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## EIGHTH INTER-AMERICAN MEETING OF ELECTORAL MANAGEMENT BODIES CONCEPT NOTE

The Inter-American Meetings of Electoral Management Bodies (EMBs) aim to promote the exchange of knowledge, experiences and best practices of electoral administrations in the region. In particular, these meetings facilitate horizontal cooperation in order to continually strengthen institutional capacities and further improve electoral systems in the Americas.

Seven Inter-American Meetings of Electoral Management Bodies have taken place to date.<sup>1</sup> The most recent meetings, those held between 2007 and 2010, both encouraged collaboration between institutions and put forward concrete initiatives to strengthen electoral authorities and to make elections more transparent and participatory.

During this eighth meeting, representatives from electoral management bodies of the Americas will once again have the opportunity to evaluate and learn from and diverse experiences, in this case specifically relating to:

- The role of Electoral Management Bodies in candidate selection processes.
- Vote counting, data transmission, and preliminary results reporting.

### The role of Electoral Management Bodies in candidate selection processes

The spread of universal suffrage throughout the region in the past three decades has solidified the legitimate origin governments through periodic free and fair elections, thus thrusting political parties into a central role in the political process. As Hans Kelsen aptly stated, “modern democracy rests entirely on political parties.”<sup>2</sup>

Nonetheless, citizens perceptions of political parties, the quintessential representative institution and the one principally associated with the expression of popular sovereignty are not

<sup>1</sup> The first meeting took place in Panama City, Panama in March of 2003, where participants discussed the important role of political consensus in both implementing technological changes and in enacting necessary legal reforms relating to technology. In subsequent meetings, participants discussed the effective use of new technologies in different phases of the electoral process and shared best practices regarding the accurate and efficient transmission of results. Efforts to increase public trust in the electoral process were also discussed. During the 7<sup>th</sup> and most recent meeting, electoral management bodies had the opportunity to exchange experiences in three key areas: the relationship between electoral authorities and political parties in the electoral process; the role of the media in the electoral process; and access to the vote for the handicapped.

<sup>2</sup> Kelsen, Hans. (1988 [1929]). *La Démocratie. Sa Nature-Sa Valeur*. Paris:Economica.



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positive. Citizens express less confidence in political parties than in any other political institution.<sup>3</sup> The crisis of representation facing political parties in the region is linked, among other things, to the poverty in content of campaign promises (party programs are vague and full of platitudes); to clientelism, which threatens freedom of electoral choice; to inequality of opportunity among parties (inequity in the resources to disseminate campaign proposals and promote candidates); and to the lack of channels for participation.

Confronted with this reality, citizens come to believe that their representatives are failing to promote their interests and demands.<sup>4</sup> Political parties have low levels of credibility and of institutionalization, a fact that is reflected in the large quantity of transient parties linked to particular candidates as well as the preponderance of personality-driven candidacies, many of whom witch or abandon their parties once they take office. The crisis of representation threatens the legitimacy of the system as well as the capacity of parties to construct a democratic mandate that would allow them promote the general welfare.

One of the principal factors explaining the lack of credibility enjoyed by political parties is that they are often perceived as closed organizations that are controlled by their leaders rather than by their members and supporters.<sup>5</sup> As a result, the promotion of internal democracy within political parties is an increasingly prevalent objective of electoral reform. Hernández Valle defines internal democracy with the following variables: 1) selection of internal leadership, 2) designation of candidates for popular election, 3) formulation of a party platform by the majority of members and not imposed by party leadership or economic interests, 4) financing of inter-party factions or coalitions, 5) proportional representation by gender, 6) respect for the fundamental rights of party members by way of an external authority that is constitutionally and legally permitted to regulate a party's internal activity.<sup>6</sup>

The push for internal democratization has resulted in a steady increase of regulation of party activity over time. Currently, the majority of countries in the Americas regulate the functioning of political parties.<sup>7</sup> The following discussion concerns one particular aspect of partisan activity, the internal selection of candidates for popular election. More specifically, the goal is to encourage

<sup>3</sup> Programa de Naciones Unidas para el Desarrollo, Secretaría General de la Organización de los Estados Americanos (2010), *Nuestra democracia*, México: FCE, p. 100. According to the 2009 Latinobarómetro & LAPOP surveys, political parties are the least trusted institutions.

