



# **TERMS OF REFERENCE**

**THIRD PLENARY ASSEMBLY**

**GLOBAL NETWORK ON ELECTORAL JUSTICE**

6 to 8 November 2019  
Los Cabos, Baja California Sur, Mexico



# CONTENT

<b>I. THEMES FOR 2019 .....</b>	<b>3</b>
<b>II. OPENING CEREMONY .....</b>	<b>4</b>
<b>III. PLENARY SESSION: ELECTORAL PROCESSES OF THE YEAR.....</b>	<b>5</b>
<b>IV. SOCIAL MEDIA: WORKSHOP WITH TECHNOLOGY COMPANIES .....</b>	<b>6</b>
<b>V. PLENARY 1. MECHANISMS OF REPRESENTATION.....</b>	<b>9</b>
<b>VI. PLENARY 2. EQUAL ACCESS TO ELECTORAL JUSTICE .....</b>	<b>14</b>
<b>VII. PLENARY 3. DEMOCRACY AND CORRUPTION.....</b>	<b>18</b>
<b>VIII. WORKING GROUP 1. MECHANISMS OF REPRESENTATION .....</b>	<b>22</b>
<b>IX. WORKING GROUP 2. EQUAL ACCESS TO ELECTORAL JUSTICE .....</b>	<b>35</b>
<b>X. WORKING GROUP 3. DEMOCRACY AND CORRUPTION .....</b>	<b>48</b>
<b>XI. PLENARY SESSION: JUDICIAL AND ELECTORAL TRAINING .....</b>	<b>61</b>
<b>XII. DISCUSSION REPORTS .....</b>	<b>63</b>
<b>XIII. AGREEMENTS OF THE THIRD PLENARY ASSEMBLY .....</b>	<b>64</b>



## I. THEMES FOR 2019

A preliminary program has been developed in collaboration with the Network's Advisory Council to establish discussion topics that are relevant to contemporary challenges to democracies, which will be analyzed during four Plenary Sessions and three Working Group Sessions:

Plenary session	Electoral processes of the year	Cristal venue
Plenary 1	Mechanisms of representation	
Plenary 2	Equal access to electoral justice	
Plenary 3	Democracy and corruption	
Plenary workshop	Social media: workshop with technology companies	
Plenary session	Judicial and electoral training	
Working Groups	Participants will be divided into strategic groups to discuss the sub-topics of each central theme: <ul style="list-style-type: none"> <li>1. Mechanisms of representation</li> <li>2. Equal access to electoral justice</li> <li>3. Democracy and corruption</li> </ul>	Arcos 1, 2, 3
	<b>Mechanisms of representation</b>	
1.a	Internal mechanisms within political parties: primary and internal elections	
1.b	Independent candidacies	
1.c	Social movements and alternatives to political parties	
	<b>Equal access to electoral justice</b>	
2.a	Cultural diversity	
2.b	Equality for the political inclusion of groups in situations of vulnerability	
2.c	Gender equality in political participation	
	<b>Democracy and corruption</b>	
3.a	Democratic disaffection	
3.b	Political financing	
3.c	Private interests during political campaigns	

All venues are in the Sheraton Grand Los Cabos Hacienda del Mar hotel.

All the support documents, including the event **program** will be updated continuously and will be available on the Platform of this Global Network: [https://www.te.gob.mx/red\\_mundial/](https://www.te.gob.mx/red_mundial/).



WEDNESDAY 6 NOVEMBER

## II. OPENING CEREMONY

**Date:** Wednesday 6 November

**Time:** 09:15 - 10:15

**Location:** Salón Cristal

**Objective:** Welcome the participants to the Third Plenary Assembly, speak on the importance of the GNEJ, present the progress during 2019 and the discussion topics to be addressed during the sessions.

**Format:** Plenary discussion. There will be 5-minute presentations.

**Terms of reference:**

The GNEJ is an international collaborative forum that aims to strengthen the efforts for effective protection of political-electoral rights and electoral dispute resolution, and so forth, and offers a space for collective reflection. In addition, it allows the exchange of experiences, best practices and relevant activities in the matter, and contributes to the design and implementation of shared strategies to solve common problems.

Unlike other associations and organizations that focus on the promotion of democracy, this Network consists of institutions and experts in charge of safeguarding electoral justice. Its participants represent Courts, Tribunals and judicial bodies worldwide, international organizations, civil society actors, academic institutions and experts in elections and electoral justice, with the objective to create a Network that allows the development, analysis and follow-up of a shared agenda on an international level in the field of electoral justice and the Rule of Law in democratic matters.

Since its creation, it has generated synergies between 111 actors, represented by 177 people. Of them, 68 are national and subnational institutions from 46 countries, and 43 of the actors are international organizations, academic institutions and independent experts. We currently have more than 140 judicial and academic documents and numerous discussion forums in the Global Exchange Platform, which is the digital tool used by Network Members, with the purpose to follow up on the multilateral exchanges between the assemblies.



### III. PLENARY SESSION: ELECTORAL PROCESSES OF THE YEAR

**Date:** Wednesday 6 November

**Time:** 10:45 - 11:45

**Location:** Cristal venue

**Objective:** Present the achievements and challenges of the main elections in each country and emphasize the strategies that increase the access to electoral justice.

**Format:** Plenary discussion. There will be 10-minute presentations. The Presidency will make a general introduction to the topic and each participant will address with a specific approach. During this session there will be no space for additional interventions. Opinions will be heard, and reactions can be discussed during the working groups.

**General context:**

During 2019, elections were held all over the world. In Asia, Indonesia, the world's third largest democracy with the largest Muslim population held simultaneous general and local elections for the first time. Nigeria, the most populous country on the African continent, held the most expensive elections in its history. By an electoral advance, the parliamentary elections in Spain coincided in the same year with the elections of the European Union and were held only a little more than a month apart. Australia, where voting is compulsory, held federal elections after the dissolution of the 45<sup>th</sup> Parliament, and in Latin America, 6 presidential elections were held, ending what was known as the region's *super electoral cycle*.

Each of these elections presented challenges to electoral management bodies. The electoral justice had to stay alert to ensure certainty and legality in each of the phases of these electoral processes, to maintain the fairness in the contests and to protect the political-electoral rights of citizens.

Guiding questions

- Which have been the main achievements for electoral justice, within the framework of the electoral processes of 2019?
- In terms of implemented strategies, can trends be identified?
- Which are the main jurisdictional challenges?
- How are these challenges foreseen to be addressed?



## IV. SOCIAL MEDIA: WORKSHOP WITH TECHNOLOGY COMPANIES

**Date:** Wednesday 6 November

**Time:** 11:45 - 14:00

**Location:** Cristal venue

**Objective:** To facilitate direct dialogue between election arbiters and industry leaders on how social media and technology can positively contribute to (and not undermine) electoral integrity – including through thoughtful regulatory approaches.

**Format:** Closed session according the Chatham House Rules.<sup>1</sup>

This session will feature a brief introduction to global regulatory and jurisprudential developments pertaining to social media and technology in elections, before opening into a moderated discussion with representatives from social media and technology companies. The session will close with a moderated period for questions and answers. The participants will provide structured input in advance of the session to help frame the conversation.

### General context:

According to the 2019 Global Digital Report, more than half of the world's web traffic is generated from mobile phones. Of a total of 7.676 million inhabitants of the world, approximately 4.388 million are Internet users (representing 57% of the total population) and 3.5 billion are active users of social networks (representing 45% of the total population).

Globalization and technology are rapidly changing the interaction between citizens, institutions and the way politics is developed. As a result, democratic processes are also transforming: election campaigns are finding new spaces, and dialogue between representatives and their electorate is becoming more horizontal, forcing institutions to evolve into these new spaces of two-way discussion, such as social networks.

Meanwhile, through the creation of algorithms, technological companies allow political advertising to become more and more individualized and adapted to what the person wants or desires to hear. Instead of social networks being a place of public discussion with many voices, people are increasingly isolated and out of reach for all opinions on the political spectrum (Barrett et al., 2019). However, the commercial rights of Internet companies also play an important role in the debate.

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<sup>1</sup> When a meeting is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.





In brief, during the session, reference will be made to three types of rights that are at stake and must coexist: a) Political-electoral rights; b) Personality rights; and c) Commercial rights.

### **Session information:**

Rapid changes around information and technology in elections increasingly present new challenges and opportunities, but democratic institutions and legal frameworks have not kept pace. This has implications for judges ruling on election cases that involve the use of new technologies or information platforms. Courts may have imperfect information to make a ruling, or may be faced with legal provisions or judicial procedure that does not contemplate new advances, and is therefore difficult to apply.

This is an urgent challenge, as increasingly the use of new technologies and information platforms is being presented as grounds for questioning the credibility of election campaigns, processes and outcomes. For example, in Kenya the security of election data and the opaque nature of the results transmission technology was questioned as part of a petition that led to the annulment of the presidential election results in 2017. In Mexico, the use of certain images on social media was called into question as alleged unlawful campaign sponsorship. Relevant jurisprudence on these issues is only just beginning to emerge globally.

### *New Media*

The overarching narrative around the regulation of social media emphasizes an incompatible polarity between the fundamental freedom of expression and regulation. What this narrative elides, however, is that there are a range of regulatory approaches – whether through legislation, jurisprudence, or voluntary codes – that seek to preserve electoral integrity and protect other fundamental electoral rights without threatening freedom of expression. Established principles pertaining to traditional media are being adapted in new ways that relate to political finance disclosure, campaign silence periods, equity in the pricing of political advertising and more. Dialogue with industry actors could contribute to a thoughtful extension of these principles, and reveal new mechanisms for collaboration on issues such as open justice and voter outreach.

### *Election Technology*

As technology companies engage in elections – contributing their expertise in enhancing cybersecurity, or contemplating what a broader expansion of electronic systems might entail – dialogue with election arbiters is essential. Ongoing collaboration will ensure that advances in technology are understood by those election arbiters who, through their judgements, have the ability to shape how and if these technologies are used in elections. As Microsoft President Brad Smith said in his September 2019 Atlantic article [Please Regulate Us](#), “A more active regulatory approach will require that government officials develop an even greater understanding of technology trends. This, in turn, will require more conversation between those who create technology and those who must regulate it.”



*Contribution by the International Foundation for Electoral Systems (IFES)*

Guiding questions

- a. What methodologies and International instruments allow States to tackle the manipulation of elections?
- b. Which are the identified challenges for the proper functioning of the use of new technologies in election campaigns?
- c. Among the identified challenges, which stand out as the main ones for electoral integrity and electoral justice?
- d. What measures to tackle these challenges have been considered or implemented during 2019, on an international level?
- e. Which have been the main trends in regard to regulation of networks vs. freedom of expression in media, during the past five years? What role are jurisdictional-electoral authorities foreseen to play?
- f. Which have been the key advancements of the use of technologies in regard to electoral justice?
- g. Which have been the reactions, responsibilities and measures taken by the State, as well as technology companies, in relation to the protection of personal data?





## V. PLENARY 1. MECHANISMS OF REPRESENTATION

**Date:** Wednesday 6 November

**Time:** 15:15 - 16:15

**Location:** Cristal venue

**Objective:** Analyze the mechanisms of exercising the political-electoral rights of the citizens, focusing on electoral justice processes. Specifically, introduce the topics of independent candidacies, both political movements and those alternative to political parties, and internal mechanisms within political parties (directive bodies and selection of candidates).

**Format:** Plenary discussion. There will be 10-minute presentations. The Presidency will make a general introduction to the topic and each participant will address with a specific approach. During this session there will be no space for additional interventions. Opinions will be heard, and reactions can be discussed during the working groups.

### **General context:**

Democratic disaffection arises with the disillusionment of citizens with political parties, who see them as a necessary evil. It is no coincidence that in the times we live in, the traditional political parties have gradually lost the preference of the voters both in the democracies under construction and in the consolidated democracies. In an attempt at transparency, political parties have tried to democratize. Primary elections, at least in Latin America, are a recent phenomenon (in 2019, Bolivia and the Dominican Republic held their first primaries in history) that help to promote voter interest and bring their party members closer together in decision-making.

The emergence of social movements such as the anti-austerity movement in Spain, better known as 15-M, revolutionized Spanish public squares in 2011 with such force that it has influenced political proposals ever since, just as the Arab Spring spread beyond the national borders where it was born. The appearance of *Podemos* in the Spanish political spectrum can be considered as the crystallization of the demands of this movement into a political party.

Independent candidacies can be considered as another mechanism of representation that arises as a response to the crisis of the political parties lacking method of electing candidates and scarce political offer they provide to the citizenry.

### **Session information:**

1. From democracy with parties to democracy in parties. The democratic state cannot be explained without the presence of political parties, which "express political pluralism, attend the creation and



manifestation of popular will and are a fundamental instrument for political participation" (in an excellent synthesis of art. 6 of the Spanish Constitution) and has ended up becoming the "State of parties", as Manuel García-Pelayo warned, underlining its essential role in democracies. In this sense, the legal systems of democratic states, unlike the liberal state, have been regulating parties until their inclusion in the Constitution, which has occurred mainly from the constitutions of since the 1970s. Among the regulated aspects (in addition to its creation, causes of dissolution, requirement or not to respect constitutional principles), is its organization and internal "democratic" functioning (also art. 6 EC). The implementation of this provision will be carried out in each country by law or by the party statutes themselves. These regulations set out the organizational structure, the rules of fundamental decision-making and the rights of the party members and their guarantees. Another evidence of the interaction between the principle of internal democracy and guarantees of the Rule of Law at party level.

The first tension to which this principle is subjected is under the principle of organizational freedom. As private associations, parties can organize themselves as they see fit. But the normative intervention on this freedom is given by the fact that they are associations that carry out public functions.

