

# Challenges of democracy, dilemmas of electoral justice

The program of the First Plenary Assembly is divided into a welcome dinner (Thursday) and two working days. The first day (Friday), is comprised of an opening ceremony and four thematic sessions. The second day implies half a working day (Saturday) and begins with a breakfast meeting, that will encourage discussions of other issues that will guide the work of the Global Network, and ends with a session where the participants will define and agree upon the minimum operational rules of the group, its working mechanisms and the issues that will be prioritized in the efforts of the Global Network in the following years.

## **1. FORMAT OF THE DISCUSSION TABLES**

The format of the event is a Round Table where the presidency of each session will commence with a brief intervention to encourage the debate. The thematic sessions will last for **75 minutes**. During the **first half hour**, there will be guiding interventions of **7 minutes each**, according to the program that will be distributed. In the following **45 minutes**, all the delegations may take the floor, taking turns according to the rules defined in this document.

## **2. SESSIONS AND TOPICS**

**INTRODUCTORY SESSION: Why a Global Network on Electoral Justice?**

**SESSION I: Democratic disaffection**

**SESSION II: Equal political participation**

**SESSION II: Political financing of elections**

**SESSION IV: Digital revolution in the political life: the involvement of electoral jurisdictions**

**REVIEW SESSION: Operational rules of the Global Network on Electoral Justice and working mechanisms**

### **3. WORKING METHOD**

#### **A. PREVIOUS ACTIVITIES**

- The attendees that choose to participate will submit a written contribution in English or Spanish about the four topics, up to 4000 characters each (**2 pages**). The written contributions must include specific cases of the participants' respective countries or regions, and will be integrated in the *Introductory Booklet* that will be given to the participants upon their arrival in Mexico.
- In all cases, it is requested that the comments about national or regional cases comply with the discussion questions of each session, and that the submitted texts should be predominantly explanatory.
- The end date for submitting the written contributions is October 25<sup>th</sup>.

#### **B. FIRST WORKING DAY: SESSIONS AND GENERAL PRINCIPLES**

- During the inaugural session, the purpose, objectives and scope of the Global Network on Electoral Justice will be presented. The aim of the review session is to agree on and identify an order of prioritization of the key themes of the Network for the following years. The thematic sessions will address specific aspects of the challenges that concern the world's electoral jurisdictions the most.
- The Presidency of each session will give the floor during the opening section. The presentations of the introduction round may last for **7 minutes each** and once this round is finished, the participants of the session can apply to two different kinds of interventions:
  - **Clear show of hands, up to 3 minutes:** To share ideas about what has been stated and to share experiences of their respective countries. The President of each session will register the participations in the same order that the requests are made. In the case of requiring additional time, each participant will indicate that he/she must be registered again. The continuation of his/her participation will be at the end of each round of interventions that are registered.
  - **Yellow card, up to 1 minute:** The organizational committee will give each participant one card to react to a specific point, or to respond

when national or personal references are made. The Presidency of the session can limit the number of Yellow Cards per presentation.

- ***When the time limit is reached, a bell will be heard that will indicate that the time has finished. The organizational committee will be forced to turn off the microphone once the signal is heard.***

### **C. TERMS OF REFERENCE AND SPECIFIC PRINCIPLES PER SESSION**

Moreover, in addition to the General Principles (common to all the sessions), the TERMS OF REFERENCE and the DISCUSSION QUESTIONS, there will be further guidelines that will be indicated to the session presidents as SPECIAL PRINCIPLES.

## 4. WORKING SESSIONS

# FRIDAY

### INTRODUCTORY SESSION:

#### Why a Global Network on Electoral Justice?

- **Date:** Friday, November 10<sup>th</sup>, 2017
- **Hour:** 11:00 a.m. to 12:00 p.m.
- **Venue:** Hotel La Casona, San Miguel de Allende
- **Format of the session:** There will be an initial presentation by the Electoral Tribunal of the Federal Judiciary (TEPJF, in Spanish)
- **Type of intervention:** After the presentation, there will be a brief session of questions and answers.