<sup>4</sup> Programa de Naciones Unidas para el Desarrollo, Secretaría General de la Organización de los Estados Americanos, op. cit., p. 99.

<sup>5</sup> For Michels, the bureaucratization of a political party is derived from the domination of the elected officials over the electors. Michels, Robert (1966 [1911]), *Political Parties. A sociological study of the oligarchic tendencies of modern democracy*. New York: Free Press.

<sup>6</sup> Hernández Valle, Rubén (2000), "La democracia interna de los partidos políticos", p. 148. Disponible en [www.bibliojuridica.org/libros/1/347/11.pdf](http://www.bibliojuridica.org/libros/1/347/11.pdf).

<sup>7</sup> Zovatto, Daniel (2010), "La reforma político-electoral en América Latina: evolución, situación actual, tendencias y efectos", *Revista Política Colombiana*, junio-septiembre, p. 113. Approximately half of the countries in the region have passed laws regulating political parties, a large number of which are afforded constitutional status.



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discussion regarding the objectives of regulation, the existing types of regulation in the region, its implications and the challenges presented by such regulation.

The most important objects of electoral regulation regarding the candidate selection process are delineating legitimate procedures for the appointment of candidates as well as their subsequent presentation; the requirements for a candidacy (signature requirements, simultaneous candidacies, quotas); required procedures/formalities to launch a candidacy, including time frames or deadlines and the authorities responsible for formalizing candidacies; the conditions and procedures for modifying a candidacy; candidate qualification requirements; and the declaration of candidates.

There is no regional consensus regarding the desired level of regulation. The principal point of contention revolves around whether political parties are subject to public law, in which case the State has the right to intervene in their function and organization, or whether they are “private law” entities that are not subject to state regulation. As we can see, this discussion involves two competing principles: the right of party members to participate democratically and the right of parties to organize autonomously. This debate creates an interesting dilemma given the fact that both principles, participation and self-organization, are linked to internal democratization.<sup>8</sup>

Within the region, there are three basic regulatory models connected with internal candidate selection. In the first type internal elections are obligatory (or, in some cases, not compulsory but regulated if the parties decide to hold primaries). This posture stresses the principle of democratic participation for party members over the right of parties to self-organize. Among the countries that adopt this model, the specific legislation varies in a number of ways, differing in whether primaries should be open or closed,<sup>9</sup> separate or simultaneous, with or without public financing and between organizational participation and supervision by electoral authorities. Argentina, Honduras and Uruguay all require open primaries. In Panama, Paraguay and Venezuela, on the other hand, internal elections are closed.<sup>10</sup>

The second model makes use of the party convention as a mechanism for candidate selection. This is true in the case of Guatemala, where article 26 of the electoral law assigns the role of choosing the presidential candidate to the National Assembly of each party.<sup>11</sup> Article 26 confers on each

<sup>8</sup> According to Orozco Henríquez, any reform effort must recognize the necessity of finding a balance between both principles. Orozco Henríquez, J. Jesús (2003), “La democracia interna de los partidos políticos en Iberoamérica y su garantía jurisdiccional”, VII Congreso Iberoamericano de Derecho Constitucional, Sevilla, España, 3-5 diciembre, p. 224.

<sup>9</sup> In some case, the law does not specify either way. In Peru, for example, the law states that every party can define within its bylaws whether the election is open or closed. Zovatto, Daniel, op. cit., p. 116.

<sup>10</sup> No facts were obtained for the Caribbean cases. In the case of Venezuela and Paraguay, the Electoral Body’s have provided limited assistance in internal elections.