2. In times like these, in which populist currents of thought and political forces question pluralist democracy (a single homogeneous people), constitutional democracy (invoking identity democracy) and representative democracy (in the name of direct democracy and participatory democracy as alternatives to the former), parties are viewed with suspicion. They are accused of being part of the elite, of not considering the will of the represented, of being self-referential. In the face of parties, "movements" and powerful leaders emerge, who embody and channel the popular will, without institutional and party mediations. As a response to this populist questioning, the idea of "democratic quality" arises. This entails making representative democracy more representative, electoral reforms and parliamentary functioning (see above all: Tudela, Castellà, Expósito, Kölling (eds.), White book on the quality of democracy (Libro blanco sobre la calidad democrática), Marcial Pons, 2019). Among the measures to be taken to achieve this democratic quality is also the deepening of party democratization.

In this way there is a tension between, on the one hand, the *status quo* reached in many countries (election of compromisers for party congresses between militancy; election of party offices; guarantee bodies for party members...), in which the principle of internal democracy is rather formally complied with, with hardly any external judicial control, and, on the other hand, the incorporation of proposals for new instruments for affiliates' participation in the decision-making of the party and in the election of their offices as well as their candidates. We are in a phase of "experimentation" in which the trial of new formulas, momentarily not definitive or instability, prevails. The parties have thus become "laboratories of democracy", to paraphrase Judge Brandeis, in relation to the United States.



3. In some countries, European ones mainly, the decision on which instruments of internal democracy to adopt is left to the free initiative of each party (assuming, in general, the yes or the inclusion itself). The range of possibilities is wide, and the different experiences should be reviewed. From the point of view of who chooses: the party members or the adherents (wider) or the totality of the citizenry. From the point of view of what they choose: the electoral candidates and/or the high positions of the party. There is room for mixed forms of election: first by parliamentarians, then by party members choose among the finalists (Conservative Party: election of Boris Johnson). In other countries the law regulates these aspects in a compulsory way (Argentine case: open, simultaneous, obligatory -PASO-, lately copied in Peru).

4. The primary option is not entirely peaceful. Criticism of a primary system has become apparent. Many times, they are nothing more than the transfer of typical tensions between the forms of democracy to the internal party life, and the tensions that this entails. Among them: a) the tension between representative democracy for the election of governing bodies and the direct election of the candidate for prime minister or president, which can lead to discrepancies when it comes to setting the party's programmatic line; b) on the contrary: the direct election of the leader, and with those of the managerial positions of his/her confidence, invests him/her with a strong leadership, which tends to annul internal counterweights or counterweights.

5. In view of the above, it is important not to leave aside the fundamental question: who should choose the representative: the voters (all) or only the party members or adherents of the party when designating the candidate? In principle, the instruments of direct democracy in the parties emphasize the second option: it is the affiliates who designate the candidates. On the other hand, if it is the electoral body, then the option is to personalize the vote: preferential vote in proportional systems or vote for the candidate in majority systems. A first form of synthesis to this alternative is offered by the Argentine primaries, but they are not without problems: the election itself becomes a second round, conditioned (or predetermined?) by the result of the primaries. Another form of integration between the two options is to maintain the separation of spheres: primary by party members; more personalized election by voters. But neither case implies a peaceful formula: on the one hand, it may be that the (more ideologized) bases of a party designate a candidate who does not have broad popular support, in which case the result will be untoward to the proposing party. On the other hand, the personalization of politics encourages the selection of "famous" or "popular" leaders and candidates, which entails introducing a certain dose of spectacle in the electoral campaign, in parliamentary activity and in politics in general. This can end up weakening the parties themselves, as supra-personal organizations.

6. Controls of the exercise of internal democracy. The promotion of the democratic component cannot ignore the need for guarantees and controls, as a requirement of militancy and of the general public (given the public function performed by the parties). We are faced with the expansion of the Rule of Law within the parties, which had remained a de facto "grey zone". What controls are proposed in each State? What normative parameters are used?



a) The first instance of supervision is the internal party, through bodies guaranteeing the rights of members, provided for in the statutes or internal rules of the parties.

b) Control by the independent electoral oversight body of internal decisions is provided for in some but not all legal systems, which creates a gap that must be filled as the use of these instruments of internal democracy becomes more widespread.

c) In the absence of the former or as a reviewing body of the decision of either the guarantee bodies of the party or the independent body, the ordinary judiciary is summoned. In each country it corresponds to different branches or judicial orders (civil jurisdiction is common given the private nature of the parties: this generates a relevant problem: civil judges do not know the problems of the parties well enough, or how to deal with very diverse matters). In this case and in the previous one, the control parameter is given, if any, by the legislative regulation of the matter. Otherwise, in the party regulation and in the Constitution itself, either through specific rules on internal democracy, or, as is more usual, through constitutional principles applicable to the case.

d) Ultimately, the constitutional jurisdiction, because it has jurisdiction over the matter in a specific way or for violations of fundamental rights. The question arises as to the standard of prosecution in such cases: constitutional rules often include the right of association (even specifically political) and/or the right to participate in public affairs. This is the case of Spain, where the Constitutional Court already had the opportunity in ruling 56/1995 to deal with this issue, which resolved an appeal for protection of fundamental rights (supervising the decision of a civil judge): beyond the deferential nature of the affected party, the relevant part of the judgement is that it is based on the combination of the right of association (22 EC) and participation (23.1 EC), resulting in a right to participate in party affairs. How have other constitutional jurisdictions dealt with the question of supervision of internal party decisions?

7. In conclusion, the parties' demands for internal democracy pose very different challenges to both legal systems and oversight bodies, especially the judiciary. Constitutional justice, as the cornerstone of the constitutional Rule of Law, becomes the last line of protection and defense of the parties' internal democracy. Constitutional jurisdiction, which arose as a judicial review of the constitutionality of the law of Parliament, and therefore as a limit to the majority, now stands as a guarantee of democracy itself. And within it, it can also assume the function of being the ultimate guarantee of the internal democracy of the parties and of the rights of the members. In doing so, it will subject each party power to more effective judicial control.

*Contribution by Josep Maria Castellà*



### Guiding questions

- a. Which have been the main challenges to electoral justice in this regard, and in relation to the protection of political-electoral rights?
- b. Which are the international trends regarding mechanisms of representation in governing bodies and in the public sector, from the past five years, and in 2019 in particular? Which has been the role of electoral justice in these processes?
- c. Which are the key international instruments in this field and how have they been successfully implemented? Are there aspects that could be added to these instruments?
- d. Of what nature (political/legal/judicial) are the measures taken to ensure an inclusive participation and representation?
- e. What should be the role of jurisdictional-electoral authorities?





## VI. PLENARY 2. EQUAL ACCESS TO ELECTORAL JUSTICE

**Date:** Wednesday 6 November

**Time:** 16:30 - 17:30

**Location:** Cristal venue

**Objective:** Analyze judicial and legal strategies that develop and promote the exercise of political-electoral rights of the citizens and how these tackle the challenges to modern democracies, from an academic perspective. Also, link the theoretical part with the practical experiences that are shared in the working groups.

**Format:** Plenary discussion. There will be 10-minute presentations. The Presidency will make a general introduction to the topic and each participant will address with a specific approach. During this session there will be no space for additional interventions. Opinions will be heard, and reactions can be discussed during the working group.

### **General context:**

Without respect for human rights and effective governance based on the Rule of Law, sustainable development cannot be achieved. This is so important that one of the targets of Sustainable Development Goal 16 (Peace, justice and strong institutions) is to "Promote the rule of law at the national and international levels and ensure equal access to justice for all". Similarly, the Preamble to the Charter of the United Nations states that one of its objectives is "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained", a full reference to the Rule of Law.

The importance of the Rule of Law and access to justice in electoral matters translates into a necessary condition to promote democratic values and human rights, since it guarantees the exercise of political rights and, in case of violations, a means of redress (Access to Justice and Electoral Integrity, 2019). One of the main elements of a democracy is inclusion: to promote equal and impartial treatment for all human beings and to reject any racist, sexist or classist ideology that upholds the natural superiority of a race, gender or social class (Salazar and Woldenberg 2001, 30).

It is essential to ensure the access of all population groups, especially those in vulnerable conditions, to the effective protection of their political and electoral rights. The design of electoral justice must consider the particularities of these groups, such as indigenous peoples and communities, the population with some form of disability, young people and women, all seeking political representation, and in the case of the latter, eliminating gender-based political violence.





### Session information:

Article 7 of the Universal Declaration of Human Rights states that "all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination". While this is the starting point for the right to equality, the conditions for its exercise are as diverse as the places and contexts in which it is protected, and it is therefore necessary to focus on the different forms of discrimination and in some cases the violence faced by vulnerable groups.

Equality in electoral contexts must consider each specific legal framework. In this sense, electoral law, understood as all the regulations based on legal positivism and all the conventions of the electoral process, from the active and passive voting, to the scrutiny, the verification of the election and the publication of the result (Nohlen, 2017), is considered a complex system of norms integrated by constitutional, conventional, legal and regulatory dispositions that, fundamentally, must facilitate political representation and participation and, in their case, guarantee the conditions of equality for the access to justice.

Thus, the starting point is to guarantee equal conditions for women's political participation, people with disabilities, the LGBTQ+ community, religious and ethnic minorities, youth and, in short, for the entire universe of pluralities that comprise the political community. If the political and electoral rights of any of these groups are violated due to their specific condition, it is necessary to have mechanisms of access to justice that allow us to defend them. These actions must be focused on offering solutions for all sectors of society, especially for those groups that, due to certain material or historical conditions, are more vulnerable to a potential violation of their rights.

This condition of vulnerability partially stems from historical social, political and economic inequalities, responsible for the creation of highly stratified societies, with serious consequences for the access to opportunities and the guarantee of rights, resulting in a democracy governed by the Rule of Law that is barely strengthening equality, as a principle of relations between the national State and the individuals that constitute the nation (Sousa Braga, 2017).

A complete society is an egalitarian society, in which its citizens can coexist and equally exercise their rights. To this end, it must be recognized that society at large is diverse and plural, and that preventive mechanisms must be established to help ensure equal access to justice, which is an imperative and characteristic of any contemporary democracy. In this sense, an inclusive democracy is obliged to create electoral processes in which all citizens can fit, while the electoral judges must eliminate barriers and generate platforms detached from prejudice through their work and recognize these historically marginalized groups as part of the national political system.



This is reflected in the international standards for the integral development of our societies. Goal 16 of the United Nations Sustainable Development Goals refers to peace, justice and strong institutions and includes the target "promote the Rule of Law at the national and international levels and ensure equal access to justice for all ". This link between the Rule of Law and access to justice is paramount to the construction and strengthening of democracy, where electoral justice must be its safeguard and last line of defense.

Peaceful coexistence and the exercise of public power within a framework of certitude are based on a legal framework under which citizenship is legally conceptualized in conditions of equality and with the certainty that the rulings and judgements issued by a country's jurisdictional bodies will be obeyed. In other words, institutionalism and legal certainty contribute to the establishment of an authentic Rule of Law, which is consolidated and strengthened by the widest access to justice and the transparent application of laws, in such a way that it is guaranteed that "all persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws and are entitled without any discrimination to equal protection of the law" (United Nations, 2019<sup>2</sup>).

Access to justice is therefore the cornerstone of the Rule of Law. It must ensure mechanisms and structures that guarantee equal protection of the law for all, process complaints within a reasonable time and do so independently and impartially.

With regard to electoral jurisdictional issues, having a body that resolves electoral disputes and protects political and electoral rights, whether in the form of a specialized court or a similar body in the justice system, which carries out its activities through procedures recognized and accepted by political actors, is fundamental in the management of political conflict and the peaceful transmission of public power, the legitimacy of government authority, the quality of governance, and in the fight against corruption and impunity. The legal route becomes the catalyst to advance towards a Rule of Law, since the contestants and the interested parties, agree that the only means of resolving a conflict or controversy is through the application of the law. An electoral process that is inclusive, transparent, accountable and secure, and is imbued by integrity can only be guaranteed through a justice system that increases the credibility and legitimacy of the electoral results, providing a forum for the resolution of disputes and the protection of political rights.

One of the historically marginalized groups has been women. However, during the twentieth century and so far in the twenty-first century, several countries have made progress on gender equality issues: through their social struggle and affirmative action by justice delivery bodies, there has been an increase in the global proportion of women in national parliaments. Unfortunately, the risk of a reversal in their won rights is still present. Although the 2019 Map of the UN Commission on the Status of Women showed an increase in the global proportion of women parliamentarians

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<sup>2</sup> See <https://news.un.org/es/story/2019/03/1452691>



from 24.3% in 2017 to 25.3% this year, the number of women presidents in Latin America fell back to zero, after the period 2006 - 2018, there were up to four. The equality and empowerment of women is not an exclusive benefit for them, it is a benefit for all. Promoting gender equality is essential in all areas of a healthy society: from the reduction of poverty to the promotion of health, education, protection and welfare of girls and boys.

Without a system that mitigates and manages the perception of disparities or inequalities, a lack of legitimacy is created for the current government. The importance of access to electoral justice is essential and is fundamental to the maintenance and establishment of the Rule of Law, thereby promoting emancipation and guaranteeing human dignity.

In several countries around the world, and in the case of Mexico (to a large extent through judgements of the Electoral Tribunal of the Judiciary of the Federation, TEPJF), the fulfilment of the constitutional promise to allow women's full political participation has been widened and the system of guarantees of the rights of members of indigenous communities has been strengthened. This has been done primarily through affirmative action and in accordance with respect for their domestic legal systems and guided by the relevant international treaties in force.

The TEPJF has an intrinsic vocation to contribute to the consolidation of a growing democratic culture that is effective and closer to groups that have historically been placed in situations of social disadvantage, from the judicial perspective, in the hope to progressively close the gaps of inequality that still exist in Mexico.

Although democracies manifest themselves in various ways, it is worth emphasizing that they are only truly effective once they are inclusive. This is the case if it includes a multicultural recognition of its societies, creating favorable measures for the political and cultural rights of vulnerable groups, and creating opportunities for their direct political participation, through which their representation can be increased. It is essential to look at human diversity, the existing differences and to equally protect human rights, and to change the state of politically under-representation of the groups in all States that consider themselves democratic (Sousa Braga, 2017).

