such as this will provide at least an opportunity to exchange information among you to see how it can be done better. No election system is perfect, I think by now you all agree with that, it can always be improved; the diversity of electoral systems is of such a nature that it almost reflects the diversity of the hemisphere.

We all have different political histories, juridical histories, and constitutional situations, so our electoral systems are diverse. But one would hope that we can agree on the core principles of elections, that we can agree in the core approach to elections, and I think that at some point in time we have to put these benchmarks, these best practices, together and see that as a guiding principle for all of us, independent of how we conduct ourselves throughout the electoral process.



Now, throughout the hemisphere, formal democracies have been established. We have Constitutions, we have audit organizations, and we have electoral bodies. In a very legalistic manner – the election–democracy has been established. I think from my perspective and from our learning over the past years in this organization, the next step should be to deepen that process, to make sure that democracy is not only existing in a formal sense but certainly in the minds of the people is accepted as the main and principal form of governance.

So in that regard, I would like to share with you maybe five issues which I find critically important. One is that, again, I am not speaking about harmonization but I am speaking about at least using your experience to agree on the core purpose of an electoral process. That's the first point and I hope that in the coming years we can work towards that end so we can present to the rest of the hemisphere as a region where democracy is alive and where elections are not only a unique moment in the political history of the country but a unique moment for the electors to influence politics in their country.

The second point is, and this is based really on my own experience during Electoral Observation Missions, that we need to strengthen electoral bodies, electoral councils, and tribunals. There are different names for them. But we need to strengthen the electoral authorities within countries. In my view, the best way to do that would be, within the context of each country of what is far possible and feasible, to make them independent.

To make them financially sound and independent, in my view directly financed by the Parliament, they should have their own specific mandate. Without any doubt, without any intervention, they should be fully and well equipped, administratively sound and independent in terms of hiring and firing, and they should be deeply depoliticized. That kind of in-

stitution you need when you want to strength democracy in our countries. I find an electoral body as important as other main state institutions in a country. As such it should be recognized for that purpose because it serves a purpose of maintaining stability.

The third point is that, within this context, the electoral bodies are just one stakeholder in the process, and there is an equal and very important role to be played by the political leaders, by the candidates, and by those who participate in elections: to understand that there is a right to participate in the elections but there is also an obligation to comply with the electoral law which has been adopted. In this sense, a former candidate for the presidency in Colombia, Carlos Galán, when he was running for president and before he was assassinated more than 20 years ago, said democratic rights can only exist when democrats fulfill the responsibilities, at the level of the person, the personal effort, the individual and the collective discipline through hard work and solidarity. That is the kind of spirit you want to see in the political arena or political climate in a country. So I would hope that you would make a call to political parties to obey the law.

The fourth point I would like to make is that we need to make every effort, (This is a call to governments and to political authorities) to uphold the status, the recognition of the authority of the electoral bodies. Because that is what the people of our countries look for when there is a conflict, when there is a tension, when there is a challenge. It is the authority of the electoral body which will provide clarification in terms of what needs to be done. We have several examples of this throughout the Americas in the past couple of years, where we have close elections or contentious elections, and in the end decisions need to be made and the decisions need to be made very clearly with authority without challenge by an institution that has respect in that country. And often,



Panelists at the Seventh Inter-American Meeting of Electoral Management Bodies.

that is something which is being challenged, and I regret that very much.

Throughout our own experience, and you have heard in the past couples of days about the experience of the OAS, more than 160 electoral observation missions, I personally believe that the fifth point is critically relevant: that of communication. Not just media but communication in general with a larger audience to explain and clarify decisions. I have seen in many countries that if decisions of electoral bodies are not explained in clear terms with an explanation of the law, it creates confusion, tension and challenges. I think continuous communication is critically important beyond what media engagement entails. Because ultimately, it is about preventing and mitigating tension in society while maximizing the acceptance of election outcomes.

Your role, and with the support of the Organization of American States as we stand ready to assist

countries in strengthening their technical capacity and their expertise, is to create trust and build confidence in society in your abilities, but also in creating the best environment for free, fair, and credible elections.

I know that each of you must have felt this much more than we do, and that it is not an easy task. Electoral bodies are being criticized personally, addressed to the leaders of those bodies, but you play a critical role. And while it is not an easy task, ultimately I believe it's rewarding because you do contribute to democracy and stability in your countries.