<sup>11</sup> Freidenberg, Flavia (2003), *Selección de candidatos y democracia interna en los partidos de América Latina*, Lima: Asociación Civil Transparencia, International IDEA, p. 22. Alcántara Sáez, Manuel (2010), “Autonomía de los partidos políticos vs. Justicia electoral a fin de garantizar su democracia interna”, II Conferencia Iberoamericana sobre Justicia Electoral, Panamá, 1-3 de septiembre, p. 10.



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party's National Assembly the right "to choose and proclaim its party's candidates for the President and Vice President of the Republic".<sup>12</sup> In addition to the Guatemalan case in which the party convention is required by law, a large number of parties in the region have established this mechanism in their bylaws.

The final model comprises those cases in which the law does not stipulate a particular method of selection, allowing each party to establish their own methods (Brazil, Ecuador, El Salvador and Mexico, for example).<sup>13</sup> In the case of Colombia, article 107 of the constitution and article 10 of the Basic Statute of Political Parties specify internal elections as an alternative, but leave to the parties the decision of whether or not to implement that method.<sup>14</sup> Each of these cases privileges the principle of party self-organization, permitting parties to define the method of candidate selection within their own bylaws.

Electoral authorities can be called upon to fulfill a variety of distinct functions, depending on particular regulatory model. An electoral management body may be responsible for the organization of elections if it actively intervenes in the internal selection process; it may act as a supervisor through the intermediary of official representatives, in some cases only if requested by the parties; and lastly it might be required to provide a judicial resolution in the case of internal conflicts.<sup>15</sup>

Reforms aimed at democratizing the inner workings of political parties have produced mixed results. On the one hand, some authors claim that open primaries allow for an increased participation in party activities by the society-at-large. They also attract new members to the organization and help the party mobilize around new issues, which results in improvements in popular legitimacy.<sup>16</sup> Others have argued that obligatory primaries are detrimental to party cohesion because they increase confrontation and fragmentation between internal factions/coalitions, thus exacerbating the already low levels of institutionalization of political parties and creating serious obstacles to governability.<sup>17</sup>

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<sup>12</sup> According to Article 25, the National Assembly "is the supreme body of the party, and is made up of two delegates, endowed with the right to speak in debate and to vote, from each one of the municipalities in which the party has an organizational presence, each of whom is elected by the respective Municipal Assembly for every National Assembly that is held." The electoral law regulates official announcements of the National Assembly as well as credentials, quorum rules, voting, majorities, presidencies, and requirements for resolutions and resources. Article 22, clause d) states that political parties enjoy the right to "make a formal complaint, in front of the Supreme Electoral Tribunal or the Inspector General, regarding any abnormality of which they have knowledge and to compel the investigation of actions that jeopardize the norms and principles of the laws regarding electoral matters and political parties." (In-house translation)

<sup>13</sup> Alcántara Sáez, Manuel (2010), op. cit., p. 10. Zovatto, Daniel, op. cit., p. 116.

<sup>14</sup> Zovatto, Daniel, op. cit., p. 116.

<sup>15</sup> Freidenberg, Flavia (2007), "Democracia interna en los partidos políticos" en Dieter Nohlen, Daniel Zovatto, Jesús Orozco y José Thompson (comp.), *Tratado de derecho electoral comparado de América Latina*, México, DF: Instituto Interamericano de Derechos Humanos, Universidad de Heidelberg, International IDEA, Tribunal Electoral del Poder Judicial de la Federación, Instituto Federal Electoral: 627-678.

<sup>16</sup> Freidenberg, Flavia (2003), *Selección de candidatos y democracia interna en los partidos de América Latina*, Lima: IDEA International.

<sup>17</sup> Zovatto, Daniel, op. cit., p. 116.



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In light of the different models and scenarios that have been posed, it is interesting to consider the variety of challenges that confront electoral authorities regarding the internal selection of candidates by political parties. It is important to emphasize that the objective of the recent reforms has been the internal democratization of political parties.