*Contribution of Justice Mónica Aralí Soto Fregoso*

#### Guiding questions

- a. How do you define “equal access to electoral justice”?
- b. How can equal access to public offices be guaranteed, in a continuous and resilient manner in relation to democratic challenges
- c. Which have been the mechanisms or judicial decisions that have ensured greater equality in elections, during the past five years, and in 2019 in particular?
- d. Which are the key international instruments in this field and how have they been successfully implemented? Are there aspects that could be added to these instruments?



## VII. PLENARY 3. DEMOCRACY AND CORRUPTION

**Date:** Wednesday 6 November

**Time:** 17:30 - 18:30

**Location:** Cristal venue

**Objective:** General introduction to the theme, its implications for electoral processes and effects on the democratic disaffection, from an academic perspective, as well as link the theoretical part to the practical experiences shared in the working groups.

**Format:** Plenary discussion. There will be 10-minute presentations. The Presidency will make a general introduction to the topic and each participant will address with a specific approach. During this session there will be no space for additional interventions. Opinions will be heard, and reactions can be discussed during the working groups.

### **General context:**

Protecting, strengthening and consolidating institutions is key to controlling and fighting corruption. In fragile democracies, corruption can be seen as a cause and consequence of their weak institutions. In addition, private companies and power brokers increasingly play an active role in political campaigns, which goes hand in hand with the discussion on public and private models of political finance. Therefore, it is essential that judicial systems are independent, have a strong regulatory system, are transparent and accountable. Electoral justice, as a safeguard of the legitimacy of democracy and its elections, must seek new alternatives in order to have a closer and more trusting relationship with citizens.

### **Session information:**

Political corruption is inversely proportional to the integrity of the electoral process. The comparative study of the global indices of transparency and perception of corruption<sup>3</sup> in the reports on democracy, Rule of Law<sup>4</sup> and election observation<sup>5</sup>, allows us to detect that, in most cases, those countries with less reliable electoral processes show the highest corruption indices. This relationship is not surprising. The States in which this relation is presented (lower electoral integrity - higher corruption) are usually characterized by the lack of robust control institutions and absence

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<sup>3</sup> Cfr. Democracy Index, The Economist, see: <http://www.eiu.com/topic/democracy-index>; Annual Report on *Freedom in the World*, Freedom House, see: <https://freedomhouse.org/report-types/freedom-world>.

<sup>4</sup> Rule of Law Index 2019, World Justice Project, see: <https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf>

<sup>5</sup> Cfr. On this, the reports of ACE Electoral Knowledge Network (<https://aceproject.org>) and the reports of the election observation reports of the Organization of American States (OAS) and of the European Union (EU).





of a solid political culture. Yet, although the institutional context is decisive, the fact is that there are also direct causal relationships between one phenomenon and another.

Corruption is defined as the illegal use of the resources or power of public entities for the individual benefit of the officials who manage them. It is the use of public power or money to favor the particular interest of the official and of the individuals with whom he or she is related. These corrupt practices can only be generalized and normalized if officials at the highest level are unable or unwilling to prevent them. If these officials (or their superiors) came to office as a result of political corruption, not only will they have to compensate their benefactors for favors received during the electoral process, but they will have neither the interest nor the need to control acts of corruption. They are not appointed by an electorate to which they are accountable in terms of transparency and honesty.

On the contrary, if the electoral process guarantees free, comprehensive and truly competitive elections and prevents – or at least minimizes – acts of corruption such as illegal campaign financing, officials will not have to return favors, for example, by illegally assigning contracts to those who financed their candidacies. On the other hand, officials elected through free and competitive elections know that they must satisfy the demands of voters who, in general, would punish opacity and acts of corruption at the polls.

The effects of corruption on the electoral process are multiple and particularly serious for the functioning of the democratic system. The greater the perception of corruption, the less trust in the people who perform public functions, and, in the institutions that they represent<sup>6</sup>. This institutional disenchantment opens dangerous spaces for anti-democratic political experiments. On the other hand, numerous studies have highlighted the social and economic<sup>7</sup> costs of corruption. This cost is usually paid by the lower-income sectors, which are the ones who most need state revenues to be directed towards satisfying the basic needs that will allow them to develop their capacities<sup>8</sup>.

How to avoid political corruption in the context of election campaigns? This is probably one of the most important challenges of the political system in general and of the electoral system in particular. The legal framework and institutional staging must be able to prevent political corruption at all stages of the electoral process: pre-campaign, campaigning, Election Day and vote tallying.

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<sup>6</sup> Cfr. Among others, the reports of the *Latinobarómetro*. See: <http://www.latinobarometro.org/lat.jsp>

<sup>7</sup> Cfr. Among others, *The Economics of Corruption and the Corruption of Economics: An Institutionalist Perspective*, Geoffrey M. Hodgson and Shuxia Jiang, *Journal of Economic Issues*, Vol. 41, No. 4 (Dec. 2007), pp. 1043-1061

<sup>8</sup> On capacity training, see Amartya Sen, *Development as Liberty*, Editorial Planeta, 2000.



In the following paragraphs I will refer in a very general way to some of the issues that should be at the top of the agenda of any conversation that seeks to eliminate acts of corruption in electoral processes.

The real autonomy and independence of the electoral authorities is one of the essential conditions to ensure adequate protection of the electoral process. But these guarantees are insufficient. In addition, suitable and effective procedures and resources are required to avoid affecting the integrity of the electoral process. It is useless to have truly autonomous authorities, if the procedures are cumbersome and slow. The challenge is in the guaranteeing. At the same time, the effectiveness of the procedures and the assurances – such as due process – of all the candidates.

Another issue that should receive great attention when making adjustments to improve the honesty of the process, is campaign financing. Proposals to restrict (or even eliminate) private resources and to have mechanisms for monitoring and transparency in real time, of the sources, the ceilings and the allocation of the resources, should occupy the first room in the discussion on electoral matters. One measure that would help achieve this objective would be to consider political parties and movements as subjects bound by the laws of transparency and access to information, with the assignment of clear duties of active transparency, subject to a strict regime of exceptions, such as, the reservation of the strategy of the campaign.

Third, there are measures to ensure that on Election Day, no fraud is committed at the polling station. This would require ensuring that the jury draw is truly random, that the polling place is genuinely secret, that the registration forms are clear and protected, and that there is a proper chain of custody of the information. Regardless of the level of systematization, the software used at any stage of the process, including jury drawing, issuance of voter registration or collection, transmission and consolidation of information, must have enough cybersecurity guarantees against interference attempts. But they must also be subject to independent audits to ensure that the formulas, algorithms and source code are functioning correctly and are truly reliable.

On the other hand, it is indispensable that once a candidate, party or movement is condemned for acts of electoral corruption, they must assume the corresponding political responsibility. In Colombia, for example, electoral regulations state that if a candidate is convicted of electoral corruption, the party or movement loses the seat for which the candidate was elected. This is what has been called the "empty chair".

The measures mentioned in the previous paragraphs are necessary – though insufficient – requirements to ensure an adequate electoral process. However, even if these measures are enshrined in legal frameworks, they can be ineffective if their flaws are not detected in time. For this reason, citizen oversight systems must be strengthened throughout the electoral process. It is essential to guarantee regulatory frameworks for the proper functioning of electoral observation missions and to ensure special protection for whistleblowers.





Transparency International's *Global Corruption Barometer 2019 for Latin America and the Caribbean* relates the perception of corruption in general to the perception of the integrity of the electoral process. According to the report, one in four citizens could have received bribes in exchange for their vote. The question is, why do not these people denounce acts of corruption? One of the answers relates to the high possibility of retaliation for doing so. It is indispensable, as Transparency International proposes, to adopt a legal framework that protects those who denounce any form of bribery at any stage of the electoral process.

Finally, there are issues that lie at the intersection of electoral integrity and electoral competitiveness. These are the new ways – and platforms – to advance the political discussion. I am referring in this case to the difficulty of controlling the millionaire financing of political advertising on the Internet when it is disguised as organic content; to the use of algorithms that hinder an open and plural conversation; to the use of data to make – behind people – advertising or even propaganda aimed at certain sectors to radicalize their positions and close political communication spaces; the creation of trends or false conversations through the use of robots (*Bots*); and the use of *trolls* and online bullying to impede free communication. These situations particularly affect the rights of voters and compromise the conditions for an election on equal terms. These challenges lie at the point of intersection between electoral integrity and competitiveness and, given their enormous difficulties, must be the subject of multisectoral reflection to find adequate remedies to address them without affecting the right to freedom of expression and the architecture of the Internet.

*Contribution by Catalina Botero*

#### Guiding questions

- Seen from a perspective of electoral integrity and in light of free, fair and credible elections, how can an impartial and transparent preparation and management be ensured throughout the election cycle?
- How can accountability, ethical conduct and integrity monitoring in democracy be ensured, and in relation to the new challenges presented by the use of new technologies and social media?
- In terms of jurisdictional-electoral institutions, what are the current challenges and measures taken to address them?
- Which are the key international instruments in this field and how have they been successfully implemented? Are there aspects that could be added to these instruments?



THURSDAY 7 NOVEMBER

## VIII. WORKING GROUP 1. MECHANISMS OF REPRESENTATION

**Date:** Thursday 7 November

**Time:** 09:30 - 11:00

**Location:** Arcos 1, 2 or 3

**Objective:** Each working group will focus on the sub-topics of the “Mechanisms of Representation”: primary and internal elections within political parties, independent candidacies, and social movements and alternatives to political parties.

**Format of the working groups:** These sessions will primarily be dialogue based. There will be an initial presentation of 10 minutes by the session Presidency, who will make a general introduction to the subject. Thereafter, the speakers will have an initial presentation of 7 minutes to guide the discussion. Afterwards, the floor will be opened for contributions by the attendees, who may participate up to two times of a maximum of 3 minutes per comment. Once the round of participations is closed, the speakers will have a second, final participation of 3 minutes.

### GROUP 1.A: INTERNAL MECHANISMS WITHIN POLITICAL PARTIES: PRIMARY AND INTERNAL ELECTIONS

**Venue:** Arcos 1

#### **General context:**

Elections constitute one of the precepts of democracy. They must be free, fair, and universal for all citizens. For that to work, the internal structure and functioning of the parties must be democratic. This session seeks to analyze the mechanisms that political parties have in order to involve their supporters in the internal decision-making of the parties, including from the selection of candidates – which in some countries is done through a vote open to the population and in other cases is only among the party members – to the selection of party leaders.

#### **Terms of reference:**

One way or another, representation has always been present in political life, old or new. In this brief note, we will attempt to best define this concept (distancing it from its theatrical notion) before reminding that often, whoever says “representation” also says “crisis of representation” and finally, show the limitations of diverse solutions devised to face this crisis.



In its simplest form, the issue of representation is linked between those who govern and the governed. The stronger this link, the stronger the legitimacy of those who govern and their authority -their capacity to govern- is unquestioned.

There are various possible interpretations of representation, yet the most common mainly concerns power. And in the political sphere, it is the delegation of decision-making power, and to speak in the name of voters. With time, this authorization has suffered significant changes that can be quickly reminded of.

Firstly, it is a matter of transforming the imperative mandate into a representative mandate, introduced by the French Revolution in 1789. The Deputies, or the representatives of Parliament, are no longer after their elections representatives of those who voted for them and allegedly they represent the general interest, even when the latter enters a particular conflict of interest with their voters.

Hence the idea that universal suffrage would make it possible to rebuild the unity of the nation in changing times and contexts. This form of representation is still in force in some European countries such as Great Britain and France.

There are also examples of professional representation consisting of the presence of elected officials who are openly committed to defending particular interests. In the U.S., this practice continues with the sole obligation of a prior public declaration of these interests.

The third form is census representation, which has now disappeared, meaning that voting is practiced between people of the same economic condition.

The fourth form of representation is so-called proportional representation, which is increasingly fashionable (and whose forms are multiple according to historical contexts) and which is supposed to allow the full expression of voters from a country with multiple political orientations and sensitivities.

As Didier Mineur<sup>9</sup> “indicates, “universal suffrage has caused the electorate to coincide with all those represented so that the authorization in principle, granted by individuals to the representatives appointed to decide for them, is now confused with the election”. It is this "confusion" that would explain, on the one hand, the growing independence of elected officials from voters, being the first most independent in their actions and, on the other, the belief that voting for a representative means voting for their policy.

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<sup>9</sup> *Archéologie de la représentation politique. Sciences Po Paris 2010. P.199 etc.*



It is not a question of answering questions about the legal and philosophical concept of representation, but rather one of understanding why it is an indispensable condition of the political system called representative democracy. In order to clarify the debate, it will be necessary to remind of the functioning of this system, at the center of which lies the question of the selection of governors.

If the people are sovereign, how can a government exercise its power over this sovereign entity? If the powers of the State are powers less separate than the articulated and harmonized powers and "only power can stop power", who has the legitimacy to organize the relations of these powers respecting the sovereignty that can only be that of the nation?

With the emergence of universal suffrage, the answer (provisional, which has already lasted several centuries) is very simple: the people delegate their sovereignty to their representatives, who organize the State, first by adopting the laws of the nation, then by organizing the functioning of their powers.

In this sense, voting is not only a procedure for deciding between candidates, but above all an expression of the sovereignty of the nation, which is expressed through the existence of elected representatives who are, in principle, the representatives of the general will.

The voters' obedience to the laws adopted by these representatives is the very condition of their freedom and sovereignty, being also the creators of laws through the work of their representatives. This denotes another aspect of voting that is no longer a right granted to a person, but a part of the civic responsibility to make the best possible choice for the common good.

The ban on selling a vote that exists in all known election laws emanates from there.<sup>10</sup> This ideal conception of representation does not fail to raise a great deal of criticism, some of a factual nature and others of a more conceptual nature. Professional representation is thus confronted with the question of the real and growing influence of national and international economic interests.

As for proportional representation, it must answer the question of the role and influence of the officials of political parties that regulate the ranking of candidates.

But in the end, the central critique of representation questions its authenticity and, above all, its claim to hegemony. The Deputy is really, as usually referred to, the representative of the people? And if that is true, who is it about? The one who elected them or the one who cannot be found of whom Pierre Rosanvallon speaks and who is nevertheless the supreme sovereign?