I wanted to share this with you and I wanted to thank you very much for your presence here today and indicate to you that the OAS is ready to support in any way we can.



**PABLO GUTIÉRREZ**  
**Director, Department of Electoral Cooperation  
and Observation OAS**

I would like to thank the Election Assistance Commission of the United States and the Federal Elections Commission of the United States who made it possible to hold this meeting in Washington at this time. Thanks once again for the commitment of all electoral management bodies, to the highest officials who have attended this meeting of exchanges.

Thanks to the Ambassadors who are accompanying us, the Ambassador of Uruguay, the Ambassador of Mexico, and certainly thanks to the staff of the department which has made possible, not only from the point of view of substance but also in the logistics, to hold this meeting. As you see, it is a predominantly female group.

Thank you very much and we hope that the next time we will meet somewhere in the Caribbean as expressed by the Assistant Secretary General. Thank you very much.



# ANNEXES

## PRESENTATION: THIRD INTER-AMERICAN MEETING OF EXPERTS AND REPRESENTATIVES OF ELECTORAL BODIES OF OAS MEMBER STATES

### TIBISAY LUCENA

#### President, National Electoral Council of Venezuela

We have this presentation to talk briefly about the Third Meeting, which is the conclusion of what we have done in the past two years in Caracas. A job we have been carrying out jointly and we hope that finally we will finish it and have a good frame of reference to share with everyone.

The electoral branch of the Bolivarian Republic of Venezuela will once again -and for the third consecutive year- host the Third Inter-American Meeting of Experts and Representatives of Electoral Management Bodies of OAS member states. This meeting will be held within the framework of resolution 2528 of the OAS General Assembly on the modernization and use of electoral technologies in the hemisphere.

The aim of this third meeting is to continue and conclude the development of the framework of best practices for the management and oversight of electoral processes, whether manual or automated, so as to ensure the auditability of elections in the hemisphere. We recognize and encourage the com-

pilation of technical knowledge accumulated by the electoral bodies in the region, which responds to the specific voting systems, peoples and cultures where they are located.

The rich discussion during the Second Meeting, titled "Towards a Framework of Procedures for the Management and Oversight of Electoral Processes", held in Caracas in June of last year concluded with an interesting inventory of the criteria and management procedures for oversight of fundamental electoral processes, such as voter registries, nomination of candidates, poll worker selection, electoral material production, logistics, voting, vote tallying, and the transmission of electoral results.

The purpose of building this reference framework is to identify, based on the inventory, what we have in common and where we differ, and then to move towards the systematization of the elements that optimize resources and to grant guarantees, always based on the experiences of authorities who organize and manage the processes.



We justify our proposal on the belief that OAS Member States have constitutional frameworks and consolidated democratic systems which are moving towards the transformation of our societies. In this process, the role of electoral management bodies has become increasingly important, and their renewed leadership is accountable to citizens and political actors regarding the ability of each system to accurately and faithfully express the will of the people and the voters.

Similarly, we emphasize and respect the primacy of constitutional and legal frameworks in which the particularities of each electoral system and process are based. Within these frameworks reside the culture, tradition and history of each society and electoral system, and each system brings together and reflects what is established in the relevant constitutional bodies and agreements.

In these meetings, neither do we speak of, nor is it the goal to determine, uniformity or standards. We talk about similarities and differences in the ways and purposes of electoral process management, which allow you to see strengths and weaknesses and, therefore, to try to support these strengths and to mitigate these weaknesses.

We believe that, in so far as is known what and how this is being done, together, each agency will reflect on their electoral mechanisms and procedures in order to identify those that are most successful.

We will soon disseminate the report of the discussions at the Second Meeting so that each of the electoral bodies sees the comments of their technicians and representatives.

In Venezuela, our political experience in this regard is very clear: the need for safeguards that we should give to policy makers in the context of conflicts, of difficult situations in Venezuela, which has strengthened the electoral and voting system. We have established 17 technical audits within our procedures that have been built in different phases of the electoral process. All of them are in perfect agreement with the political actors. The certification of each of them has been carried out with the participation of representatives of political organizations and the final recognition of the public through an increasingly larger participation, which for us is the best certification that any process may have.

To conclude, we return to the idea that we all have unique and common experiences to share. We must preserve and share them in the context of the horizontal exchange and solidarity that we have been discussing in recent years.