The preceding discussion has proposed three topics to debate. First of all, which model is most conducive to achieving the objective of internal democracy? Should electoral authorities play a role in encouraging social participation or should they abstain in order to protect the organizational autonomy of political parties? Secondly, to what extent have reforms increasing the role of electoral authorities been effective? In other words, have they promoted the internal democratization of parties?<sup>18</sup> Finally, one must consider in what capacity the electoral authorities have the means to ensure compliance with the reforms, guaranteeing that legitimately democratic competition within political parties is a practical reality.

## Vote counting, data transmission, and preliminary results reporting

Every electoral process involves three distinct stages: the pre-electoral period, beginning with the official announcement of the elections, election-day, and the post-electoral stage, which culminates with the official announcement of the results. Each phase presents distinct challenges. The second stage, for example, is characterized by an intense flurry of activity in a brief time period. This Eighth Meeting will concentrate on two specific aspects of election-day: firstly, the process of ballot counting at polling stations, in both general and specific terms, encompassing both manual and electronic voting; secondly, the transmission and publication of preliminary results, paying particular attention to the speed and reliability of transmission, considering its political implications.<sup>19</sup>

“The vote-counting process is done at the polling stations, and it includes the examination of votes to determine their validity; the counting of each vote; and the formal recording of the results on a tally sheet, in compliance with certain formalities established by the law.”<sup>20</sup> The process can be divided into distinct phases, extending from the work of the polling stations<sup>21</sup> (the primary electoral body) to the decisions made by the highest applicable electoral authority. In some cases, there are intermediate stages that involve aggregating the votes from each electoral circumscription, each of which corresponds to a defined number of polling stations. The vote-counting process concludes with the publication of the official electoral results, followed by the official declaration of results and the certification of incumbents or, in the case of a referendum, the acceptance of the winning option.

<sup>18</sup> For example, how have they prevented the interference in open primaries of external organizations linked to other political parties.

<sup>19</sup> In general terms, election day comprises three phases: voting, ballot counting in polling stations and finally the tabulation and publication of results. General Secretariat of the Organization of American States (2008), *Manual for OAS Election Observation Missions*. Washington, DC: GS/OAS, pp. 16-19

<sup>20</sup> General Secretariat of the Organization of American States (2008), *op. cit.*, p. 18.

<sup>21</sup> There is not a single nomenclature in the region for polling stations. Variations include las mesas de votación, las juntas receptoras, las mesas receptoras, las mesas electorales, las comisiones receptoras, mesas directivas de casilla, among others.



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It's important to bear in mind that the ballot counting process entails both quantitative and qualitative aspects. The former comprises the tabulation of votes cast, the number of voters in each polling station, the votes for each party or candidate, the null votes and blank ballots, and the number of surplus ballots. The second more complicated aspect entails a verification and validation of the ballots to determine whether or not they are valid or null, and in some cases blank, contested, observed or repealed. Both aspects are reflected in the official tally sheets emitted by the polling stations.<sup>22</sup>

The vote-counting process represents one of the most fundamental stages of an electoral process' final phase. The credibility of the election and the trust of the electorate, as well as the willingness of candidates and political parties to accept the result, depend in large part on the speed, professionalism (reducing the margin of error), security and transparency of the process. In this context, electoral management bodies play a fundamental role at all levels of their organization, from representatives on the ground at the polling stations up to the most senior authorities.

Regarding the vote counting process at the polling stations, several fundamental aspects merit consideration: the selection and training of poll workers, the presence of poll-watchers from political parties during the counting process and the security of electoral materials.

The number of citizens who make up the staff of a polling station varies from country to country, ranging from three to six, in the case of designated members as well as their substitutes. The stations are organized in hierarchical structures that differentiate between presidents and regular members, for example. Underlying the diverse models that have been adopted by countries in the region is the distinction between a "controlled" or a neutral strategy, meaning that the polling station officials are made up of either party members or organizations that exercise "control" over one another, or alternatively are composed of citizens without political affiliation.<sup>23</sup> This distinction relevant to polling stations is also reflected at higher levels of the electoral authority. As a result, it is important that all the members of polling stations are equipped with sufficient knowledge to carry out their functions.

