

Handbook for National Human Rights Institutions on **electoral process accompaniment and observation**



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1 Introduction

The Universal Declaration of Human Rights recognizes that every citizen has the right to participate in genuine elections as a free expression of its will. In recent years, the electoral crisis in Latin America has led to change the method of monitoring “free and fair elections” with criteria from specific instruments of Public International Law on human rights.

In 2005, important electoral observation groups or entities endorsed the “Declaration of Principles for International Election Observation”, which establishes the general guidelines for credible observation, including the purpose and scope of electoral missions, laying the foundations for a professional community of electoral observation groups. At the same time, important groups of citizens have developed to observe elections in their own countries. Citizen observation is understood as a right to participate in public affairs and a way to monitor or supervise governments.

The right to participate in public affairs is a fundamental right that allows citizens to get involved in the political, economic, social and cultural life of their country. This right is exercised directly or indirectly through elected representatives. We see it in the right to elect and be elected, to participate in participatory processes such as plebiscites, referendums, constituent assemblies, recalls, to hold public office, to present petitions to authorities and any process that involves the opinion or need of citizens in decision-making.

For the members of the RINDHCA, we consider it is important to highlight the international instruments that the OAS member states have signed and ratified that guarantee the full exercise of political rights as human rights.

- **Universal Declaration of Human Rights:** “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law” (art. 8).
- **American Declaration of the Rights and Duties of Man:** “Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available

to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights. (art. XVIII).

- **International Covenant on Civil and Political Rights:** “Each State Party to the present Covenant undertakes:(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity” (art. 2, para. 3, subparagraph a); To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;(art. 2, para. 3, subparagraph b); To ensure that the competent authorities shall enforce such remedies when granted.art. 2, para. 3, subparagraph c). All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. (art. 14).
- **General Comment 25 adopted by the United Nations Human Rights Committee:** Right to participate in public affairs, right to vote and right to equal access to public office (art. 25 ICCPR, 1996): [...] “An independent electoral board should be established to oversee the electoral process and ensure that it is conducted fairly and impartially and in accordance with legal provisions compatible with the Covenant [...] There should be an independent counting of votes and a recounting process, with the possibility of judicial review or other equivalent process, in order to ensure that voters have confidence in the security of the vote and the counting of votes” (pt. 20).
- **American Convention on Human Rights (Pact of San José, Costa Rica):** “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature”. (art. 8). “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties”. (art. 25.1). “The States Parties undertake: a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b. to develop the possibilities of judicial remedy; and c. to ensure that the competent authorities shall enforce such remedies when granted” (art. 25.2).
- **Inter-American Democratic Charter, OAS:** “Any person or group of persons who consider that their human rights have been violated may present claims or petitions to the inter-American system for the promotion and protection of human rights in accordance with its established procedures. Member states reaffirm their intention

to strengthen the inter-American system for the protection of human rights for the consolidation of democracy in the Hemisphere.” (art. 8).

National human rights institutions are state bodies with a constitutional or legislative mandate to protect and promote human rights. They are part of the State and financed by it, which does not take away their autonomy and they are understood as control bodies within the State itself. National human rights institutions that comply with the Paris Principles have become fundamental for national systems for the protection of human rights and within their main functions, they are mechanisms of link between international human rights standards and the State to which they belong.

Public International Law brings us criteria to evaluate respect for the situation of human rights, especially political and related rights in electoral contexts. These criteria and standards arise from the obligations voluntarily acquired by States and within public international law they allow the generation of a common language to debate the context of rights and the quality of elections. As a general rule, we find national and international observers, national human rights institutions, human rights organizations, electoral administrators to form a community with the capacity to ensure the guarantee of the Rule of Law.

Public International Law is the system of laws that governs relations between states and involves obligations that represent an agreement and a commitment to guarantees between the State and citizens. The objective of this document is to strengthen the human rights community based on the basic and essential principles for the enjoyment of rights throughout a process of citizen participation, especially the electoral process. National Human Rights Institutions cannot ignore their mandate, as guarantors and promoters of international human rights law, to promote respect and protection of the human rights of the population and to ensure respect for and compliance with international human rights standards in the country.

During electoral stages, in addition to their general mandate, they work to guarantee transparency and justice in electoral processes, sometimes alerting about risk situations, seeking the inclusion of vulnerable groups. The fact that their work is not classified as “electoral observation” is because they go beyond the defense and promotion of rights. National human rights institutions have significant potential to contribute to electoral observation and the promotion and guarantee of human rights in this context.

The systematic monitoring and surveillance of the human rights situation, which involves everything related, directly or indirectly, to electoral processes, respect for the civil and political rights to elect and be elected, to assemble, to participate, to express, within the framework of electoral laws and compliance with international standards that characterize a free, informed and democratic election are inherent to the actions of human rights institutions.

2 Obligations of States to be taken into account in the supervision, accompaniment and observation of an electoral process with a human rights-based approach

2.1 General obligations

To hold authentic elections that reflect the free expression of the will of the voters. Article 21 of the Universal Declaration of Human Rights, article 25 of the International Covenant on Civil and Political Rights. This is understood as the holding of periodic, competitive elections through universal and equal suffrage and secret ballot.

2.2 Fundamental obligation

The State must adopt the necessary measures to enforce rights. International and regional treaties establish that States must adopt the necessary measures to enforce human rights¹. This obligation includes ensuring that international obligations derived from treaties and agreed and accepted by States are incorporated into the national legal framework. International treaties establish that States must adopt measures to promote the principles of the rule of law, accepting that all persons are equal before the law and that the laws must be applied under equal conditions².

2.3 Obligations in the electoral process

The jurisprudence of the Inter-American Court establishes, in accordance with articles 23, 24, 1.1 and 2 of the American Convention on Human Rights, that the State has the obligation to guarantee the exercise of political rights, which implies the regulation of this rights and their application in accordance with the principle of equality and non-discrimination, taking measures to “guarantee their full exercise.”³

1 Los tratados internacionales y regionales hacen referencia explícita, al Estado de derecho es una obligación en el PIDCP, la existencia del Estado de derecho se reconoce como una condición esencial para el respeto de los derechos humanos y la democracia representativa

2 Art 2 CADH

3 Caso Yatama Vs. Nicaragua. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 23 de junio de 2005. Caso Chitay Nech y otros Vs. Guatemala. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 25 de mayo de 2010. Serie C No. 212, párr. 106.