From there, the possibilities for cooperation and exchange of experiences in any of the above-mentioned areas, of course, will be increased when we conclude in the Third Meeting this hard and rich work that we have shared in to bring together the knowledge, wisdom, and know-how that are as important to democracy as elections are.

Each of the electoral bodies in this hemisphere, as we have said and we have shown, in all meetings where we discussed it, has strengths and some form of weaknesses. We can share these weaknesses and enrich ourselves with our best practices.



## AGENDA

Thursday, May 6th

- 08:30 a.m. Registration
- 09:00 a.m. **Opening session**
- José Miguel Insulza, Secretary General of the Organization of American States (OAS)
  - Ambassador Carmen Lomellin, Chair of the Permanent Council and Permanent Representative of the United States of America to the OAS
  - Donetta Davidson, Chair of the U.S. Election Assistance Commission (EAC)
  - Matthew S. Petersen, Chairman of the U.S. Federal Election Commission (FEC)
- 10:00 a.m. Official photo
- 10:15 a.m. - 10:45 a.m. **Presentation: Third Inter-American Meeting of Experts and Representatives of EMBs of OAS Member States (Caracas, Venezuela)**
- Tibisay Lucena, President of the National Electoral Council of Venezuela
- 10:45 a.m. Coffee Break
- 11:00 a.m. - 12:30 p.m. **Panel I: “Models of engagement between EMBs and political parties in electoral processes”**
- Alberto Dalla Vía, President of the National Electoral Chamber of Argentina
  - Eugenio Chicas Martínez, President of the Supreme Electoral Tribunal of El Salvador
  - Errol Bethel, Parliamentary Commissioner of the Parliamentary Registration Department of The Bahamas
- Moderator:** Steven Griner, Chief of the Electoral Observation Section of the Department of Electoral Cooperation and Observation, OAS
- 12:30 p.m. - 02:30 p.m. Lunch
- 02:30 p.m. - 5:00 p.m. **Panel II: “The role of the media during electoral processes”**
- Marc Mayrand, Chief Electoral Officer of Elections Canada
  - Juan Ignacio García Rodríguez, Director of the Electoral Service of Chile
  - Jennifer van Dijk-Silos, Chairperson of the Independent Electoral Council of Suriname
  - Leonardo Valdés Zurita, PhD, President of the Federal Electoral Institute of Mexico
- Moderator:** Cynthia L. Bauerly, Vice Chair of the U.S. Federal Election Commission (FEC)
- 06:00 p.m. - 08:00 p.m. Reception hosted by the OAS in the Aztec Patio, OAS Main Building





### Friday, May 7th

- 09:00 a.m.      **Introductory Remarks: “Support for Electoral Processes in the Americas”**
- María Otero, Under Secretary of State for Democracy and Global Affairs of the United States of America
- 09:15 a.m.- 10:45 a.m.      **Panel III: “Access to voting for persons with disabilities”**
- Jim Dickson, Chairman, U.S. Election Assistance Commission, Board of Advisors
  - Mario Seing Jiménez, Magistrate of the Supreme Electoral Tribunal of Costa Rica
- Moderator: Rebeca Omaña, Specialist of the Department of Electoral Cooperation and Observation, OAS
- 10:45 a.m.      Coffee break
- 11:00 a.m. - 12:30 p.m.      **OAS Initiatives in the Electoral Field**
- Pablo Gutiérrez, Director of the Department of Electoral Cooperation and Observation, OAS
  - Pedro Esteban Penagos López, Electoral Judge of the High Chamber of the Electoral Tribunal of the Federal Judiciary of México
  - Gary Cort, Chairman of the ISO Technical Committee 176 Quality Management & Quality Assurance
- 12:30 p.m. - 1:30 p.m.      **Closing session:**
- Ambassador Albert Ramdin, Assistant Secretary General of the Organization of American States
  - Pablo Gutiérrez, Director of the Department of Electoral Cooperation and Observation, OAS
  - Donetta Davidson, Chair of the U.S. Election Assistance Commission (EAC)
  - Cynthia L. Bauerly, Vice Chair of the U.S. Federal Election Commission (FEC)
- 02:00 p.m.      **Lunch**
- 06:00 p.m.      **Closing reception hosted by EAC and FEC, Russell Senate Office Building, Room 385**