Training members of polling stations should be considered a central dimension of the organization of an electoral process. Numerous OAS Election Observation Missions (OAS/EOMs) have noted that a lack of knowledge regarding electoral procedures and legislation on the part of poll workers has generated problems during ballot counting.<sup>24</sup> An effective training program would reduce the quantity of errors in the tally sheets as well as the time taken to fill them out, which would

<sup>22</sup> Franco Cuervo, Beatriz (2003), "Escrutinios" en Instituto Interamericano de Derechos Humanos, *Diccionario electoral*, Tomo I, México, DF: Universidad Nacional Autónoma de México, Instituto Federal Electoral, Tribunal Electoral del Poder Judicial de la Federación, Instituto Interamericano de Derechos Humanos: 499-509.

<sup>23</sup> Fiallos, Mariano (2003), "Mesas de Votación" en *Diccionario Electoral*, Tomo II, México DF, Universidad Autónoma de México.

<sup>24</sup> One third of the OAS/EOM reports between 2008 and 2010 recommend reforming or improving the training of electoral authorities. The recommendation to increase the level of electoral institutionalization manifests itself in different ways depending on the particular case and country. Nonetheless, the necessity to standardize the electoral



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in turn affect the speed at which preliminary results could be released. Furthermore, in the case of electronic voting, training programs are essential to ensure that the president of a polling station possesses the capabilities to print the corresponding receipts or record the results with an electronic storage medium that can be taken to the headquarters of the electoral authority as support for the results.

It is important to acknowledge the role of poll watchers delegated by political parties during this stage of the electoral process. Their presence may help to generate confidence in the results and to diminish the number of subsequent challenges. In this sense, the practice of giving copies of the tally sheets to party delegates merits consideration. Although this practice might prove complicated in cases in which large numbers of parties are participating, there is the option of posting a copy, as is done, for example in Ecuador and Peru.

The security of electoral materials is another aspect that merits consideration. There is consensus on the importance of protecting ballots and tally sheets from any kind of adulteration and many authorities have adopted measures aimed at reducing such opportunities. However, increasing levels of control may merely complicate the process, leading to an increase in the margin of error and the quantity of challenges. Finding a balance between the application of adequate security measures and the simplification of the process represents a challenge for every institution that is responsible for organizing electoral processes.<sup>25</sup>

Logistical issues and other elements related to the infrastructure of voting centers also play a large role in protecting the physical security of electoral materials. In a third of the OAS/EOMs conducted between 2008 and 2010 in Latin America and the Caribbean, overcrowding at polling stations – and in general, deficient infrastructure at voting centers – was a recurring issue.

Generally speaking, the tally sheet or its facsimile represents the foundation of the preliminary results. In some countries, the OAS/EOMs have observed that the act of filling out the tally sheets presents significant challenges for poll workers. In some cases, this is due to the complexity of the format or due to the fact that copies must be filled in manually, and in others because of the quantity of results that must be registered.

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organization – particularly between national and sub-national institutions – has been a recurring theme, principally in decentralized or federal systems. In like manner, in a number of Caribbean countries, the reports recommended standardizing procedures at the polling stations themselves. Another issue related to electoral authorities that also appeared in various reports was the necessity of clarifying or strengthening the legal framework relating to electoral processes.

<sup>25</sup> The progress that has been achieved is reflected in the fact that the majority of OAS/EOMs reports from 2008-2010 the security of electoral materials did not appear as a substantive problem. Nonetheless, the need to simplify and speed up the process was repeated.