The main elements for a representative democracy imply some basic requirements:

1. **Periodic Elections:** This means that the time between one election and another should not be improperly prolonged so that the Government represents the will of the citizens.
2. **Universal Suffrage:** The obligation to guarantee universal suffrage is in the International Covenant on Civil and Political Rights and in other treaties. The State must guarantee the right to vote, avoiding any discrimination and giving access to people with disabilities, with special needs and vulnerable or specially protected populations.
3. **Equal suffrage:** International law protects the equal right the suffrage and avoiding the fraud.
4. **Secret ballot:** Every person has the right to vote in secret without fear of being intimidated.
5. **Prevention of corruption:** States must adopt measures to prevent corruption. The United Nations Convention against Corruption includes important provisions regarding the conduct of public officials, in order to ensure that they are honest and responsible, and each State is expected to regulate the financing of political campaigns. In the electoral context, it is important to include rules that prevent the misuse of public resources.⁴

The Inter-American Democratic Charter, in its Chapter II, explains and enshrines the relationship between democracy and human rights, and how, by virtue of the strengthening of the inter-American system, persons or groups of persons who consider their rights violated can bring their petitions and complaints before the inter-American system for the protection of human rights.

4 Carta democrática Interamericana. Artículo 3. Son elementos esenciales de la democracia representativa, entre otros, el respeto a los derechos humanos y las libertades fundamentales; el acceso al poder y su ejercicio con sujeción al estado de derecho; la celebración de elecciones periódicas, libres, justas y basadas en el sufragio universal y secreto como expresión de la soberanía del pueblo; el régimen plural de partidos y organizaciones políticas; y la separación e independencia de los poderes públicos.

3 Individual rights and freedoms directly linked to the electoral process

Political rights, are fundamental human rights closely related to other rights such as freedom of expression, freedom of assembly, freedom of association, and their guarantee allows the development of free elections and representative democracy. This principle is included in the Inter-American Democratic Charter in its article 3: “Essential elements of representative democracy include⁵, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government”.

To evaluate the conditions of guarantee of human rights in an electoral process, respect for each of the human rights, must be taken into account. We explain those most relevant, which does not exclude working on other rights if the national human rights institution considers or finds any violation.

3.1 Right to participate in public affairs

International law protects the power of citizens to participate in the public affairs of the country without any type of discrimination, and protects the rights of persons with disabilities and members of minority groups to participate in public affairs.

3.2 Right to vote

The right to vote, unlike most other civil and political rights recognized by international

5 Corte IDH. Caso Castañeda Gutman Vs. México. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 6 de agosto de 2008. 140. Los derechos políticos son derechos humanos de importancia fundamental dentro del sistema interamericano que se relacionan estrechamente con otros derechos consagrados en la Convención Americana como la libertad de expresión, la libertad de reunión y la libertad de asociación y que, en conjunto, hacen posible el juego democrático. La Corte destaca la importancia que tienen los derechos políticos y recuerda que la Convención Americana, en su artículo 27, prohíbe su suspensión y la de las garantías judiciales indispensables para la protección de éstos.

141. Los derechos políticos consagrados en la Convención Americana, así como en diversos instrumentos internacionales, propician el fortalecimiento de la democracia y el pluralismo político. Este Tribunal ha expresado que “[l]a democracia representativa es determinante en todo el sistema del que la Convención forma parte”, y constituye “un ‘principio’ reafirmado por los Estados americanos en la Carta de la OEA, instrumento fundamental del Sistema Interamericano”.

human rights law, is restricted to citizens, with some exceptions that allow those with resident status to vote on certain occasions. This right to vote can only be limited by objective, reasonable and express criteria in the law.

The right to vote is essential for the existence of democracy and one of the ways in which citizens exercise the right to participate in political affairs. This right implies that citizens can freely and equally choose those who will represent them.

3.3 Right and opportunity to be elected⁶

This right can only be restricted by objective, reasonable and express law reasons. The Inter-American Court of Human Rights has ruled on this matter, indicating that the loss of the right to be elected can only be imposed after a court or tribunal pronouncement.⁷

3.4 Gender equality⁸

To guarantee gender equality, States must adopt special measures such as financial assistance, training, electoral procedures such as quota laws, awareness campaigns in society and affirmative action seeking the appointment of women to senior public positions.

3.5 Non-discrimination and equality before the law

The right to equality before the law seeks to ensure that citizens enjoy non-discrimination in the exercise of human rights and fundamental freedoms.

3.6 Freedom of assembly

This is an essential right for holding elections, and must be guaranteed to candidates, political parties and movements. It can only be restricted in legitimate circumstances.⁹

3.7 Freedom association

Freedom association is important for the development of political parties and electoral campaign activities. Restrictions must be established by law and must be objective.¹⁰

6 Caso Yatama Vs. Nicaragua. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 23 de junio de 2005. Serie C No. 127, párr. 198. Por su parte, la participación política mediante el ejercicio del derecho a ser elegido supone que los ciudadanos puedan postularse como candidatos en condiciones de igualdad y que puedan ocupar los cargos públicos sujetos a elección si logran obtener la cantidad de votos necesarios para ello.

7 Caso Petro Urrego contra Colombia: Por otro lado, la Corte recuerda que los derechos políticos no son absolutos, de forma tal que su ejercicio puede estar sujeto a regulaciones o restricciones. Sin embargo, la facultad de regular o restringir los derechos no es discrecional, sino que está limitada por el derecho internacional, el cual requiere el cumplimiento de determinadas exigencias que, de no ser respetadas, transforman la restricción en ilegítima y contraria a la Convención Americana. En este sentido, el párrafo 2 del artículo 23 de la Convención establece que la ley puede reglamentar el ejercicio y las oportunidades a los derechos reconocidos en el párrafo 1 de dicho artículo, "exclusivamente" en razón de la "edad, nacionalidad, residencia, idioma, instrucción, capacidad civil o mental, o condena, por juez competente, en proceso penal". Asimismo, cabe recordar que, como lo establece el artículo 29 de la Convención, ninguna norma de la Convención puede ser interpretada en sentido de limitar los derechos en mayor medida que la prevista en ella.