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<sup>10</sup> Michael Sandel: *What Money Can't Buy: The Moral Limits of Markets*. Allen Lane. London 2012.



It is this ambiguity that provokes the idea that the votes should be unanimous (the people are one and indivisible and their representative is unique) in the well-known manner of the election of the Pope or that of the leaders of countries that proclaim themselves socialist, real or imaginary.

This is also reflected in the analyses of the so-called "crisis of representation", a convenient explanation of the parties' weakness and their rejection, of the impotence of parliaments, and would be the basis of the constant search for a magic formula that would ensure the true representation, or in its absence, of the providential person who could incarnate the people.

We know the destructive effects of these criticisms. On the one hand, no authoritarian regime has emerged that has not criticized and/or excluded parliaments. On the other hand, they tend to reject a fundamental principle of democracy, which is pluralism. Regardless of the quality of the political parties, they all represent different opinions and options and reflect this principle in practice.

There is ample and well-documented empirical evidence of this crisis, whether it is the almost irreversible abstention from electoral participation, mistrust of political parties or weak activism within them.

These phenomena are indisputable. Can its basic explanation be reduced to the deficit of representation?

Certainly, many solutions to the so-called deficit have been presented. Change the electoral system to introduce greater proportionality or create cross-cutting political parties capable of articulating claims and demands that are no longer specific to certain social categories or introduce forms of direct consultation (referendums) that allow the executive to respond immediately to the demands of the "people" and, therefore, further reduce the space of the legislature.

We know the limits of these bricolage projects. It is time to open other spaces for reflection. The last 20 years of Pierre Rosanvallon's reflections have generated, for instance, "historical individualism", the demands of a new relationship between the governed and the government, or the emergence of counter-democracy in which the representative-represented relationship loses its relevance.

In fact, the current trend leans toward the domination of the executive branch, which is the repository of most of the State's power. And this power, thanks to the tendency of electing the President by universal suffrage, tends to challenge the legislative power for its legitimacy derived from the representative character of its members.

The executive has a double legitimacy, that of its technical effectiveness and that of the various forms of approach to the "popular base", either through the generalization of primary elections or





through the multiplication of popular consultations. Instead of representing the State (Louis XIV) or society (Stalin), the current fashion is to represent or, more prosaically, embody the "people".

This seems to be the challenge of a reflection on representation, which essentially leads to a reflection on representative democracy.

We have seen the importance of the concept of representation and how it is essential to build a representative democracy. We often forget the conditions that make it functional and the obvious limits of its implementation. At the same time, remembering the need, the conditions and the limits allows a reflection on this topic to be more promising and fruitful.

*Contribution by Dong Nguyen Huu*

#### Guiding questions

- a. What are the regional and international trends in the nomination of candidates within political parties?
- b. What types of internal challenges have resulted in what types of measures being taken? What challenges remain to be addressed?
- b. What has been the role of electoral justice in these processes?





## **GROUP 1.B: INDEPENDENT CANDIDACIES**

**Venue:** Arcos 2

### **General context:**

In recent years, the possibility for a person to run for popular election has been included in various countries. Through the figure of "independent candidacies", citizens can register and aspire to public office without the mediation of political parties. This figure has become more relevant as credibility in political parties has been questioned. However, the existence of independent candidacies creates new challenges for electoral authorities, ranging from the form of registration – the support they must get to register a candidate – to issues related to campaign finance. This session will analyze this issue and how it has been dealt with in different countries.

### **Terms of reference:**

According to Raul Ferreira (2002), an independent candidacy is “the nomination to seek an elected post, with its particularity that such political offer is done without a direct or supplementary competition within a political party”. In that regard, the direct registration of an independent candidacy is done when the citizen has the possibility to carry out freely his fundamental right of passive suffrage, meaning the dual right to be elected and the right to become a candidate.

In most of Latin America, the passive suffrage holds a fundamental restriction, which is a basic premise of a democracy sustained in the hegemony of a political party system, which has denied the citizens the fair right of political participation, by demanding that any candidate must be affiliated to a political party or to be nominated by such an organization.

The debate related to independent candidacies has been heated and long lasting in Latin America, as well as in other parts of the world, by trying to identify the advantages and disadvantages, of first accepting and afterwards regulating independent candidacies. This debate does not only focus on the legislation and regulations related to such type of candidacies, but also on the possible impact to democratic principles and a possible detriment to the political party system by making this alternative way of accessing to power a more widely used norm, than it currently is, a political party system which is already suffering serious setbacks due to lack of valid representation and the increasing popular search for other ways of political participation.

Many mixed arguments have been expressed during this debate, among the expressed advantages are, that since Independent candidates don't have ties to a traditional party group, they are more flexible in the way that they are able to act for the benefit of their local constituency, or that Independents can give people a credible alternative to the traditional parties, in other words a much wider choice will help fight voter apathy and they are also at least providing a viable



alternative to the traditional party hierarchy, which has been the main reason of dissatisfaction by younger generations and therefore keeping their distance from active party involvement.

By passing the legislation for independent candidacies as part of the Political Reform of 2012, which was fully implemented in 2015 during the Federal mid-term elections, Mexico is now part of the countries who has independent candidates. This reform included the creation of the National Electoral Institute (INE), Congressional reelection, new regulations on TV and radio airtime during the campaign period, out of country voting, gender parity and the aforementioned independent candidacies. However, since Mexico will be covered sufficiently during the Conference by attending Mexican experts, this paper will show other examples in the region, of Countries who have managed to partially or fully embrace independent candidacies in their electoral legislation.

### *Guatemala*

The oldest and most formally structured electoral legislation in Central America, has been avoiding independent candidacies, even that many social groups have claimed for its discussion and the urgent passing of a bill in Congress, the most visible of those has been Carlos Cerezo Blandon, son of former Guatemalan President Vinicio Cerezo Arevalo (1986-1991) who has tried unsuccessfully to be registered by the Supreme Electoral Tribunal as Presidential Candidate in various occasions. However, Guatemala has an interesting alternative for candidates for Mayors and Municipal Councils, which is the figure (Art. 97 of the Electoral & Political Parties Law) of the Civic Committee, which are local grass roots organization, who can nominate, select and register formally their candidates for those local level office seats only. This alternative also has help enormously to motivate the participation of indigenous groups and other minority groups which otherwise might have been excluded by a traditional political party, and they have had significant success.

In 1999 Civic Committees won 24 Mayoralties out of 340 in the Country, in 2003 they won 27 a small increase but with a huge importance, since they managed to capture the second largest city of the Country, Quetzaltenango. By 2011 Civic Committees had increased their numbers of Candidates 105 in total but suffered a setback by only winning 15 Mayoralties and lesser seats in Municipal Councils all over Guatemala, and the numbers in following and more recent elections have decreased significantly. The reasons for this might have to be with the difficult uphill road the Civic Committees have to endure, the regulations are very restrictive, for example: their candidates can only run for Mayor or for a seat in the City Council, their registration period is very short, they have to collect more members within their Municipality than an already established political party, they are not subject to receive public funding only private, therefore being put in an unfair disadvantage against a political party and finally, their existence can only last from the day the elections are called upon and the actual election day, not one day after. This hurts the Civic Committee enormously since they don't get the opportunity to solidify their base and sustain their active day to day presence with their targeted constituency. Additional to all these strict regulations, is the always present threat of absorption of their most charismatic and notorious community leaders, by mayor political parties with strong presence in those areas, who lure them in, either thru financial compensation or



promises to have a better easier and secured opportunity at winning the election with the backup of the political party electoral machinery, besides the most recently used malpractice in the last General Elections of June 2019, of creating “Satellite” Civic Committees of the traditional parties just to split the vote and avoid a Civic Committee to succeed.

#### *El Salvador*

On July 29, 2010 the Constitutional Chamber of the Supreme Court of Justice in El Salvador, passed its resolution by majority (four votes against one), which stated that “Since the Constitution does not required to be affiliated to a political party, and that in light of the passive suffrage, it now allows independent candidacies for the Legislative Elections in the Country”. This marked the beginning of an unprecedented political reform process in the Country, together with the unconstitutional ruling to the historically used closed party list during the Legislative elections. This new regulation was implemented for the first time by the Supreme Elections Tribunal during the Legislative and Municipal Elections of 2012, however the lack of prompt information to the citizens made it an unsuccessful pilot, since none of the five registered independent candidates managed to win a seat in the National Legislative Assembly. It was not until the Legislative and Municipal Elections of 2018, when for the first time an independent Candidate was elected, Leonardo Bonilla, with a significant number of votes, just 5000 votes short of the political party *Cambio Democrático*, who also won one seat. Unfortunately and as an example of the lack of maturity and intolerance by the traditional political parties who were still holding a grudge against the Supreme Court of Justice by passing independent candidacies, on the inauguration day of the new Legislative Session on May 1st 2018, there was not even a seat assigned to the new Independent Member of the Assembly, and he had to be seated in a plastic chair during the ceremony until a formal seat was assigned to him on the Assembly’s main Floor.

Quickly reviewing the rest of Central America, Honduras took things a bit further since 2004, by allowing independent candidacies not only for Municipal and Congressional Elections, but also for the Presidential race, recording 57 independent candidates during the past 2017 Elections, with 55 of those being Candidates for Mayors, 1 for Congress and 1 for President. Honduras regulation for independent candidate is not that restricted, only a signature recollection equivalent of a 2% of the total casted votes in the past elections is needed to register an independent candidate and they will be subject to receive public funding if they win the election, receiving those funds the following year of the election.

Panama had the most surprising effect of any independent candidates in recent elections in the region, when Ricardo Lombana managed to end up in third place during the Presidential race, with more than 36 thousand votes, revindicating the importance of the independent candidate, in a country which had banned independent candidates over a decade, until the 2014 Elections when the ban was lifted.



Only Costa Rica is still pending to debate and decide about independent candidates in the future, and Nicaragua, in which many democratic spaces seem to close instead of prospering, a debate of such kind seems not feasible under the current circumstances.

The debate will certainly continue, threatening to take away the hegemony of candidates' nominations from the hands of the political parties, is not well received by them, but it's a necessary and inevitable discussion topic, when addressing democracy's future in Latin America<sup>11</sup>.

*Contribution by Máximo Zaldívar*

#### Guiding questions

- What are the advantages and disadvantages of allowing independent candidacies? Are there secondary effects on other areas of democracy?
- What is the future for candidacies within independent vs. political parties?
- What is or should be the role of political financing of independent candidates in elections?
- Considering the democratic principles of fair elections/contest, what aspects need to be considered, maintained, strengthened or changed in terms of independent candidacies? Have past or current trends contributed to this end?
- What is the role of electoral reforms in this sense? Mention cases.

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#### <sup>11</sup> Referencias:

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## GROUP 1.C: SOCIAL MOVEMENTS AND ALTERNATIVES TO POLITICAL PARTIES

**Venue:** Arcos 3

### **General context:**

In addition to the options of political parties and independent candidates, social movements have become a form of active and direct participation in political life. This type of participation allows a group of people to run for office, outside the political parties. Moreover, social movements do not always seek to run for popularly elected office but make specific demands to be met by the government. This session will discuss the nature of such alternative mechanisms to political parties, and their advantages and disadvantages in channeling citizen demands.

### **Terms of reference:**

Why we are positing social movements as an alternative to political parties. Is it acquiescence to the argument that political parties have failed to effectively undertake their roles? What are these roles and what factors account for the failure of political parties to undertake them? If we accept that political parties have failed, the second logical question that presents in the context of our discussion, is to examine the ability social movements provide an alternative. Are social movements a credible alternative? How have they succeeded where political parties have failed? Is that success all round and is it sustainable?

Simply stated can social movements successfully supplant the role of political parties in democratic societies? Finally, it is worth reflecting on whether our conceptualization of an “alternative” can yield models that affirm the critical roles that both social movements and can play in democratic societies. The underlying premise is that neither of the two institutions can fully supplant and effectively discharge of the roles that are the subject of this discussion. I therefore argue that while social movements have and continue to play an important role in advancing citizen rights, equality and human dignity, the electoral and governing functions of political parties still remain important in representative democracies. Transition of social movements to political parties offers one pathway to harness the complementarity of roles, as is a model of collaboration between social movements and political parties.

Susan Scarrow surmises the role of political parties in representative democracies to include articulating group aims, nurturing political leadership, developing and promoting policy alternatives, and presenting voters with coherent electoral alternatives.<sup>12</sup> Scarrow (2005) propositions a broad consensus on the role of political parties in ensuring voters have viable policy alternatives and in

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<sup>12</sup> Susan Scarrow, Political Parties and Democracy in Theoretical and Practical Perspectives, Implementing Intra-Party Democracy (National Democratic Institute for International Affairs 2005).





carrying through with implementation of these policies in the management of public affairs. That consensus however subsists, at least in practice, with a growing level of citizen disenchantment with formal political institutions, including political parties. There are numerous research examples pointing to declining membership of political parties, low voter registration et cetera. The disillusionment also touches on the broader state of democracy according to a PEW Research Center survey with 51% of those polled expressing dissatisfaction with how democracy is working in their countries. Thomas Carothers, writing about a decade ago, aptly captured this phenomenon in what he called the “standard lament”<sup>13</sup>, increasing public distrust and negative views of political parties fueled by claims of: domination of parties by corrupt, self-interested elites; failure by parties to provide alternatives or offer competing ideologies/policy platforms; unwarranted differences and squabbling amongst parties at the expense of national interest; election-driven parties that fail to consistently engage citizens outside of the election cycle; weak ability of parties to govern and poor performance when they finally assume power.

Carothers therefore suggests that parties are unable to effectively represent the interests of citizens. Suffice to argue, there are intractable linkages between citizen perceptions and anger at politicians and institutions of democracy and if effect on overall confidence in democracy. Many of the same criticisms from the past remain relevant today and there is wide recognition of the waning influence of political parties that has also affected the stability of party regimes.<sup>14</sup> The confounding reality is that at the same time, citizens are getting more engaged in demanding for responsive government, and they are more often than not acting outside of formal party institutions. Parties are failing in one of their single-most important role, mobilizing political participation of citizens around their grievances and interests. Discontentment with parties and democracy, rapid advancements in digital technology, a growing youthful, educated and tech-savvy populations are at the heart of social movements and new politics.