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Following the validation process, the vote count, and the completion of the tally sheets at the polling stations, many countries transmit preliminary electoral results.<sup>26</sup> These results are neither official nor definitive. Nonetheless, when the system functions adequately, it can facilitate a calm and peaceful environment among the citizenry and among political actors in general.<sup>27</sup>

Within the Americas, there are a variety of different models for the transmission of preliminary results, beyond the distinction between manual and electronic voting. In some countries, the transmission stations are housed in polling stations, as is the case with Costa Rica and the Dominican Republic. Other countries, Panama for example, use cell phones under a system called WAP (Wireless Application Protocol). Other models require people to collect, gather and transport the tally sheets from the polling stations to centers where the tally sheets are then transmitted.

In cases in which voting is done electronically, like Brazil and Venezuela, the results are transmitted once the aggregation process is finalized. In Brazil, the memory is removed from the machine used by the voters and then entered into another terminal from which the results are transmitted to national computing center. In Venezuela, a data transmission cable is connected to the voting machine and the data is sent to the national aggregation center (centro nacional de totalización).<sup>28</sup>

Speed is a critical variable for the transmission of electoral results. In that respect, “one of the benefits of using information technology in the various phases of an election is that it can speed up the process.”<sup>29</sup> Generally speaking, it must be recognized that the evolution of telecommunications systems has given rise to an expectation among the electorate that results will be disseminated on the same day of the election.

On the other hand, the more time that the electoral authorities take to publish the preliminary results, the greater the possibility that other results will be published by organizations with less reliable sources, such as exit polls, that differ from the preliminary results that are subsequently published. In this context, is important to consider the existing regulation on the publication of tentative results and the jurisdiction of the electoral authorities to control the information published on election-day.

The timely dissemination of preliminary results has proved to be a valuable tool when it comes to engendering trust and tranquility in the population, and in political actors. The practice

<sup>26</sup> There is not a single nomenclature for this process. In some countries, like Mexico, it is called PREP for Programa de Resultados Electorales Preliminares. Other countries abbreviate the process as TREP, la transmisión de resultados preliminares.

<sup>27</sup> General Secretariat of the Organization of American States (2010), *Observing the Use of Electoral Technologies: A Manual for OAS Electoral Observation Missions*, Washington, DC: OAS/GS.

<sup>28</sup> As we have seen, available technology includes faxes, scanners, cell phones, communication systems with virtual VPN networks and dedicated connections. All of these systems should include security functions such as passwords, encryption systems and authentications in order to ensure a secure transmission.

<sup>29</sup> General Secretariat of the Organization of American States (2010), op. cit., p. 6.



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impedes difficult scenarios, in which the results that are first announced – regardless of the source – are considered valid, thus complicating the subsequent publication of different, albeit official, results as well as their acceptance by candidates and parties.

The officials responsible for creating mechanisms for transmitting preliminary results are responsible for designing procedures that reduce the margin of error and provide safeguards to protect electoral information. For example, the practice of transmitting information from the tally sheets via telephone to a reception center creates the possibility that the person who transmits or receives the information will commit an error. Consequently, not only conducting tests and simulations but also establishing external audits can help overcome such weaknesses and contribute to a reliable system with built-in contingency plans for election-day.

In the same manner as other key activities of the electoral process, the participation of technical representatives of political parties in the audits prior to election-day merits consideration. Allowing parties access to these events increases trust in the system, while also contributing in a positive way to the eventual acceptance of the published results.

The preceding discussion suggests four topics to debate. First, what models for the composition of polling stations provide the highest levels of impartiality and oversight of the vote count? Second, what measures should be adopted to improve the training and performance of poll workers? Third, what are the features and characteristics that would best ensure efficiency and effectiveness in mechanisms for the transmission of preliminary results? Fourth, what are the advantages and disadvantages of publishing results from preliminary transmission mechanisms on Election Day?

During this Eighth Inter-American Meeting, Electoral Management Bodies will once again have the opportunity to exchange points of view and profit from the experiences shared by their colleagues in the hemisphere. As with previous meetings, opportunities for debate and reflection will be promoted, with the ultimate goal of improving the electoral systems of OAS member states.