### TERMS OF REFERENCE

The Global Network on Electoral Justice emerges as a response to the challenges that concern constitutional courts, supreme courts and electoral tribunals in consolidated democracies, from the perspective of the effective protection of political-electoral rights of citizens and of systems of representation, focusing on the main threats to their normality.

The Network aims to offer a space for specialized and transversal debate about the main regulatory, theoretical and practical dilemmas that are encountered by the bodies responsible for guaranteeing and upholding electoral justice and the Rule of Law in democratic matters.

To this end, an inclusive and representative space is sought to be created. Its objective is to invigorate the global democratic governance, departing from the deliberation, design and recommendations of strategies with a jurisdictional perspective, at national, regional and global levels, and by promoting dynamic communication, active participation in the exchange of experiences, best practices

and consultative opinions and any other kind of support that addresses the individual and collective needs of its members on this matter.<sup>1</sup>

Thus, through the implementation of a multilateral exercise, the quality of democracies and of electoral processes is intended to improve in various ways, by reinforcing the quality of democratic discussions and protecting the political rights of citizens (Keohane, Macedo and Moravcsik, 2009).

## SESSION I: Democratic disaffection

- **Date:** Friday, November 10<sup>th</sup>, 2017
- **Hour:** 12:00 to 13:15 p.m.
- **Venue:** Hotel La Casona, San Miguel de Allende

## TERMS OF REFERENCE

After the third wave of democratization and with the universalization of electoral processes, electoral justice plays a decisive role to ensure the stability of the democratic system in its broader concept (right to vote and be voted; political parties system and legitimacy for the access to political power), adherence to the legal framework and the consolidation of democratic governability.

In various democratic systems worldwide, citizens express their dissatisfaction with the mechanisms that are intended to respond to their demands. Nevertheless, democracy remains the most frequently used method of government and of renovation of political power, and its instruments of popular consultation continue to be an ideal mechanism to answer the complaints and discontent of society.

According to Freedom House, year 2016 was the eleventh consecutive year in which populist and nationalist forces made notable progresses in the detriment

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<sup>1</sup> Unlike other associations and organizations that focus on the promotion of democracy, this Network consists of the authorities in charge of safeguarding electoral justice. Likewise, the objective is to bring together academic and constitutional analysis, with an approach of public policies, so that the non-binding recommendations that are created can be properly implemented by the institutions that are part of the Network.

of political rights and civil liberties worldwide. Although there are free and periodical elections in many contemporary democracies, citizens are disappointed with democracy itself and have little trust in its institutions (Latinobarómetro, 2016). Nevertheless, democracies across the globe keep channeling the dissatisfaction of society into the ballot boxes: through elections, plebiscites and referenda.

In accordance with Arend Lijphart, two elements must exist for the successful establishment of a democratic government: power-sharing and the autonomy of groups, since they promote the participation of groups in the decision making. The involvement of citizens and of civil society depends on the means that they can use to change and continuously track the performance of the political system. This includes the use of the judicial system, the media and electoral bodies to influence the electoral system.

Discussion questions:

1. How does the discredit of the democratic institutions manifest itself in your country? Departing from a perspective of electoral justice, what are your experiences of facing this challenge?
2. How can the means of communication between the political class and the citizenry be reestablished? Has the electoral justice system in your country had any experience with regard to this?
3. Has a higher level of citizen trust in the elections been generated by tying elections and political processes to the judicial system in your country?



## SESSION II: Equal political participation

- **Date:** Friday, November 10<sup>th</sup>, 2017
- **Hour:** 15:00 to 16:15 p.m.
- **Venue:** Hotel La Casona, San Miguel de Allende

### TERMS OF REFERENCE

In accordance with the definition by Sartori (1991), democracy is a system that declares justice for all human beings, without distinction. In other words, one of the principal elements of democracy is inclusion: to encourage equal and fair treatment of all human beings and to reject every racist, sexist or social class ideology (Salazar and Woldenberg 2001, 30). This way, greater social justice should be ensured and promoted, taking into account the diversity of populations.