The rise of citizens movements has been evident across the globe, playing out in the theater of street protests and often times succeeding in not only conveying a strong message aggregating citizen interests around particular issues but in the extreme leading to sweeping political changes and revolutions. In Middle East and Northern Africa, the self-immolation of a Tunisian street trader, Mohamed Bouazizi, in response to harassment by authorities, sparked a fireball that left in its wake anti-government protests, uprisings and the fall of regimes in Tunisia, Egypt, Algeria, Libya and conflict in dozens of other countries in the region.

Today, similarly styled and near – spontaneous citizen movements have ushered transitions in Ethiopia and Sudan. *Occupy Wall Street*, for all its criticisms, amplified the message of income and wealth inequality in the United States far louder and dramatically than formal political parties.

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<sup>13</sup> Thomas Carothers, *Confronting the Weakest Link: Aiding Political Parties in New Democracies* (Carnegie Endowment for International Peace 2006)

<sup>14</sup> Patrick Liddiard, ‘Are Political Parties in Trouble’ <https://www.wilsoncenter.org/publication/are-political-parties-trouble>





*Barcelona En Comu* in Spain followed in the tradition of the Greens that formally entered politics in Europe. Diverse as the groups are spread out, they are conjoined in the hip by several successes. The ability to politically mobilize public anger and frustration with formal institutions of democracy, to craft advocacy efforts around pertinent citizen interests, to tap directly into networks and individual citizens in non-traditional spaces to enlist participation, including the use of new media, social networking and forms of decentralized communication. Unsurprisingly young people, women and other groups excluded by the traditionally elitist and hierarchical structured political parties have played a distinctively visible role in these movements. In Sudan, the street protests (organized by Forces of Freedom and Change and Sudanese Professionals Association) found an icon in the mobilizing chants of a young Nubian “queen”. Social movements therefore have registered commendable success in advancing political, social and economic rights. From environmental issues, concerns around income equality, fighting oppressive regimes responsible for worsening economic and social conditions, to consolidating the participation of women and youth, important strides have been achieved across the world.

For all these successes, social movements are however confronted with one major challenge. Representative democracy has a strong emphasis, near universal prerequisite, for formal organizations to participate in elective politics and ultimately in executing the governing function. These are roles, Scarrow reminds us, that political parties are best suited to execute. In a minimalist sense if one considers legal frameworks for elections and how liberal democracies structure government institutions including the legislative and executive branches.

The emerging question is what natural progression demands of social movements, if they are to take on elective politics and execute government functions in a coherent and organized manner. A common phenomenon is that they morph into formal political parties, even where they retain the “movement” tag. Albertine<sup>15</sup> offers a movement-to-party theory and with that a framework to track the erosion of public trust in established institutions into the emergence of new political parties such as the Five Star Movement (FSM) in Italy. Decades back in 1983, the Finnish Green Movement, an offshoot of the social movements of 1960s, entered parliament and went on to become a formidable party in Finnish politics.<sup>16</sup> It is from a practical perspective an arduous challenge managing the transition and building the organizational capacity required to trade formal politics and the business of government.

Moreover, it is suggested that voters, at the point of elections, prefer predictable and coherent programs, values that formal political parties are more likely to provide.<sup>17</sup> It is equally challenging when social movements fail to make the transitions necessary to crown their advocacy efforts at

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<sup>15</sup> Albertine Eikås Halkjelsvik, *From Anti-establishment Social Movement to Successful Political Party: Following the Emergence of the Five Star Movement in Italy* (University of Bergen 2016).

<sup>16</sup> <https://www.greeneuropeanjournal.eu/how-the-alternative-movement-became-green-in-finland/>

<sup>17</sup> Kitschelt, H. (2006). Movement parties. *Handbook of party politics*, 278–290.



the most important moments. In Egypt, the lack of preparation saw a fairly robust citizen movement cede space to the Muslim Brotherhood when the exigencies of elections tolled. Is transition the only pathway? International Idea<sup>18</sup> offers a model of collaboration between social movements and political parties that offers possibilities to strengthen political parties, in terms of policy platform, structure and membership base on the one hand, and benefits movements that are ill-suited for the skill-sets, knowledge and resources parties bring to legislative and executive governing functions. Such models are useful to acknowledge the critical alternative role that social movements will continue to play distinguished from political parties, while safeguarding the critical electoral and governing functions that political parties occupy in representative democracies. It also helps solve the challenge of defining relationships between social movements and electoral management bodies, where such movements have not morphed into formal political parties. Regardless, electoral management bodies ought to create platforms for consultations with social movements, especially where such movements play an important role in political transitions.

*Contribution by Dickson Omondi*

#### Guiding questions

- What has been and is the role of social movements in politics? What effects have they had on citizen participation, representation and equality?
- What effects do these movements and alternatives to political parties have on electoral administration and regulation? Have new forms of representation emerged? Are they legislated?
- What have been the factors and reasons behind social movements in the 21st century? How do they relate to democratic disaffection?
- Seen from the perspective of democratic disaffection, what are the alternatives to political parties, their benefits and disadvantages for democratic culture and electoral processes?
- Regarding the protection of political-electoral rights, how have these movements and alternatives contributed to this end? How can jurisdictional-electoral authorities relate to these phenomena?

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<sup>18</sup> International Idea, *Collaboration between Citizen Movements and Political Parties Political Party Innovation Primer 3*  
<https://www.idea.int/sites/default/files/publications/collaboration-between-citizen-movements-and-political-parties.pdf>



## IX. WORKING GROUP 2. EQUAL ACCESS TO ELECTORAL JUSTICE

**Date:** Thursday 7 November

**Time:** 11:15 – 12:25

**Location:** Arcos 1, 2 or 3

**Objective:** Each working group will focus on the sub-topics of “Equal access to electoral justice”: political minority participation (gender equality, indigenous peoples, persons with disabilities, LGBTIQ+). This, with a special focus on the achievements and proactive strategies.

**Format of the working groups:** These sessions will primarily be dialogue based. There will be an initial presentation of 10 minutes by the session Presidency, who will make a general introduction to the subject. Thereafter, the speakers will have an initial presentation of 7 minutes to guide the discussion. Afterwards, the floor will be opened for contributions by the attendees, who may participate up to two times of a maximum of 3 minutes per comment. Once the round of participations is closed, the speakers will have a second, final participation of 3 minutes.

### GROUP 2.A: CULTURAL DIVERSITY

**Venue:** Arcos 1

#### **General context:**

According to the United Nations, “cultural diversity is one of the central challenges of our time and that policy choices about recognizing diverse ethnicities, religions, languages and values “are an inescapable feature of the landscape of politics in the 21<sup>st</sup> century”<sup>19</sup>. Likewise, one of the key values of democracy is diversity. Therefore, during this session, the issue of cultural diversity and how it should be ensured through electoral justice will be discussed.

#### **Terms of reference:**

Indigenous peoples are not minorities. We are peoples. We are not minorities in quantitative terms, since in many countries, such as my own, even with otherwise questionable census data, we represent at least half of the population. Even in other countries, such as Mexico, where the population is not as high in percentage terms (about a quarter of Mexicans self-determine

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<sup>19</sup> Heba El-Kholy, “No democracy without diversity”, 19 september 2013, <https://www.undp.org/content/undp/en/home/ourperspective/ourperspectivearticles/2013/09/19/no-democracy-without-diversity-heba-el-kholy.html> (accessed 17 October 2019).



themselves as indigenous peoples), if we classified all inhabitants by ethnic categories, we would undoubtedly be among the groups with the highest presence.

Beyond the numerical data, always opinionable, above all we are neither politically, socially nor historically, minorities. We are ancestral collectives, with our own cultures and indomitable aspirations to continue being so. We did not come to these lands to find our own space, but rather, we were here many before the others.

The category "minorities" for indigenous peoples corresponds to another historical epoch, when we were denied our rights. Under no circumstances do we accept this derogatory and anachronistic term.

As is well known, indigenous peoples are among the most excluded, marginalized and disadvantaged sectors of society. This has had a negative impact on our ability to determine our own course and to make decisions on issues that affect our rights and interests.

The character of peoples different from others with whom we often share national borders and the historical socioeconomic situation, is the starting point for briefly analyzing the ways in which the political rights of indigenous peoples are expressed.

Broadly speaking, a distinction between political rights and the impact on indigenous peoples' decision-making, can be made in two dimensions:

First, the individual dimension, because each indigenous person is a human person and as such has all human rights, including the rights to participate in the public and political life of any society.

Secondly, the collective dimension, because if any progress has meant national and international legal instruments on this issue, it is the recognition and protection of the rights of indigenous peoples as such, as collectives.

Let's look at the first aspect:

Indigenous peoples have the same rights to participate in the governance of their countries, to have equal access to public offices and to participate in the will of the people through periodic and genuine elections, through universal, equal and secret suffrage (art. 21 International Covenant on Civil and Political Rights).

The aforementioned social, political, cultural and economic limitations mean that, in practice, the exercise of political rights on an equal footing with the rest of society is not possible for indigenous people.



In the various electoral missions that I have had the opportunity to partake in, and in registers of various electoral processes, the claims of inequity, if not direct limitations on the exercise of electoral rights, are a constant.

The indigenous person, as a voter, is not on an equal footing at the time of voter registration, access to voting centers, or for the casting of votes. The indigenous person as a candidate for elective office is not on an equal onset at least at the time of registration of candidates, for the creation and registration of political parties, in terms of political financing systems, with the media and even in terms of their own security. In addition, in general, we observe that electoral institutions themselves do not adequately consider cultural diversity, nor do they facilitate access for persons belonging to indigenous peoples. This occurs quite regularly with permanent and temporary electoral bodies, with electoral documentation and with electoral oversight.

Of course, in general terms, the electoral legislations make very little emphasis on this issue, which is reflected in the electoral system itself as well as in the political parties, the media and the activities of the electoral campaigns. Therefore, seriously addressing the evident limitations that indigenous people have in exercising their electoral rights implies a broad, complex and integral approach. No single measure, such as the facilitation of indigenous candidacies or some partial reform of the electoral system, however intentional, can deal efficiently with this issue.

The second aspect is the collective exercise of political rights. There has been enormous progress at the international and national levels on the collective rights of indigenous peoples. Today we no longer discuss whether indigenous peoples have or should have this or that right. We are debating how to make them a reality.

Art. 18 of the United Nations Declaration on the Rights of Indigenous Peoples states that indigenous peoples have the right to participate in decision-making in matters that affect them, which is a right that has implications for the enjoyment of other rights, and is based on the basic principles of self-determination, equality, cultural integrity and property.

Both the UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 define political participation as occurring both in the institutions themselves and in relations with States, since indigenous peoples have the right to preserve and strengthen their own political, legal, economic, social and cultural institutions, while maintaining their right to participate fully, if they so wish, in the political, economic, social and cultural life of the State.

The political participation of indigenous peoples must be seen in three dimensions: within the general electoral political system, in the exercise of the rights of participation and consultation outside the electoral process and as a consequence of the rights to maintain and develop their own rules and institutions of governance.





Regarding the first aspect, the collective rights of indigenous peoples and the electoral system, the opinion of the Inter-American Court of Human Rights has been fundamental. In 2005, it recognized the right of indigenous communities to have their own parties created and organized on the basis of an ancestral organizational system based on communal, neighborhood, territorial and municipal assemblies. In that ruling, the Court ordered the reform of the electoral system to address this reality recognized as an international human rights standard.

As for the second aspect, we are referring to the rights of participation and free, prior and informed consultation enjoyed by indigenous peoples. Since 1989, Convention No. 169 of the International Covenant on Civil and Political Rights, 169, ratified by the vast majority of countries in the region, states that "...governments should: (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programs which concern them". A similarly oriented text is also included in the United Nations and OAS Declaration on the Rights of Indigenous Peoples. This political participation goes far beyond the electoral, as it applies to any legislative or administrative measures that may affect peoples. Beyond the conflicts and debates over how, when and where to implement these rights, the truth is that it is a key area for indigenous peoples' political participation.

The third area of indigenous peoples' political participation, based on the right of peoples to self-determination recognized in international instruments, is that of self-government. In many ways, with different mechanisms and historical processes, there are several examples on the continent that range from full territorial, political and administrative autonomy, to other more limited forms of self-development.

In all these cases, the relationship between these indigenous entities and the State authorities implies recognition of the existence of legal pluralism and the establishment of political relations of institutional balance. If we consider the different components that make up the concept of political participation of indigenous peoples, we see that electoral participation, although very relevant, is one of these dimensions. Therefore, normative changes and public policies that seek to address the issue must do so in a broad, comprehensive manner, in terms of individual and collective human rights, if we are to build a new State that includes and respects the multiculturalism of its peoples.

*Contribution by Álvaro Pop*



Guiding questions

- a. How can the representation of different population groups within political parties be promoted?
- b. Which affirmative actions have proved to be the most efficient in the public sphere, and on what other factors do their success depend?
- c. How can indigenous populations be brought closer to the judicial-electoral authorities, both in the protection of their political-electoral rights and in their composition?



## **GROUP 2.B: EQUALITY FOR THE POLITICAL INCLUSION OF GROUPS IN SITUATIONS OF VULNERABILITY**

**Venue:** Arcos 2

### **General context:**

A democratic political system must allow the full political participation of all citizens, regardless of the population group with which they identify or their specific characteristics. Therefore, this session will analyze how equal access to justice has been promoted to protect their political-electoral rights.

### **Terms of reference:**

Access to justice is one of the fundamental principles of the rule of law. Moreover, it is one of the foundational principles of democratic regimes as it considers the individual right of every person or social group to claim the protection of their rights —regardless of their economic, social, political, physical, mental, racial, migratory, ethnic, religious, gender or sexual background. From a formal jurisdictional standpoint, access to justice is “every person’s subjective public right, within the terms established by law, to expeditiously access independent and impartial courts, to raise a claim or defend themselves from it, so that, through a process in which certain formalities are respected, a decision and resolution is reached and executed” (Lara Otaola, Lima & Zinser, 2019: p. 6).