8 Naciones Unidas, CEDAW, art. 3. CADH, artículo. 24. Igualdad ante la ley. PIDCP art. 25

9 Artículo 15 de la Convención Americana sobre Derechos Humanos establece el derecho de reunión pacífica y sin armas. Sin embargo, este derecho puede estar sujeto a restricciones legales si son necesarias para: La seguridad nacional, La seguridad o el orden públicos, Proteger la salud o la moral públicas, Proteger los derechos o libertades de los demás

10 PIDCP. Artículo 22 Toda persona tiene derecho a asociarse libremente con otras, incluso el derecho a fundar

International treaties are clear that everyone has the right to associate with non-governmental organizations. Regarding political organizations, national legislation must not unjustifiably restrict the ability of individuals to join an organization and States must recognize accredited organizations and facilitate the possibility of carrying out their activities. Any act or omission by a government body that affects an organization must be subject to administrative review.

3.8 Freedom of movement¹¹

Mobility is considered essential during the electoral process, not only for political parties and voters, but also for those who work at polling stations. This implies the possibility for citizens who are abroad to return to the country to participate in the elections.¹²

3.9 Freedom of opinion and expression¹³

Freedom of opinion and expression, the free communication of information and the ideas of voters and candidates is necessary in every election. This freedom includes the right of everyone to seek, receive and impart ideas through the medium of their choice. Freedom of expression also protects the right to free communication with international organizations.

3.10 Right to information

Everyone has the right to seek and receive information. Access to information means to ensure transparency and accountability in every electoral process. The State's international obligation has to adopt the necessary measures to enforce rights, public and clear information is necessary to ensure transparency in the electoral process. This is a fundamental right necessary to guarantee freedom of opinion.

3.11 Right to personal security

The right to personal security includes protection against arrest, arbitrary detention and exile. In the electoral context, it is necessary to protect voters, candidates and officials, or elected persons from any interference, coercion or intimidation. The armed forces and police must act neutrally during the electoral process.

The Inter-American Court of Human Rights has said that political rights imply the "right to have a real opportunity to exercise the position for which the person has been elected."

sindicatos y afiliarse a ellos para la protección de sus intereses.

11 Artículo 22 Derecho de Circulación y de Residencia 1. Toda persona que se halle legalmente en el territorio de un Estado tiene derecho a circular por el mismo y a residir en él con sujeción a las disposiciones legales. 2. Toda persona que tiene derecho a salir libremente de cualquier país, inclusive del propio. 3. El ejercicio de los derechos anteriores no puede ser restringido sino en virtud de una ley, en la medida indispensable en una sociedad democrática, para prevenir infracciones penales o para proteger la seguridad nacional, la seguridad o el orden públicos, la moral o la salud públicas o los derechos y libertades de los demás. 4. El ejercicio de los derechos reconocidos en el inciso 1) puede asimismo ser restringido por la ley, en zonas determinadas, por razones de interés público.

12 artículo 13 de la Declaración Universal de Derechos Humanos (DUDH)

13 PIDCP Artículo 19: Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección.

The State has the responsibility to adopt effective measures to guarantee the necessary conditions for its full exercise.” Among the duties and obligations of the State is the protection of the life and personal security of any person in the exercise of their political rights, at all stages of the electoral process.¹⁴

The IACHR explains, that is an obligation of means, not of results, but along the same lines, the court has said: “it is essential that the State generate the optimal conditions and mechanisms so that political rights can be exercised effectively.” This should be applied to each of them.

3.12 Right to an effective judicial recourse¹⁵

Everyone has the right to an effective recourse before a competent national tribunal for acts that violate his or her rights or freedoms. The right to an effective remedy is fundamental to the full enjoyment of all human rights, and must apply during the electoral process, including the possibility of challenging the results.

3.13 Right to a fair and impartial trial¹⁶

Everyone has the right to a fair trial by a competent, impartial and independent tribunal. The independence and impartiality of the courts are essential rights of the rule of law.

¹⁴ Corte IDH. Caso Pacheco León y otros Vs. Honduras. Fondo, Reparaciones y Costas. Sentencia de 15 de noviembre 2017.

¹⁵ CADH Artículo 7 Derecho a la Libertad Personal 1. Toda persona tiene derecho a la libertad y a la seguridad personales. 2. Nadie puede ser privado de su libertad física, salvo por las causas y en las condiciones fijadas de antemano por las Constituciones Políticas de los Estados Partes o por las leyes dictadas conforme a ellas. 3. Nadie puede ser sometido a detención o encarcelamiento arbitrarios

¹⁶ CADH. Artículo 7. No.6. Toda persona privada de libertad tiene derecho a recurrir ante un juez o tribunal competente, a fin de que éste decida, sin demora, sobre la legalidad de su arresto o detención y ordene su libertad si el arresto o la detención fueran ilegales. En los Estados Partes cuyas leyes prevén que toda persona que se viera amenazada de ser privada de su libertad, tiene derecho a recurrir a un juez o tribunal competente a fin de que éste decida sobre la legalidad de tal amenaza. Dicho recurso no puede ser restringido ni abolido. Los recursos podrán interponerse por sí o por otra persona.

4 Stages of the Electoral Process and their elements that constitute them

The electoral process has three stages, all equally important and they must be taken into account in the evaluation and supervision of respect for human rights, especially civil and political rights in this type of process; and each stage is characterized by the development of certain elements or processes, some of which are transversal, such as the legal framework, the electoral system, the electoral administration, the voter registration, the action of the media and others of a certain stage.

4.1 Pre-electoral stage

It includes all the actions and processes of preparation for the day of the elections in the electoral administration, registries, districts and all the entities that participate.