Some of the greatest challenges that democracies face are inequality, exclusion and discrimination. It is necessary to recognize the unequal access of different population groups to political rights, and to encourage citizen participation. For instance, there are groups that are in a vulnerable situation due to their sex, legal situation, migratory, ethnic, age, and so forth, that make it more difficult to protect their political rights and that restrict their access to electoral justice. To mitigate these challenges, targeted strategies must be designed within the different groups for the effective and universal protection of the political rights of the citizenry.

Gender equality in political representation is an example of the importance of electoral system design. In accordance with Kenworthy and Malami, while the political, socioeconomic and cultural factors are important, the structure of the political system also plays a crucial role in this matter. In this sense, the constitutional courts and electoral tribunals have a significant influence by issuing relevant rulings on the matter, which in turn have permitted the political participation of women. Although further efforts to reach this equality must be realized, some prominent scholars such as Pippa Norris still search explanations as to why in some societies, as in Northern Europe, the political participation and empowerment of women have been reached since decades ago.



Societies are formed by a great diversity of actors and groups that ought to find spaces of formal representation. Each country has its own specificities, and while there is no single formula to achieve this sectorial incorporation, the exchange of experiences and best practices can facilitate the design of strategies to achieve this. For example, in Mexico and other Latin American countries, actions have been implemented for the effective protection of political rights of indigenous communities. Other cases of such efforts are the one of India, where representatives of different castes are included in public institutions, and of the national minorities in Europe, among others.

Discussion questions:

1. Which are the scope and costs of affirmative actions? In what cases has differentiated judicial treatment decreased the inequality of the excluded groups of your country?
2. How have citizen participation mechanisms, such as plebiscites and referenda, influenced the recollection of the demands of different groups? Is justice a determining factor in the development of said mechanisms?



### SESSION III: Political financing of elections

- **Date:** Friday, November 10<sup>th</sup>, 2017
- **Hour:** 16:15 to 17:30 p.m.
- **Venue:** Hotel La Casona, San Miguel de Allende

#### TERMS OF REFERENCE

Money plays a key role in politics, as candidates and political parties need funding to enter the political arena. However, money also imposes great challenges to contemporary democracies: from private donations, international donations, illicit money, to corruption (International IDEA, 2014). Likewise, money can disturb the will of citizens by interfering in the electoral competition, distorting the public agenda and weakening democracy (OAS, 2011).

For this reason, financial audit safeguards constitutional principles and guarantees the certainty of the use of public resources in the established terms by law, and proves to be a fundamental element to achieve equality in the access to public resources during electoral campaigns. Therefore, political finance can influence candidacies, elections and the establishment of the public agendas, which can carry on a positive impact if it is used to boost strategies that favor marginalized groups. To this end, there is a great debate about its regulation, both with regard to its use as well as to the origin of the money.

#### Discussion questions:

1. Is it preferable to create a public, private and/or mixed financing scheme? What is the role played by the judiciary in this respect?
2. How can the resources be audited and how are the expenditures in social media calculated? What elements does electoral justice have to ensure that legislation on this matter is respected?
3. How can discrimination in the access to political financing be terminated?

## SESSION IV: Digital revolution in the political life: the involvement of electoral jurisdictions

- **Date:** Friday, November 10<sup>th</sup>, 2017
- **Hour:** 17:45 to 19:00 p.m.
- **Venue:** Hotel La Casona, San Miguel de Allende

### TERMS OF REFERENCE

Information technologies, the use of internet and social media in particular, have changed the traditional way of interaction between institutions and citizens. For that reason, and to evolve at the same pace that technologies transform themselves, institutions must realize adjustments to their operations as well to their legal frameworks. This way, they can find the adequate communication channels to enhance democracy and focus actions on ensuring the procurement of electoral justice. Therefore, it should be taken into account that the use of such technologies is giving voice to more population sectors, including civil society organizations. Although, this may also exacerbate the existing inequalities as social media is also a vehicle for many of the actual distortions of democracy.