Access to justice and in this case, access to electoral justice, should not only be understood from a formal standpoint “as the means aimed at preventing the violation of the electoral system [and] the mechanisms for resolving electoral conflicts” (Orozco-Henríquez, 2013: p. 9). Electoral justice is not only responsible for finding a solution to electoral conflicts or ensuring the legality of an election, it is also the centerpiece to guarantee the political-electoral rights of citizens, which at the end are nothing more than human rights. It is worth emphasizing this point, as it implies that access to electoral justice constitutes a legal universal principle for the protection of electoral and political rights, and in consequence, for the protection of every person’s political dimension.

It is precisely from a comprehensive understanding of access to electoral justice that people’s right to be heard and claim their rights is guaranteed. This right becomes even more important when it comes to underrepresented groups. Firstly, because the application of measures, policies and plans for access to justice —in this case electoral justice— implies the elimination of physical, formal, substantial and structural barriers for the exercise of political-electoral rights. And secondly, because it also entails the configuration of compensatory, corrective and restorative mechanisms for the protection of rights. Fundamentally, access to electoral justice must be understood as a universal principle to restore power to those citizens who have historically been excluded or disenfranchised.



For this to happen, one of the most effective mechanisms to increase access to electoral justice for vulnerable and underrepresented groups is precisely international law and its formal instruments, such as international treaties and conventions. The importance of these treaties lies in their universality. They are a set of universal rights and obligations, meaning that they do not belong to a specific country or address a specific cultural, legal or political tradition. Instead, they are instruments that reflect the spirit and desire of humanity and have therefore been signed and ratified voluntarily by most countries.

In consequence, it is important to highlight those international instruments for the protection of vulnerable and underrepresented groups such as: the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO, 1989), the Convention on the Rights of Persons with Disabilities (2008), and the Ibero-American Pact for Youth (2016). It is precisely from the universality and relative universality (Griffin, p. 28) of these treaties and conventions, that the urgent need for jurisdictional, electoral and constitutional authorities to adopt them and monitor their compliance arises. Since human rights are the universal safeguard for human dignity, political rights automatically become universal principles for people's self-determination in the conduct of public affairs. Hence the importance of breaking down barriers for vulnerable and underrepresented groups so they can be key participants of society and the State.

In practice, over the past two decades, there have been several international actors who, through judgments and claims, have contributed to the recognition and protection of minority rights, as well as their representation and participation. Among them, the case of JGA Diergaardt v. Namibia of 1997 may serve as an illustrative example. Back then, the Rehoboth Baster community sued the government for violating their rights of self-determination, equality before the courts and free participation in public life, among others. As part of the resolution on this case, the fact the Namibian government did not have any legislation for the use of official languages other than English, constituted a violation of the right of communities to use their mother tongue. Another exemplary case is that of Ignatane vs. Latvia in 1997, where Antonina Ignatane presented herself as a candidate for the Social Justice and Equal Rights Movement party for the local elections. Ignatane was removed from the list of candidates by the Riga Election Commission for allegedly not possessing the required official language competencies. In this case, the United Nations Human Rights Committee established that the decision was not made according to objective criteria or adherence to due process. It was only until 2001 that the Latvian government modified the procedural rules of language inspectors in elections.

In Mexico, there are several cases that exemplify the work of the jurisdictional authorities — specially of the Electoral Tribunal of the Federal Judiciary of Mexico (TEPJF in Spanish) — for the protection and promotion of access to electoral justice for underrepresented groups. It should be



noted that prior to the human rights constitutional reform of 2011 in Mexico, where the primacy of the *pro personae* principle was enforced in the application of the law, the TEPJF had previously exercised this control mechanism when enforcing the law for the protection of political-electoral rights. One of these cases is established in the SUP-JDC-484/2009 and SUP-JDC-492/2009 resolutions, in which the TEPJF's Upper Chamber revoked the rulings set out by the National Commission of Guarantees of the Party of the Democratic Revolution. The Commission's resolutions had ruled out Valente Martínez Hernández and Arnulfo Hernández Moreno, both candidates for congress, even when they had lawfully identified themselves as individuals pertaining to the Otomi indigenous community. As a result, the TEPJF ordered the protection of their rights by instructing their inclusion in the list of candidates. In its resolution, the TEPJF determined that the right to vote and to be voted had been violated, contravening the Mexican Constitution and 169 Convention on Indigenous and Tribal Peoples in Independent Countries of the ILO.

Another more recent case is the approval of Thesis XXXV / 2018 of the Upper Chamber of the TEPJF that bans the use of discriminatory gender stereotypes in electoral propaganda and proposals made by political parties and their candidates. Prior to the Upper Chamber's resolution, the Specialized Regional Chamber of the TEPJF issued the ruling SER-PSC-195/2018, which sanctioned the Institutional Revolutionary Party and its candidate for governor for the state of Puebla, for spreading electoral propaganda that promoted gender stereotypes. When the case was subsequently adopted by the Upper Chamber, the decision was upheld by the SUP-REP-623/2018 appeal and its cumulative judgment. During the approval process —carried out by unanimous decision— the Upper Chamber considered in its interpretation article 1 of the Mexican Constitution and various specific provisions of different international mechanisms such as: articles 5 and 10 of the Convention on the Elimination of All Forms of Discrimination Against Women; Article 6 and 8 of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women and what was established by the Inter-American Court of Human Rights in the *González et al. Case v. Mexico*. (TEPJF, 2018)

In accordance with the responsibility to protect, promote and guarantee access to justice and political-electoral rights of underrepresented or vulnerable groups, it is essential to continue and improve these efforts today. In consequence, it is necessary for courts and jurisdictional bodies to take the lead —without hesitation— in applying, promoting and defending the principles and rights contained in international treaties and conventions. The toolbox of international law for access to justice exists and is within reach; and it is the courts' responsibility to enforce it. The primary objective should be to guarantee the right of vulnerable and underrepresented groups to freely decide and participate on issues that directly and indirectly affect them. Only with the application of international treaties and conventions the conditions for the universality of rights will be guaranteed and vulnerable and underrepresented groups will be able to decide about their future. This is precisely the task of justice, ensuring that these conditions exist.





*Contribution by Miguel Angel Lara Otaola*

Guiding questions

- a. What strategies have generated positive results at the international level: rulings, jurisprudence, public policies, laws, affirmative actions, protocols, or others?
- b. What methodology(ies) can be suggested to advance political inclusion, by political/electoral/judicial-electoral system type?



## GROUP 2.C: GENDER EQUALITY IN POLITICAL PARTICIPATION

**Venue:** Arcos 3

### **General context:**

Historically, women have been excluded from social and political participation because they have not been considered full citizens. According to data from the United Nations, while gender equality has progressed globally between 2000 and 2015, women and girls continue to suffer discrimination and violence everywhere in the world. For this reason, the Sustainable Development Goal 5 establishes the target 5.5 to “ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life”. This session will analyze progress and challenges in achieving gender equal political participation.

### **Terms of reference:**

The mandated reflection must begin by recognizing that Paraguay is not exactly a good example of progress in achieving gender parity within democratic countries. The concept is understood, on the one hand, as a democratic principle that implies the effective and real exercise of equality between women and men (CIM/OAS, 2016, pp. 18/19) and, on the other, as a device that guarantees the participation and equal representation of women and men in popularly elected positions, obliging political organizations to draw up lists of candidates with 50% of each sex ordered sequentially and alternately)<sup>20</sup>.

The efforts to propose democratic parity in Paraguay acquired greater visibility with the creation of the Group for the Promotion of Democratic Parity (GIPD), formed in 2014 as a plural space integrated among women members in politics of diverse partisan extraction. Together with the Ministry of Women and international entities such as UN Women, UNDP and civil society organizations such as the Documentation and Studies Center (CDE) and "Decidamos", Campaign for Citizen Expression, worked on the drafting of a bill.

This bill was presented to the Senate on March 8, 2016 under the slogan "We are half, we want parity" and coincided with the International Women's Day. It foresaw, among other things, "...the balance in the participation of 50% of men and 50% of women in the lists of elected offices, hiring and designation of the powers of the State...", as well as a key of alternation, meaning that candidates of different sexes are altered and, for instance, following a woman, is a man, and vice versa. It also proposed its mandatory application both in elections within political parties and movements and in intermediate and political elections, trade union and social organizations

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<sup>20</sup> The concept comes from the "Athens Declaration", issued in the framework of the first European summit "Women in Power" held in November 1992..



governed by provisions of the Electoral Code, other collegiate bodies, the cabinet of the Executive Branch and public officials in high positions of government and administration.

This attempted law achieved half a sanction in the Senate and by turning it over to the Chamber of Deputies - which served as the reviewing body – it questioned the terms and grounds of the bill and substantially modified it by eliminating the first article that establishes that the lists of political parties in elective or collegiate offices must be composed of 50% women, removing the very essence of the regulations.

Returning to the chamber of origin, the Senate did not add enough votes to impose its version and ended up approving the modified version that means limiting itself to promoting parity through awareness-raising campaigns undertaken by the Ministry of Women and the Superior Tribunal of Electoral Justice (TSJE) and developing leadership training programs for women, while noting that 30% of the State's annual contribution to political parties should be earmarked for the training of women in political leadership. Of course, this sanction was severely criticized by the sector concerned, given the mutilation in its articles and ideas included in the original text.

In November 2018, the Executive Branch vetoed the sanction totally, considering the regulation as incoherent, for not establishing mechanisms to achieve the objectives of parity.<sup>21</sup> In order to close the process, the chamber of origin ended up accepting the veto, and the project was archived. And this is how - for the time being - this initiative to adopt democratic parity in its legal framework, that obliges democratic parity in the access to public and private positions ended.

There was another attempt to pass a democratic parity law and this was done in the discussions to implement the unblocking of lists, at which time an attaché was introduced in the Senate. The aggregate was, however, rejected by the Chamber of Deputies and the Senate did not gather, once again, the necessary votes to impose its version.

Thus, Paraguay continues to suffer from the lack of mechanisms of political participation and representation that promote or ensure parity in political representation or in collegiate bodies. In public positions of popular election, one can hardly speak of a quota of 20% of the total of the list, a compulsory device only at the level of intraparty competition (internal elections) and not interparty<sup>22</sup>. The result of the lack of mechanisms that strengthen equality in political competition is reflected in the current legislature where, out of eighty seats in the lower chamber, only thirteen are held by women; while in the upper chamber, out of forty-five seats, nine are held by women.

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<sup>21</sup> It upheld: “...The regulations approved by Congress do not create new mechanisms, do not establish new challenges or ways to generate a better balance in the participation of women in electoral candidacies...”

<sup>22</sup> This way, the integration of the lists that will compete for public positions of popular election are put to the consideration of the electorate with a very reduced feminine percentage, without obligation towards the political parties to observe the percentage of 20% (art. 32 paragraph r) at the moment of presenting their lists of candidates for municipal, departmental and national positions and, what is more important, without possibility that the Paraguayan Electoral Management Body can monitor the fulfillment of this guarantee.



And, unlike the period 2013-2018, when at least one woman was elected governor, today all departmental executives are men.

Regarding the appointment of women to judicial-electoral bodies, the Superior Tribunal of Electoral Justice, the highest instance in the matter, managed to include a woman after 18 years of institutional life. Regarding women's access to the positions as judges and court members in the various electoral districts, there has been a setback.

As for the 2030 Agenda, it certainly represents a historic opportunity for the entire Latin American and Caribbean region to introduce high priority issues, including the reduction of inequality in all its dimensions. Gender equality as a human right, beyond being an objective of development on its own, is also a critical factor in achieving sustainable development, which is why it is placed as a key principle under the slogan "Leave no one behind".

The Paraguayan government, through the Technical Secretariat for Economic and Social Development Planning (STP) - a member of the ODS Paraguay Commission - not only renewed its commitment to the Sustainable Development Goals (SDG), as a transversal State policy in March of this year, but also created mechanisms to follow up progress with the creation of a web platform to monitor progress in the fields of action corresponding to each SDG, in a comparative manner and classifying them by areas of action.

Furthermore, our country has drawn up a "National Development Plan (PND) Paraguay 2030", prepared under the coordination of the STP and is even prior to the SDGs although 92% of it is linked to the international agenda. The IV National Equality Plan aims to remove the obstacles to achieve real and effective equality between women and men from 2018 to 2024.

Among the targets of Goal 4, the following ones can be highlighted: "...3) By 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university... (5) By 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations..."

Despite these advances, there is still a long way to go. As the central government departments such as the Ministry of Women coordinate tasks and impose their gender equality agenda on participation, the changes will be more decisive than marginal. It should not be overlooked here that Paraguay has already had twenty-one years of equal opportunity plans, considering the National Plan for Equal Opportunities for Women promoted by the Ministry of Women in 1997.

About the protection of human rights, it is undeniable that effective political participation - a prerogative that has the rank of first-generation human right - is achieved through the promotion of equality and equity between male and female citizens. Indeed, if equality between women and



men is a constitutional precept enshrined in the nation's supreme law, the lack of lower-ranking provisions that contribute to facilitating the integration of parity in positions cannot constitute any obstacle to its implementation. For this reason, I believe that jurisdictional work can become a valid alternative to promote improved access for women to managerial positions, since the imperative of the fundamental norm is asserted in cases submitted to their jurisdiction.

In short, the Paraguayan government has renewed its commitment to achieving parity/equity in participation and representation through the activity carried out by the Ministry of Women. Even so, it cannot be ignored that Paraguay continues to suffer from mechanisms that promote real equality in women's access to important positions in both the public and private sectors, and the decisive step for this lies in a new offensive on the task of sanctioning the democratic parity law.

*Contribution by María Elena Wapenka Galeano*

#### Guiding questions

- What mechanisms of political participation and representation have granted greater parity in governing bodies?
- Which mechanisms of participation and inclusive representation have granted greater parity in judicial-electoral bodies?
- Within the framework of Agenda 2030, what concrete steps remain to be taken? How can we ensure that these steps do not generate marginal changes?
- Seen from the perspective of the protection of human rights, how does effective political participation relate to equality and equity? Should jurisdictional bodies take judicial steps or affirmative actions to promote parity/equity, or should they consider another strategy as well?