- **Legal framework:**
Every democratic election requires a legal framework that includes norms that regulate the development of all aspects of the electoral process in the three stages to guarantee that the obligations of the State in terms of human rights are fulfilled.
- **The electoral system and the delimitation of electoral districts:**
The electoral system determines how votes are translated into mandates and how constituencies are defined throughout the country. Like the legal framework, they must adhere to human rights obligations.
- **The electoral administration:**
This is a public administration institution that handles issues related to the structure and mandate of the electoral body. The credibility of this institution is very important and it is expected to be impartial and capable of organizing and carrying out free, fair and inclusive elections.
- **Voter registration:**

In most systems, voters must be registered before they are eligible to vote. In some

countries, the civil registry is used as the basis for the voter registry, and some laws require prior registration for the formation of the voter registry.

Voter registration is the responsibility of both the citizen and the electoral administration body. The right to register and vote is enshrined in the Constitution or in electoral laws.

Discrimination by registrars or other officials in registering citizens on the basis of race, language, or other minority status is illegal and is treated as a violation of civil rights. Voter registration lists must be available and publicized for inspection by political parties and the public to ensure the integrity of the voter registry, without publishing private data.

- **Registration of parties and candidates:**

In most electoral systems, parties are required to register before they can nominate candidates and contest elections. In some systems, independent candidates cannot run for public office and must affiliate with a registered party. Procedures and requirements for party registration must be expressly enshrined in law.

- **Registration of political party logos:**

Electoral authorities may also register a party logo that is printed on ballot papers. Logos are important in countries with low education rates, as they allow voters to identify their candidates or party. Being able to register the symbol that best represents a party is an important factor in integrity. Electoral authorities may reject logos that they consider offensive or that may confuse voters.

Basic eligibility requirements for candidates are usually set out in the constitution or law. These may include citizenship, age, and residency. Electoral policymakers add specific registration requirements, which may include the date by which the application must be submitted, a petition signed by a certain number of registered voters, financial deposits, or other documents required to demonstrate eligibility. These requirements should not be exclusive of specific groups or individuals.

- **Training:**

The electoral administration must train the people who work in the elections. Administrators must receive training regarding administration techniques and supervision. Communications staff must be trained on the equipment used by the electoral administration. Warehouse and transportation staff require training on proper warehouse management and on inventory control systems for ballots, papers or any material to be used. Registrars with respect to the requirements for voting. People who make up the voting tables require training regarding the management of voting tables and counting. Voter registration and voting table manuals are important in this exercise.

- **Voter education:**

It is the responsibility of the state and especially the electoral body to educate citizens regarding the electoral process. In this exercise, political parties, civil organizations and National Human Rights Institutions also provide training and promote political rights, either by their mandate or by agreement and in coordination with the electoral body. Voters need to understand their rights and responsibilities under constitutional and electoral law so that they can fulfil their obligations in an informed manner.

The integrity of the election result depends on voters being able to make an informed choice between candidates and parties. Providing them with partial or inaccurate information can affect the way they vote.

- **Media:**

The entire media environment, media coverage, and the possibilities of equal access to the media by parties and candidates, and the rights of the opposition, must be taken into account.

- **Electoral Campaign:**

Electoral campaigns are competitive efforts by candidates and political parties to win the support of voters in the period preceding an election. Candidates use a variety of techniques to attract voters, from public meetings and political rallies to the use of advertising in the mass media. The official campaign dates set out in the electoral calendar must be taken into account. All steps of the campaign must be taken into account so that the rights of freedom of expression are not affected and the spaces are equitable: duration of the campaign, the ability to campaign freely, the neutrality of public officials during the campaign, the safety of participants, and access to the media.

- **The electoral calendar:**

This is the schedule of dates for the “official” campaign, generally starting one month before the election day.

4.2 Electoral stage or election day

It brings together all the actions, procedures and processes that are carried out during this day.

- **Voting day:**

The administration’s activities are observed throughout the day. Opening of polling stations, access, secret voting, acquisition of ballots or use of technologies and alternative methods for voting and the voting booth close.

- **Vote counting:**

It covers all the processes associated with the counting, from the closing of the polling station, adding and tabulating the votes, minutes, rights of witnesses and prosecutors, transmission of results. Including the results final announcement.

- **Transmission of preliminary electoral results:**

The results are transmitted from all the precincts to the electoral organization, giving transparency to the process and informing all citizens.

- **Announcement of results:**

When the counting finished on the same day, the results are consolidated and the bulletins are prepared.

4.3 Post-electoral stage

This includes the actions and procedures to achieve the counting of votes until the moment in which the accreditation is given to those who win the elections.

- **Official results:**

The announcement of the official results must be accurate, reflecting the totality of votes, spoiled votes and blank votes. The integrity of the official results can be protected using the same protection measures that are used to protect the integrity of the vote and can be supervised by control institutions, such as national human rights institution, monitoring observers, the actions of witnesses and representatives of political parties comparing their parallel counting of votes with the official results and reporting the differences found to the official system, whether it is the electoral organization or a competent court.

The timely and opportune publication of the election results is very important; delays raise suspicions of alteration of results, losing credibility.

- **Resolution of electoral conflicts:**

These are the mechanisms established to see and decide on conflicts related to the election during the course of the electoral process.

Some countries resolve these conflicts through special courts. It is important to determine whether it is an electoral dispute over results or whether it is a crime committed within the framework of the electoral process. It is important that the competent entity guarantees independence, impartiality, jurisdiction, and requires respect for civil and political rights within the process.

5 Elements to be monitored with focus on human rights

5.1 Legal framework and human rights

A clear legal framework is necessary to manage a democratic and authentic electoral process. It is made up of the Constitution, electoral laws; regulation of the media, political parties and civil society actors, and all the regulations issued for an election by the electoral authority. These laws must be clear, written, and provide clarity within the electoral process, promoting or focusing on human rights.

To evaluate an election, it is necessary to know the legal framework of the electoral processes. It is necessary to make a thorough review of the applicable regulations, reviewing how internationally recognized rights such as the protection of human rights and compliance with international obligations are protected and guaranteed.

It is important that the role of each of the state authorities, national and international observers, is clear, with regard to the defense of human rights, that is, that it does not have discriminatory norms and that it establishes an effective resource for the defense of rights.¹⁷

Within this legal framework, it must be verified that at least the international obligations in terms of human rights are fulfilled: The State must adopt the necessary measures to guarantee human rights.