For this reason, the governability of internet is one of the greatest challenges to contemporary democracies, as well as the development of mechanisms to measure the effects of internet in the democracies. Another problem is the dissolution between the private and public spheres, which, in moments of electoral campaigns, can acquire particular relevance.

The effects of new means of communication on democracy would not be understood today if it was not for the use of information technologies in elections, especially when the messages of the candidates are beginning to differentiate between the electorate and in this way create a market of voters. Therefore, the propaganda aimed to manipulate *Big Data* is becoming and working more and more as the publicity for commercial products on the internet. This must be

combined with the absence of boundaries in the internet, and of clear and suited regulation to these new realities: “realities of the XXI century, rules of XX century”.<sup>2</sup>

Discussion questions:

1. Which must be the legal interpretation of the digital revolution?
2. How should social media be analyzed within the spectrum of regulation vs. free of speech?
3. How should personal data of citizens be protected against the new political campaign strategies on social media?

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<sup>2</sup> A first attempt for regulating the content of the messages sent through the internet was materialized in the law of 2002 (see *McCain-Feingold campaign finance act*), that mandates the validation of messages by the candidates for federal elections in United States. With this signature, it was supposed that they will be hold accountable of their content. But it would be impossible that the content of this law could convey the privacy that prevails in Facebook. Any candidate could be falsely accused the previous day to the election, without the chance to argue, that the infamous note reduced votes in the final consultation. There exist some proposals (little hear about them by the internet enterprises) to force that at least a repository is preserved of all the campaign messages: Daniel Kreiss; New York Times del 8 de September; Turrow, Joseph et al, "Americans roundly reject tailored political advertising" Working Paper, University of Pennsylvania, 2012.

# SATURDAY

## **BREAKFAST: The dilemmas of justice: What challenges are electoral dispute resolution bodies facing?**

- **Date:** Saturday, November 11<sup>th</sup>, 2017
- **Hour:** 09:00 to 10:45 a.m.
- **Venue:** Hotel La Casona, San Miguel de Allende
- **Session format:** The format of this event is a breakfast meeting aimed to gather the concerns regarding challenges of the participants' respective democracies, from an electoral justice approach.
- The objective is to create a list of dilemmas that the countries have in common and define the global agenda and the strategy of how to address the identified dilemmas.
- **Type of intervention:** After the initial intervention that will guide the debate, the floor will be handed over to the participants, who will have to register their participation at the beginning of the session in order to share their ideas and to share experiences of their respective countries. The two types of participation rules will be followed by the registered participants (clear show of hands and yellow card).

## **REVIEW SESSION: Operational rules of the Global Network on Electoral Justice and working mechanisms**

- **Date:** Saturday, November 11<sup>th</sup>, 2017
- **Hour:** 11:00 a 12:00 a.m.
- **Venue:** Hotel La Casona, San Miguel de Allende

### **TERMS OF REFERENCE**

In this session the operational rules will be adopted, the working mechanisms will be proposed and the central theme of the Global Network will be agreed upon; which will in turn reflect current concerns of the countries represented at the meeting and unite them within this Network.

### **SPECIAL PRINCIPLES FOR THIS SESSION**

- **Session format:** The Presidency will put into consideration the operational rules, the topic and working mechanisms of the Global Network during a presentation for **up until 15 minutes**, as well as present previous discussions on the operational rules from the preparatory meeting of the Network in May 2017.
- To begin with, the Presidency will give the floor to two representatives of international organizations in order to explain how they coordinate their international projects at a global level, referring to their experiences concerning the proposed topic, for **up until 10 minutes**. When the participation round is finished, participants will be invited to speak and exchange ideas of the session **until one hour of discussion is completed**. The same rules of intervention will be followed; by a clear show of hands and use of the yellow card.
- In this last round, each speaker will be invited to share and register their intention to coordinate specific projects at a global level, for which written general principles will be delivered within no later than a month from the event.