## X. WORKING GROUP 3. DEMOCRACY AND CORRUPTION

**Date:** Thursday 7 November

**Time:** 14:15 – 15:45

**Location:** Arcos 1, 2 or 3

**Objective:** Each working group will focus on the sub-topics of “Democracy and Corruption”: the impact of corruption in the election results and the democratic disaffection, the political financing/election campaigns, and financing and social media: *bitcoin*, *blockchain* and advertising in social networks.

**Format of the working groups:** These sessions will primarily be dialogue based. There will be an initial presentation of 10 minutes by the session Presidency, who will make a general introduction to the subject. Thereafter, the speakers will have an initial presentation of 7 minutes to guide the discussion. Afterwards, the floor will be opened for contributions by the attendees, who may participate up to two times of a maximum of 3 minutes per comment. Once the round of participations is closed, the speakers will have a second, final participation of 3 minutes.

### GROUP 3.A: DEMOCRATIC DISAFFECTION

**Venue:** Arcos 1

#### **General context:**

In recent decades, citizen attitudes such as political disaffection have increased in the world's democracies. This disaffection is expressed through the lack of interest in politics and distrust of politicians and their institutions. This disaffection is often underpinned by corruption scandals that undermine the credibility of politicians. This session will address this issue and what different regions of the world are doing to fight corruption and thereby re-generate public confidence.

#### **Terms of reference:**

There is an international consensus that corruption is a threat to the stability and security of societies, compromising sustainable development and the Rule of Law (United Nations Convention against Corruption). It currently represents one of the major issues faced by governments at a global level, leading, in some cases, to conditions prone to the weakening of public institutions and governance structures; undermining the States' capacities and efforts to ensure human rights.



Considering Transparency International's 2018 Corruption Perceptions Index <sup>23</sup>, which analyses 180 countries according to perceived levels of corruption in the public sector, it is clear that most countries have limited capacities to control corruption, that in turn contributes to a crisis of democracy around the world. In fact, on a scale of 1 to 100 that measures the levels of corruption, “more than two-thirds of the countries analyzed score less than 50 points. The average score is only 43”<sup>24</sup> since 2012 and only 20 countries improved their scores.

Reviewing the political realities at a global level, we find examples of how anti-corruption sentiments are increasing and affecting the perception and valuation of democracy.

In the case of Latin America and the Caribbean, the analysis of the data<sup>25</sup> shows how the lack of integrity in political figures and institutions and around electoral processes erodes the foundations of democracies and translates into a deep distrust of politicians. The figures presented in *Latinobarómetro's* 2018 report<sup>26</sup>, show a setback in how citizens value democracy and that they prefer to be indifferent to the regime that governs them, moving away from politics, democracy and its institutions. This is having effects on electoral processes and results and manifests a move closer to anti-politics.

By comparison, in the countries of the European Union and Western Europe, although it is a region that has the most solid democracies, the figures presented in the index show that the citizen trust in democracy has been affected in an important way. This, due to rise of political leaderships that use social networks have aimed at disinformation campaigns, reducing the transparency of electoral processes and increasing the apathy to participate in them; elements that could be impacting the results.

On the other hand, in Eastern Europe and Central Asia where index scores are below 50, the impression that the stability of the democratic system is closely related to prevailing levels of corruption perception is reinforced in most countries, especially regarding the rights to express discontent, to demonstrate and even to organize or affiliate politically.

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<sup>23</sup> Transparency International, 2018. *Corruption Perceptions Index*:

[https://files.transparency.org/content/download/2383/14554/file/2018\\_CPI\\_Executive\\_Summary.pdf](https://files.transparency.org/content/download/2383/14554/file/2018_CPI_Executive_Summary.pdf)

<sup>24</sup> Transparency International, 2018. *Corruption Perceptions Index*:

[https://www.transparency.org/news/pressrelease/corruption\\_perceptions\\_index\\_2018](https://www.transparency.org/news/pressrelease/corruption_perceptions_index_2018)

<sup>25</sup> Transparency International, 2019. *Las Personas y la Corrupción: América Latina y el Caribe*. Global Corruption Barometer:

[https://www.transparency.org/gcb10/latin-america-and-the-caribbean?news/feature/global\\_corruption\\_barometer\\_gcb\\_latin\\_america\\_2019](https://www.transparency.org/gcb10/latin-america-and-the-caribbean?news/feature/global_corruption_barometer_gcb_latin_america_2019)

<sup>26</sup> Report of *Latinobarómetro* 2018: <http://www.latinobarometro.org/latNewsShow.jsp>



Although Asia-Pacific is allegedly the region that has the three countries with the best scores in the index, New Zealand (87), Singapore (85) and Australia (77), it also has some of the countries with the lowest scores, North Korea (14); Afghanistan (16) and Cambodia (20). Thus, the region's progress in anti-corruption matters has shown little improvement, which is attributable to the weakness of some of its countries in terms of democratic institutions and the assurance of human rights; especially the limited exercise of political-electoral rights in countries such as Hong Kong.

According to the Global Corruption Barometer<sup>27</sup>, despite the African region perceiving that corruption has increased in their countries, most citizens feel optimistic and feel they can do something about it, but rather from private spaces identified as non-political. In fact, in the region only 41% of citizens say they are satisfied with how this system of government works, adding to the apathy towards the political sphere. The region continues to present low indices of corruption perception. In fact, in the 2018 report, only 8 of the 49 countries presented indices of over 43.

The composition of these regional views and the cross-analysis of the data presented by Transparency International related to democracy and its institutions, show a direct relationship between corruption and "global democratic health", indicating that democracies characterized as "full" obtain on average 75 points on the Corruption Perception Index, while those categorized as "weak" obtain an average of 49 points, dropping to 35 when considered as "hybrid" regimes, with elements of autocratic systems. The negative assessment of democracy and the dissatisfaction of this form of government suggest that it is not being perceived as efficient in terms of satisfying needs; nor is it effective in generating opportunities for all people, let alone in regard to promoting the redistribution of those minimums that would ensure civil rights (individual freedoms); political rights (freedoms of participation in the exercise of power and in decision-making); social rights (freedoms of access to economic, social and cultural welfare).

In general, there is a great difficulty in quantifying the levels of corruption and having scientific knowledge about the increase of corrupt acts in recent years. The globalized environment in which the democratic life of today's world takes place, as well as the proliferation of access to and use of new technologies that transcend the social and political dynamics of offline life, extending them to virtual spaces of interaction lacking solid and effective regulatory frameworks, also poses new ecosystems prone to the dynamization of corruption. It also implies important challenges in the efforts to mitigate it, while also

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<sup>27</sup> Global Corruption Barometer (GCB): <https://www.transparency.org/GCB10/Africa>



beginning to breed technological solutions aimed at designing electoral processes that use tools oriented towards transparency and that incorporate the use of "immutable" systems.

The strengthening of justice institutions and investment in the development of regulatory control frameworks, as well as measures to ensure access to justice and mechanisms aimed at transparency that facilitate citizen oversight and auditing is a crucial aspect to be addressed by the State to mitigate the impacts of corruption. This is especially important when it comes to electoral justice, which merits particular attention, analysis and focus that, considering the election cycle, allows measuring the effects of corruption on electoral processes and the actions that from the legal point of view could be promoted.

Hence, this working group suggests to generate a space for dialogue and reflection that explore the depth of the effects of corruption on electoral processes, considering aspects such as: citizen participation in electoral processes, both in terms of motivation and political-electoral commitment of candidates, as well as that of voters in the exercise of their right to vote; the disaffection around democracy and its institutions, in terms of transparency, but mainly, of the institutions' possibility to generate effective solutions to citizens' needs; and their commitment assumed in formal spaces of participation.

At first, there will be a space to hear the opinions of experts who will provide conceptual references, framing the discussion around the conceptualization of Agenda 2030 and the challenges that corruption poses for its implementation, specifically from the ODS16: Peace, Justice and Strong Institutions; the trends and challenges that the electoral authorities experience in electoral legislation; the emerging solutions that from innovation and the use of new technologies that are debated to increase the integrity of electoral processes; as well as the view of civil society and how electoral observation is being shaped as a solution towards electoral credibility.

Thereafter, a space will be opened for group work, focused on debates and the sharing of visions around the issue, offering concrete recommendations for the activities promoted by the Global Network on Electoral Justice. The results of the work of the roundtable will be presented in a plenary.

*Contribution by the United Nations Development Programme Office in Mexico*



Guiding questions

- a. Are electoral reforms, legal/judicial/administrative initiatives the product of citizens' distrust? Or are they necessary to strengthen electoral authorities?
- b. What should be the role of the judicial-electoral authorities in combating democratic disaffection? What measures have been taken that have generated greater citizen confidence or participation?
- c. Regarding the protection of personal data, how does its management affect public confidence in democratic institutions and elections?





## **GROUP 3.B: POLITICAL FINANCING**

**Venue:** Arcos 2

### **General context:**

During this session, the topic of political financing will be discussed, as well as the different existing schemes and the advantages and disadvantages of public, private and mixed financing models.

### **Terms of reference:**

Money plays a central role in elections and politics: candidates and political parties need funding in order to enter and compete in the political contest. However, money also poses great challenges to contemporary democracies: from private donations, international donations, illicit money and corruption (International IDEA, 2014).

What should political, public, private or mixed funding look like? Let's start from the premise that the playing field should be even for all candidates competing in the election, and that there should not be a winner before the start of the election campaign because they have the largest economic funding of all. Attention has mainly been paid on controlling and regulating the spending of this financing in the campaign stage, in order to discourage and mitigate the undue influence of money in this phase of the electoral process. However, the effectiveness and correct functioning of the electoral system is related to the strength and effectiveness of its system of sanctions. This, because if it is weak, no matter the type of political financing of the system, the political actors will not have the slightest objection to tilting the game to their advantage.

The design of an effective sanctioning system should be the primary objective of any electoral system, even before defining the type of political financing to be used and should cover all aspects where money can influence the contest, such as through social networks.

To determine the best type of political financing for each electoral system, a wide range of factors should be considered, including the number of political parties, the division of powers, the system of government, and the strengthening of the Rule of Law and the institutions in charge of organizing and overseeing elections.



### Guiding questions

- a. How does public and private political financing affect the fairness of the contest? How does it affect the perception of the legitimacy and integrity of elections? Do the identified challenges affect the electoral authorities that watch over the elections?
- b. What is the main effect of the use of new technologies on political financing? What is the future of electoral legislation and the administration of electoral justice in this regard?
- c. What measures can judicial-electoral authorities take to ensure financial equity in the contest, and in relation to their own proper institutional functioning?



### **GROUP 3.C: PRIVATE INTERESTS DURING POLITICAL CAMPAIGNS**

**Venue:** Arcos 3

**General context:**

One aspect of the weakening of democracy is connected to the financing of election campaigns by private groups seeking to mobilize their particular interests in order to have privileged access to the State. However, this type of relationship – and pressure – is not only conditioned by financing, but also, with the use of new technologies and by offering a positive or negative image to citizens, as is the case with the media and social networks. This session will analyze the relationship between political campaigns and private interests, and the mechanisms of the State to regulate this type of interaction.

**Terms of reference:**

The intersection of politics, corporate interests, and the use of mass technology are arguably at a crossroads in the evolution of modern political campaigns. What was once espoused as the ultimate democratic enabler, the advent of the modern Internet, and by extension social media networks, has debatably been circumvented by special private interests and, in some cases criminal elements, during political campaigns. While the attempted manipulation of the voting masses by special private interests during political campaigns is likely as old as democracy itself, what is new is the targeted speed and vast reach the Internet provides, particularly when coupled with the prevalence of personal smart phones. To that end, this paper will demonstrate that to truly understand private interests during political campaigns, one must first define what is meant by the term.

Moreover, the question of interventions through digital platforms and media will be addressed. Once the regulations, or “ground rules” of a political campaign are understood, they can be exploited, thus it will be important to examine how external or foreign influence is undertaken within modern democracies, particularly using cyber influence activities for private gain. When examined from a technical perspective, recent examples will be addressed that demonstrate the role of social networks using cyber influence in driving private interests during electoral campaigns, be those motives political or financial. This paper will then offer some solutions in the form of a multilateral framework.

For the sake of clarity, the definition of private interests for this discussion will be broad. This is necessary in order to legitimately examine several of the modern examples available of recent influence activities during political election campaigns. To that end, private interests will be defined as any domestic individual and/or group/corporation, as well as non-domestic special interest entities (including foreign organizations), with a vested interest in benefiting from a political campaign’s outcome. This last portion of the definition is critical as it helps define the motives



behind why private interest groups take the risk of getting involved in influencing political campaigns in the first place. The advent of money on an election campaign, and the need for ensuring strong campaign finance laws exist is well understood among election management bodies and will not be the focus of this paper's discussion. What is worth noting, however, is how the advent of modern technology has made the attempted influence of the electorate, both positive and negative, far more accessible at a fraction of the cost. As an example, the use of preprogrammed algorithms, or "bots", to manipulate Twitter and Facebook accounts during the ongoing unrest in Papua New Guinea (PNG) was recently exposed by the BBC and the Australian Strategic Policy Institute (ASPI). For less than \$300,000 USD, a Jakarta based media company was able to generate hundreds of fake accounts and thousands of fake posts in an attempt to undermine the pro-independence PNG movement's narrative. An example of the BBC/ASPI research is shown above.

### How we detected a bot

The photo used for profiles are fake

Images of K-pop stars, Chinese actors were used.  
A reverse image search reveals this.

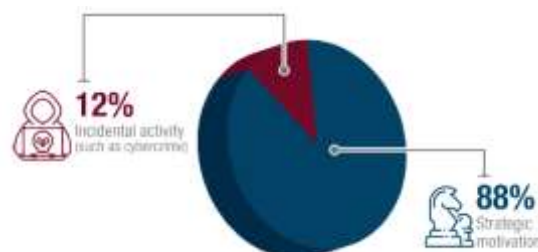


Source: BBC investigation & Australian Strategic Policy Institute

BBC

Primarily since the surprise outcome of the 2015 BREXIT referendum in the United Kingdom, where a slim majority of citizens voted to leave the European Union common trading partnership, Western democracies, and in particular Europe, have witnessed a rapid increase in cyber influence efforts during several recent elections.