- **Comply with the guidelines of the Rule of Law:**

The legal framework for elections implies the protection¹⁸ of fundamental rights and grants international obligations a binding character at the national level¹⁹. This obligation, according to the Human Rights Committee, implies that the State must adopt

¹⁷ Carta Democrática Interamericana. Artículo 7. La democracia es indispensable para el ejercicio efectivo de las libertades fundamentales y los derechos humanos, en su carácter universal, indivisible e interdependiente, consagrados en las respectivas constituciones de los Estados y en los instrumentos interamericanos e internacionales de derechos humanos.

¹⁸ PIDCP, Art. 2; CADH, Art. 2

¹⁹ Art 2. CADH

unconditional and immediate measures that include positive actions such as educating and training citizens and officials in human rights; and include the obligation to prevent, punish, and investigate cases of human rights violations.

As a general rule, the electoral system is provided for in the Constitution, and the electoral law regulates the content and operation of the system. This regulatory framework must include, in addition to political rights, other rights and freedoms enshrined in international human rights law that may be affected within the electoral process.

In cases where the State must restrict fundamental rights, this determination must be objective and reasonable. However, there is an express prohibition on restricting political rights, unless it is a case provided for by law and the restriction is objective and reasonable²⁰.

The Inter-American Court of Human Rights said: “The first step in assessing whether a restriction on a right established in the American Convention is permissible in light of that treaty consists in examining whether the restrictive measure complies with the requirement of legality.” This means that the general conditions and circumstances that authorize a restriction on the exercise of a given human right must be clearly established by law.”

- **Stability of legislation, encouraging participation and ensuring equality**

The legal framework for elections must be stable, no substantial changes must be introduced within six months prior to the election, giving legal security to all parties to the process. The State must adopt the necessary measures to enforce rights under the rule of law within a stable legal framework, promoting the right to public participation in decision-making.

Electoral laws must be coherent, clear and precise and take into account the different languages that the country has. Laws must follow the principle of equality, guaranteeing a²¹ legal environment that allows the protection of electoral rights for all. The American Convention on Human Rights establishes that all persons are equal before the law and have the right to receive legal protection without

20 SUSPENSIÓN DE GARANTÍAS, INTERPRETACIÓN Y APLICACIÓN CADH: Art. 27. Suspensión de Garantías 1. En caso de guerra, de peligro público o de otra emergencia que amenace la independencia o seguridad del Estado parte, éste podrá adoptar disposiciones que, en la medida y por el tiempo estrictamente limitados a las exigencias de la situación, suspendan las obligaciones contraídas en virtud de esta Convención, siempre que tales disposiciones no sean incompatibles con las demás obligaciones que les impone el derecho internacional y no entrañen discriminación alguna fundada en motivos de raza, color, sexo, idioma, religión u origen social. 2. La disposición precedente no autoriza la suspensión de los derechos determinados en los siguientes artículos: 3 (Derecho al Reconocimiento de la Personalidad Jurídica); 4 (Derecho a la Vida); 5 (Derecho a la Integridad Personal); 6 (Prohibición de la Esclavitud y Servidumbre); 9 (Principio de Legalidad y de Retroactividad); 12 (Libertad de Conciencia y de Religión); 17 (Protección a la Familia); 18 (Derecho al Nombre); 19 (Derechos del Niño); 20 (Derecho a la Nacionalidad), y 23 (Derechos Políticos), ni de las garantías judiciales indispensables para la protección de tales derechos.3. Todo Estado parte que haga uso del derecho de suspensión deberá informar inmediatamente a los demás Estados partes en la presente Convención, por conducto del Secretario General de la Organización de los Estados Americanos, de las disposiciones cuya aplicación haya suspendido, de los motivos que hayan suscitado la suspensión y de la fecha en que haya dado por terminada tal suspensión.

21 El principio de proporcionalidad busca que la medida no sólo tenga fundamento legal, sino que sea aplicada de tal manera que los intereses jurídicos de otras personas o grupos no se vean afectados, o que ello suceda en grado mínimo.”

discrimination.²²

The rule of law requires that laws and procedures are not applied arbitrarily and are public. Sanctions for violations of the law must be proportionate and effective.

- **State authorities are responsible for defending rights:**

Under the State's international obligations under international human rights law, all branches of the State, public and governmental authorities, have the responsibility to respect and protect human rights, which includes the electoral body and its officials.

- **Electoral calendar:**

The legal framework must include the electoral calendar, including all aspects of the election. This calendar must be published in advance so that all necessary measures can be taken for the administration of elections, legal, and must include training and logistics.

- **Non-discrimination:**

International human rights law protects the right to equality, that is, discrimination is expressly prohibited on any grounds, such as race, sex, religion, language, political opinion, or special abilities. The positive obligation of the State to avoid discrimination or the negative obligation not to discriminate must be taken into account.

- **Right to an effective recourse, including the challenge of election results:**

International human rights law includes the right of every person to lodge an effective recourse before a competent national court against acts that violate their rights or freedoms²³. This also applies to the electoral process when considering any right affected in its development, in addition to political rights, and must be taken into account in the three stages of the electoral process. It is important to verify that the right to challenge election results is included.

In accordance with these conditions that the legal framework for elections must have, national human rights institutions can review:

- If the principles of the rule of law are promoted.
- That the function of the electoral institute is clearly defined and does not require interpretation.
- That there is an obligation to hold periodic elections.

22 CADH. Artículo 24. Igualdad ante la ley

23 Art 25 CADH. Protección Judicial 1. Toda persona tiene derecho a un recurso sencillo y rápido o a cualquier otro recurso efectivo ante los jueces o tribunales competentes, que la ampare contra actos que violen sus derechos fundamentales reconocidos por la Constitución, la ley o la presente Convención, aun cuando tal violación sea cometida por personas que actúen en ejercicio de sus funciones oficiales. 2. Los Estados Partes se comprometen: a) a garantizar que la autoridad competente prevista por el sistema legal del Estado decidirá sobre los derechos de toda persona que interponga tal recurso; b) a desarrollar las posibilidades del recurso judicial, y c) a garantizar el cumplimiento, por las autoridades competentes, de toda decisión en que se haya estimado procedente el recurso.

- That the rules and requirements for citizenship are clear, defined, and not discriminatory.
- That the legal framework includes the principle of equality and does not include discriminatory provisions.
- Special measures are taken to promote equality for minorities, vulnerable populations and gender.
- Measures are included to ensure equality for persons with disabilities or special abilities.
- The legal framework provides an effective, timely and enforceable remedy for citizens during the electoral process and includes the possibility of challenging the outcome of the election.

5.2 The electoral system and the delimitation of districts

The electoral system and the process of delimiting districts are very important elements that must guarantee inclusion. The electoral system is the mechanism used to convert the number of votes into political mandates, and include the responsibility of elected representatives to the voters.

We can classify them into:

- Plurality or majoritarian systems, in which the candidate or parties with the largest number of votes are considered the winners. Examples of plurality or majoritarian systems are simple majority in single-member districts, block voting, block voting by party, alternative vote and second round.
- Proportional Representation Systems, in which parties receive approximately the same proportion of legislative seats as the votes cast. These systems include the Proportional Representation system with lists and the single non-transferable vote.
- Mixed systems in which majoritarian and representation systems coexist.

International law does not require or advocate a particular electoral system, but it must be an inclusive electoral system that respects human rights and fundamental freedoms.²⁴

The process of delimiting electoral districts determines the constituencies and the seats for each. In this process, it is important to check that equality in the weight of votes and in the representation of voters according to the population of each one is guaranteed.

The design and decision on the electoral system and the delimitation of districts is

²⁴ Caso Yatama Vs. Nicaragua. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 23 de junio de 2005. Serie C No. 127: El derecho y la oportunidad de votar y de ser elegido consagrados por el artículo 23.1.b de la Convención Americana se ejerce regularmente en elecciones periódicas, auténticas, realizadas por sufragio universal e igual y por voto secreto que garantice la libre expresión de la voluntad de los electores. Más allá de estas características del proceso electoral (elecciones periódicas y auténticas) y de los principios del sufragio (universal, igual, secreto, que refleje la libre expresión de la voluntad popular), la Convención Americana no establece una modalidad específica o un sistema electoral particular mediante el cual los derechos a votar y ser elegido deben ser ejercidos (infra párr. 197). La Convención se limita a establecer determinados estándares dentro de los cuales los Estados legítimamente pueden y deben regular los derechos políticos, siempre y cuando dicha reglamentación cumpla con los requisitos de legalidad, esté dirigida a cumplir con una finalidad legítima, sea necesaria y proporcional; esto es, sea razonable de acuerdo a los principios de la democracia representativa.

taken long before an election and is decisive in guaranteeing inclusion. This design process occurs long before the arrival of any observation mission, which means that the evaluation is done after the fact. This makes it necessary and opens the possibility that an entity with the capacities of national human rights institutions can review and warn the administration if it were to be seen that the necessary guarantees are not in place and seek a way to guarantee non-discrimination and the right to effective recourse in the context of the electoral system and the delimitation of districts.

The right to participate in public affairs must be protected in the process of delimitation of districts. This right not only includes the right to vote and to be elected, but also the right to participate in non-governmental organizations and the possibility of participating in national electoral observation organizations.

Representatives of candidates and political parties must also be guaranteed access to all aspects of the electoral process to ensure that they can monitor it. This should include the delimitation of districts, voter registration, production and design of ballots, etc.

Within the electoral system we can verify:

- Equality in the value of each citizen's vote
- Multiparty participation and equitable representation.
- Protection of the right to participate in public affairs
- Non-discrimination.
- That the system guarantees non-discrimination and gender equality

5.3 Electoral calendar and enjoyment of rights

The obligation to protect human rights must be taken into account in the planning of elections, that is, when drawing up the electoral calendar, there must be time for reviewing the delimitation of districts according to specific needs, such as special seats to be elected. Monitoring the guarantee of human rights from the design of the electoral calendar and the conformation of districts is important from the point of view of national human rights institutions, taking into account that, at this time, observation missions have not yet arrived in the country, except in some countries that have national missions that operate throughout the year through civil society networks and platforms.²⁵

5.4 Electoral organization

It is important that the electoral institute be independent and impartial to guarantee the integrity of the process and facilitate citizen participation in an equal manner²⁶, respecting human rights. Regardless of the fact that its composition may be political, its function is to comply with national law and defend political rights independently and impartially. In

²⁵ La Misión de Observación Electoral – MOE Colombia – es una plataforma de organizaciones sociales, universitarias y de la sociedad civil, independiente del gobierno, de los partidos políticos y de intereses privados, que promueve la realización del derecho que tienen todas las personas a participar en la conformación, ejercicio y control del poder político.

²⁶ CEDAW Recomendación 23. El disfrute del derecho de voto por la mujer no debe ser objeto de limitaciones o condiciones que no se aplican a los hombres, o que tienen repercusiones desproporcionadas para ella.

the same way, it must implement policies to encourage citizen participation and avoid acts of corruption.

The National Human Rights Institution, it is possible to verify:

- That the electoral office acts are in accordance with the law and that its framework is consistent with human rights.
- The actors in the process recognize the authority of the electoral office.
- The electoral office carries out the elections with sufficient time to implement all stages of the electoral process.
- They adopt measures to ensure respect for and protection of human rights and to administer the elections in a public and efficient manner.
- Are independent and impartial and has sufficient resources for the entire electoral process.
- In the case of hiring and appointing staff, they must comply with the country's law in a transparent manner, providing confidence to citizens.
- The composition of the electoral body must be in accordance with the law, complying with all the necessary requirements for the election of its head and other officials.
- The electoral organization must provide training to officials and citizens regarding the process itself and human rights.
- Citizens must have access to all necessary information during the electoral process, as a guarantee of the right to free expression that implies the right to receive information.
- The electoral organization must implement effective policies against acts of corruption.
- The electoral organization must treat all citizens on equal terms, promoting special measures to guarantee equality.
- Right to personal security: the electoral organization guarantees the right to security of all citizens during the electoral process.
- Freedom of movement, it must be verified that the officials of the electoral organization can move freely, as well as citizens, candidates, voters and other actors in the electoral process.
- The electoral organization must have and provide effective remedies against any violation of electoral rights.