Since the use of cyber and social media tools for electoral influence is still a relatively new phenomenon, the research in support of this paper primarily came from specialized reports released since 2015. Noted agencies examined include the European Commission, the Venice Commission, the NATO Centres of Excellence (CoE) for both cyber defense and strategic communication (STRATCOM), the Communications Security Establishment (CSE) of Canada, and the U.S. Directorate of National Intelligence, among others. The bulk of these reports were written in response to recent influence activity campaigns against domestic European





elections, or other illicit cyber activities, perpetrated by external actors usually identified as Russia, though other players do exist.

Based on evidence from the CSE, there appears to be two primary motivators for increasing external influence in Western democratic elections and institutions: political/strategic and/or financial gain (see percentages above from the CSE). In Europe, the former is largely driven by Moscow, and its desire to see pro-Russian governments (usually nationalist or populist) installed within the EU that would be willing to lift the on-going Western sanctions that have significantly reduced Russia's gross domestic product (GDP) output.

The second form of influence is usually orchestrated by cyber criminals and non-politically affiliated groups, such as the fake news troll farms in Veles, North Macedonia, that encourage right wing vitriol simply to generate content-based ad revenue, known as click-bait. The angrier the inflammatory assertions are, the more clicks the trolling sites receive from unsuspecting American and European on-line readers. This has in-turn placed considerable stress on corporations such as Facebook and Twitter to reign in their platforms, and added pressure on governments to regulate the social media landscape. Whether it be influence activities during the 2017 Presidential election in France, or similar efforts against the 2018 Parliamentary election in Sweden, the current construct of the European Union's leadership decision mechanisms are arguably ill prepared to face this growing and clandestine threat. This reality is generally understood to be a structural and organizational challenge not just limited to political campaigns in Europe. The 2016 example of Russian influence efforts during the U.S. political campaign below is an excellent example of the cyber tools that can be used by private interests for negative effect during political campaigns.

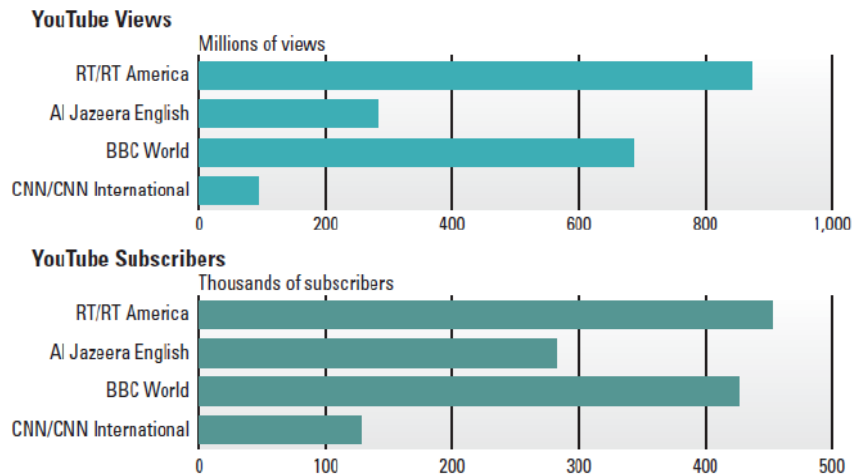
To fully understand Russian cyber influence efforts in Europe, one must first examine the precedent setting example set across the Atlantic Ocean. Despite the fact there was evidently no direct collusion between the campaign of Donald Trump and Moscow during the 2016 U.S. Presidential contest, it is now clear that Russia did try to influence American voters in favour of the Republican candidate. Whether through the use of aggressive troll farms under the Internet Research Agency, or more obvious efforts via Kremlin funded broadcasters such as RT or Sputnik, their actions were targeted, methodical, and deliberate. It is still debatable how successful these efforts were at swaying American electors, but what is not in doubt is who their target audience was: older white men. As revealed in the Federal Bureau of Investigation's report, the preferred methodology of Moscow was two-fold: First, gain access to compromising information on the Democratic presidential candidate by hacking into email accounts of the Democratic National Committee's leadership; and secondly, disseminate the stolen information via various online sources including Wikileaks, Gucifier 2.0, or by trolling Republican friendly chat sites. Once the revealed information had become news worthy, it was then amplified via mainstream platforms such as RT, Sputnik, or various YouTube channels, all in the name of transparency. The graph below, taken from the DNI report, highlights the viewership in millions of the top five YouTube news channels sourced by





viewers during the 2016 U.S. Presidential Campaign (Note: RT America has the highest views and subscription rates).

#### TV News Broadcasters: Comparative Social Media Footprint

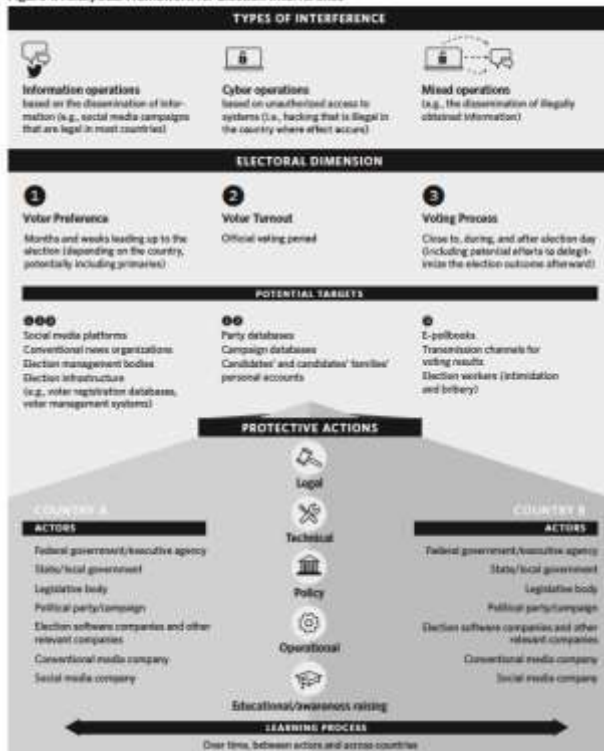


It is no longer fear mongering to suggest that a tainted election can significantly alter the direction of a nation for the worse in a single day. Whether driven by corporate self-interest, political, or criminal motivations, the tools available for private interests to subtly influence political campaigns are now cheap and widespread, arguably carried in each voter's pocket in the form of a smart phone. To try and counter this emerging phenomenon in political campaigns, the Group of Seven (G7) economic nations recently established a Rapid Response Mechanism (RRM) Secretariat based in Ottawa, Canada to examine this very problem. Using open-source reporting information, it draws on shared lessons learned to try and mitigate the negative private interest in the political campaigns of its member states. It would not be a stretch to suggest the European Union or the Organization of American States (OAS) could undertake a similar initiative for the sake of its regional electoral integrity, if not already initiated.

Creating international frameworks is a good step in countering external negative private interest in political campaigns, but it should likely be reinforced by tangible protection tools which can be deployed by various election management bodies, or other supporting government organizations.



Figure 1. Analytical Framework for Election Interference



Sweden's September 2018 national election has become a case study on how to counter cyber influence activities and malicious information dissemination. By embracing a whole-of-government approach roughly a year before the fall 2018 vote, Stockholm assigned the Swedish Police Authority, the Security Service (SÄPO), and the Election Authority as the primary lead agencies to counter foreign election influence. As a non-NATO nation, Sweden has learned to be self-sufficient regarding defense. An aggressive public awareness campaign was initiated, warning of the dangers of trolls and fake news, with some 50,000 user guide handbooks distributed to various municipal entities and political leaders. Given its integrated citizen registry and information dissemination protocols, mass public awareness campaigns were undertaken for several months leading up to the September vote, educating the public regarding

disinformation and fake news. The end result was a free and fair election, largely devoid of the negative cyber influence activities witnessed in recent European elections. An analytical framework regarding protecting elections from influence, among other things, appears on the previous page and was created by the Carnegie Institute, largely based on Sweden's recent electoral best practices. Were a similar construct be deployed in larger EU or OAS members nations, using the above identified whole-of-government approach, a strong national process for safeguarding elections could be deployed.

As was suggested at the beginning of this paper, private interests exercising their influence during political campaigns is as old as democracy. What is new, however, are the availability of cheap, mass communication tools and social networks to influence the wider electorate for private self-interest. By categorizing private interests through a broad definition, several recent examples were able to be examined from a technological perspective demonstrating the cyber influence tools used during various political campaigns over the past five years. For the sake of electoral integrity, it has been proposed that a multilateral framework, similar to the G7 RRM could be undertaken at the regional or continental level. In the end, the best tool to counter negative private interests during political campaigns is arguably educating the electorate against the threats posed, something this paper has tried to do.



### Guiding questions

- a. How can 'private interests' be categorized, how do they manifest themselves and what effects have they had on campaigns in terms of a fair electoral competition?
- b. In this sense, what types of regulation or mechanisms exist to ensure transparency, accountability and legality in campaigns? What role do jurisdictional-electoral authorities play, or how should that role be?
- c. How is possible foreign influence manifested in electoral campaigns and how can it be successfully addressed?
- d. Seen from a financial perspective, what are the current trends in private interests and political finance?
- e. Seen from a technological perspective, what role do social networks play in terms of private interests and their influence on election campaigns? In cases where they have been used as tools to disseminate a private agenda, how have their possible impacts on campaigns be addressed, and how has the integrity of election results been protected?
- f. In terms of electoral integrity, what mechanisms have generated positive effects for transparency, accountability and public trust? Mention strategies, solutions and international instruments that contribute to this goal.



## XI. PLENARY SESSION: JUDICIAL AND ELECTORAL TRAINING

**Date:** Thursday 7 November

**Time:** 16:00 - 17:30

**Location:** Cristal venue

**Objective:** Raise awareness of the importance of developing specific models for judicial training and, specifically, in the electoral field. Currently, there are many models for the continuous training of judges that include using new technologies to better share knowledge between societies and people. During the session, the topics of electoral judicial training in different regions of the world will be discussed. The usefulness of new technologies for sharing knowledge will be highlighted, putting on the table the differences between face-to-face education and online education. There will also be a general presentation on the findings related to democracies, to illustrate the interconnectivity in the world and how international cooperation allows the exchange of experiences that can harvest more and better democracies. In the end, the objective is to emphasize the importance of having a global civic and democratic education.

**Format:** Plenary discussion. There will be 10-minute presentations. The session Presidency will make a general introduction to the topic and each speaker will address a specific approach. At the end of the initial presentations, a 15-minute space for questions and answers will be opened. Contributions will have a maximum time of 2 minutes. Subsequently, the speakers will make their 2-minute closing remarks and the Presidency will share a final reflection.

### **General context:**

The objective of judicial schools is "to improve the administer electoral justice and strengthen democracy, through training, training and modernization". Thus, the role of judicial training must be aligned with the objectives of each institution, but above all with universal values, such as the values of a legal culture, the protection of human rights and promotion of democracy. In addition, judicial training centers should have international academic standards to ensure that the highest levels of training are being provided to achieve the primary goal: to contribute to the strengthening of an independent, accessible and democratic administration of justice that guarantees qualitative service.

Bearing this in mind, what is sought is that "the recipient of judicial education and training is in a continuous process of knowledge development, determined through the selected contents, assuming the dimensions: knowledge (conceptual), which reflects the object of study; skills (instrumental), which reflect the way in which one relates to that object; and values (attitudinal), which expresses the meaning that one assigns to that object". In the electoral field, civic-democratic education must be taken as an activity to strengthen electoral institutions and build a democratic



culture that promotes values. This is also relevant to generate a relationship of greater trust between citizens and electoral institutions and, where appropriate, judicial bodies.

Today, along with the design of programs of continuous improvement, institutions must introduce the use of technology to make education a useful tool for improving learning. This way, the development of specific platforms allows the teaching processes to be improved and become more universal and transversal. Barriers have been broken to have training in different places and times through platforms such as Platzi, specialized in online courses, or even through tools such as Facebook Live and YouTube.

In Latin America there is a network of both electoral and judicial schools. For example, the Ibero-American Network of Judicial Schools is a community for cooperation that seeks the exchange of experiences and information on judicial training programs, methodologies and systems, for the consolidation of a common judicial culture. Also, at the international level, the International Organization for Judicial Training (IOJT), seeks to create a network of institutions responsible for judicial education in the world and is present in all continents.

Finally, it should be noted that the results of this increased training can mean higher quality in democracies. According to the V-DEM Annual Democracy Report (2019), there is a decline of democracy, which is related to the manipulation of the media, and weakening of civil society, the Rule of Law and elections. To reverse this trend, knowledge sharing and capacity building within judicial institutions is crucial.

In sum, continued judicial education and training is an opportunity for the exchange of experiences between different countries and for having more updated staff to achieve better democratic quality. The use of new technologies presents an opportunity for this ongoing exchange.





## XII. DISCUSSION REPORTS

**Date:** Friday 8 November

**Time:** 09:30 - 11:00

**Location:** Cristal venue

**Objective:** Summarize the analytical discussions of each thematic and regional session, with an emphasis on sharing best practices, strategies and proactive actions that address today's challenges, before the General Assembly of the GNEJ, with the possibility to participate in an interactive space for questions and answers.

**Format:** Plenary discussion. There will be 10-minute presentations of the discussions of each of the main themes of the Third Plenary Assembly. The rapporteurs will present the main points shared in the plenary sessions and the working groups.



### **XIII. AGREEMENTS OF THE THIRD PLENARY ASSEMBLY**

**Date:** Friday 8 November

**Time:** 11:30 - 12:30

**Location:** Cristal venue

**Objective:** Propose the agreements derived from the discussions of the Third Plenary Assembly, and the commitments and topics programmed by the Governing Council of the GNEJ, before the whole plenary.

**Format:** Plenary discussion.