5.5 Voter registration or electoral roll

A correct voter registration guarantees the right to vote, inclusion and access to information, and is essential to establish the requirements for accessing the right to vote.

As a general rule, the voter registration or electoral roll is consolidated and refined before the arrival of international observation missions. In order to defend political rights as human rights, national human rights institutions can evaluate its composition in joint work with the electoral organization, verifying that the principles of the rule of law and

international human rights law are respected in their processes.

To guarantee fundamental freedoms and rights linked to the electoral process, the human right national institution must be verified:

- That the procedures for registration are clearly regulated by law.
- Sufficient time for the registration process with wide diffusion and the opportunity to submit requests for corrections or challenges.
- That the rules on citizenship requirements are clear and non-discriminatory.²⁷
- That the registration process promotes universal suffrage and that its limitations are based on objective and reasonable criteria.
- That the registration is available in the languages of minority populations.
- That the electoral roll is correct and up-to-date and has mechanisms to avoid multiple registrations.
- That citizens present valid identification when registering.
- That there are mechanisms to file complaints for exclusions or objections due to incorrect data.
- That there are mechanisms to guarantee the protection of personal data.
- That the educational campaigns have covered the information on the registration or census process.
- Access to the electoral roll for candidates and parties.

5.6 Voter education

The content of education campaigns should not be limited to the logistics of registration and voting, it should also promote greater awareness among citizens about their democratic rights and fundamental freedoms, as well as the protection routes linked to the international obligations associated with this exercise.

The voter education can be done with training programs and awareness campaigns and can generally be provided by electoral bodies, parties, and civil society with the aim of reaching the largest number of voters with access to the necessary information.

National human rights institutions have the duty of promoting and disseminating human rights, civil and political rights being human rights, and it is an obligation to participate in the diffusion of political rights. They must also ensure that the campaigns carried out by the electoral body are in accordance with international standards of these rights and have accurate content to avoid false information. National human rights institutions must promote and disseminate human rights principles through awareness-raising programmes and the use of the media. These can be general or focused on a specific set of rights, in the case of an electoral process, on political rights and rights associated with the process.

These campaigns must contain information on all electoral rights, including on equal suffrage, the right to vote and be elected, the right to effective remedies and the secret

²⁷ CADH. ARTÍCULO 20

ballot, information on the restrictions that may be applied to the rights of participation and that the loss or restriction of these rights may only be imposed after a court or tribunal ruling.

Within the electoral process, educational campaigns are expected to be carried out by the electoral organization, political parties, civil society organizations, among others, so it must be verified that they have the required conditions according to the standards of international law:

- That the obligations linked to universal suffrage and the right to vote are promoted.
- All voters receive information about their electoral rights before, during and after election day.
- Voter education campaigns are responsive to the needs of the electorate.
- Information on voting and the registration process is included.
- The electoral body provides education in an impartial manner.
- Civil society organizations are involved in education.
- Verify whether political parties and candidates are allowed to carry out voter education activities.
- Campaigns are inclusive of all citizens regardless of race, color, sex, language, religion, political opinions, national or social origin, abilities, sexual orientation or gender identity, birth or other status.
- Whether places for voter education are accessible
- Verify that voter education materials facilitate the right to vote for illiterate voters, minorities, and vulnerable populations in general.

5.7 Candidates and campaigns

Rights to assembly, association, freedom of expression, equality, right to be elected, personal security.

Candidates do not only have rights, they represent the political opinions and voices of the electorate, so special attention must be paid to the right to freedom of association in the context of candidacies and campaign activities. People must freely associate for political purposes, to found political parties, movements or express support for a candidate.

It is important to assess to what extent parties and candidates have had the opportunity to operate freely, they must have the opportunity to associate, meet and communicate freely, and also work on equal terms, whether a political party or an independent candidate.

Human Rights Nacional Institution must verify that:

- Citizens can establish and participate in political parties and other associations.
- Political organizations are treated equally by being recognized and registered as parties.

- Regulations and deadlines for legal recognition of political parties are clear and specific. Registration requirements cannot be too stringent, freedom of association must be protected.
- Every citizen has the right to be elected, this right can only be limited by reasonable restrictions. The loss of the right to be elected is only imposed as a penalty following a court or tribunal ruling.²⁸
- Regulations on candidacies must be the same for those who run as independent candidates and those who represent a party.
- Gender equality in the conditions for being a candidate.
- All political contenders must have an equal period of time for their campaign activities in order to compete on fair terms.
- Procedures for accessing ballots must be clear.
- Political parties must be free to communicate their opinions to the electorate. Freedom of opinion and expression must be protected throughout the campaign.
- If an electoral ban period is imposed, it must be reasonable, generally starting the day before the election to guarantee citizens the freedom to exercise their right to vote.
- As guarantee of the right to assembly, candidates and their supporters must be able to meet freely throughout the campaign period.
- The right to freedom of movement must be respected for all actors in the electoral process.
- The right to an effective judicial recourse must exist for violations of rights related to candidacies.
- The right to personal security must be guaranteed to candidates and political parties.
- Regarding campaign financing rules, the right to be elected and non-discrimination must be respected, whether it is public or private financing. It must be regulated, but maintaining the conditions of equity and the right to be elected. It is necessary to verify whether limits have been imposed on campaign financing and whether there is a mechanism for disclosure or publication of expenses, that there is no misuse of public resources and that there are sanctions for violating financing rules. This guarantees that there is equity and equality in the rights to elect and be elected.

5.8 The media

The media have a dual role in electoral processes. On the one hand, they provide information to voters, parties and candidates, and on the other hand, they monitor the process. They are essential for democratic elections. A free election is not just about voting under the right conditions; it is necessary to have relevant information about the parties, policies, candidates and the electoral process itself so that voters are in a position to make an informed choice. A democratic election without freedom of

28 CADH. Artículo 23

expression, freedom of opinion and guarantee of information in the media would not be a democracy.

It is necessary to find the necessary conditions to ensure the right to freedom of expression and its related rights with the obligation of regulation that the electoral organization has.

There are public media that have the obligation to give equitable coverage to opposition parties and candidates and private media that have an important responsibility in relation to the right to equality.

The main concern for a national human rights institution is the right of voters to pertinent, complete and accurate information. Parties and candidates have the right to use the media to convey their messages to the electorate, and the media have the right to freely inform and investigate the entire electoral process.

At the same time, the electoral organization has the obligation to provide information to voters, political parties and candidates, and the media. The relationship between the electoral body and the media is complex, since its function is to be:

- Regulator, by establishing decrees and regulations within the electoral legal framework, which include the issue of the media.
- Communicator to voters.
- Permanent source of news throughout the process.

The national human rights institution, as a control entity, has to reviewing media coverage of candidates and campaigns, must review whether the media are independent, whether there is freedom of expression within the electoral process, and whether the use of the media was considered and regulated within the legal framework. In this way, it seeks to guarantee the right to information, freedom of expression and opinion. It should also be noted that access to the media should be inclusive without discrimination based on race, gender, religion, political affiliation, among others. As a national human rights institution seeking to guarantee international human rights obligations, the following should be reviewed:

- That the State does not impose restrictions on journalists, except those related to electoral bans.
- That there is no abuse of resources or influence by the government on the content of the news.
- Respect for freedom of opinion and expression in the media.²⁹
- That surveys are published without restriction, except for those related to electoral

²⁹ PIDCP: Artículo 19. 1. Nadie podrá ser molestado a causa de sus opiniones. 2. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección. 3. El ejercicio del derecho previsto en el párrafo 2 de este artículo entraña deberes y responsabilidades especiales. Por consiguiente, puede estar sujeto a ciertas restricciones, que deberán, sin embargo, estar expresamente fijadas por la ley y ser necesarias para: a) Asegurar el respeto a los derechos o a la reputación de los demás; b) La protección de la seguridad nacional, el orden público o la salud o la moral públicas.

bans.

- That there is freedom of information on all political issues among citizens, candidates, and elected representatives, and that the media should not be held responsible for false statements made by the parties.³⁰
- That the government does not use the mechanism of defamation lawsuits as mechanisms to repress freedom of expression, criticism, or public debate.
- Right to information, that the right to information be respected and guaranteed at all stages of the electoral process, including those relating to the media in particular, to reports of corruption and crimes related to the process, in short, that the media can report freely.
- At all times, political parties and movements, and candidates, must have access to public media without any type of discrimination, receiving coverage on equal terms.
- That public media adopted affirmative measures to reach all sectors that participate in the electoral process, such as linguistic minorities, groups requiring special protection and those living in rural areas.
- Private media are not subject to the same regulations as public media, but they must guarantee equal access opportunities to all candidates. Free airtime must be distributed equitably in terms of amount of time and time slot.³¹
- The guarantee of movement must also be guaranteed to journalists and members of the media.

30 OBSERVACION GENERAL 25. COMITE DE DERECHOS HUMANOS. ART 25 PARTICIPACIÓN EN LOS ASUNTOS PUBLICOS Y DERECHO DE VOTO. PIDCP. 57 PERIODO DE SESIONES, U.N. DOC. HRI/GEN/1/REV.7 AT 194 (1996). 25. La libre comunicación de información e ideas acerca de las cuestiones públicas y políticas entre los ciudadanos, los candidatos y los representantes elegidos es indispensable para garantizar el pleno ejercicio de los derechos amparados por el artículo 25. Ello comporta la existencia de una prensa y otros medios de comunicación libres capaces de comentar cuestiones públicas sin censura ni limitaciones, así como de informar a la opinión pública. Requiere el pleno disfrute y respeto de los derechos garantizados en los artículos 19, 21 y 22 del Pacto, incluida la libertad de participar en actividades políticas individualmente o a través de partidos políticos y otras organizaciones, la libertad de debatir los asuntos públicos, de realizar manifestaciones y reuniones pacíficas, de criticar o de oponerse al gobierno, de publicar material político, de hacer campaña electoral y de hacer propaganda política.

31 Manual sobre normas internacionales de derechos humanos en materia de elecciones. Oficina del alto comisionado UN. Pagina 75. Que todas las personas candidatas y partidos políticos tengan acceso a los medios de comunicación en condiciones de igualdad para hacer campaña y publicidad también es importante. En aquellas situaciones en que los principales medios de información están controlados por el Gobierno, el acceso imparcial a esos medios puede ser aún más importante. En la normativa relativa a los medios de comunicación se deben prever salvaguardias contra la censura política, la ventaja gubernamental injusta y el acceso desigual o no equitativo durante el período de campaña. Todas las personas candidatas deben tener la misma visibilidad en los medios de comunicación públicos durante las campañas electorales.

6

Monitoring and supervising compliance of the guarantees for the enjoyment of human rights during voting day

The enjoyment of human rights in an electoral context depends on the implementation of a detailed and clear processes and procedures for citizens and officials who work during the day. It is a process regulated by each country that must guarantee international commitments and obligations. During voting day, many things happen for which the electoral organization must have prepared itself with the necessary processes and measures. The national human rights institution within its mandate must take into account several aspects:

6.1 Legal framework for voting operations

The Electoral process laws must be inclusive and must be applied on equal terms and not arbitrarily. Respect for the rule of law and the international guarantees for human rights an authentic electoral process and respect for electoral rights.

6.2 Citizenship

The citizenship's rules must be established in advance, be clear and cannot be discriminatory. This regulation is at the discretion of the State.

6.3 Right to vote

All restrictions about the right to vote must be established prior to voting day and have been duly publicized. The loss of this right is only imposed by a court or tribunal ruling.

This right may only be limited by reasonable criteria. Excessive restrictions must be reviewed, such as: restrictions on a citizen who obtains his or her nationality through a naturalization process, sentences disproportionate to the crime, persons who are in preventive detention awaiting sentencing, race, religion, sex, disability, gender identity or sexual orientation, level of education, political opinions, political affiliation, property ownership, special status, etc.³² In order for voting centers to function properly, staff must have received complete orientation and training that allows them to identify who meets the requirements for citizenship.

32 Naciones Unidas. CCPR, Observación general No. 25

6.4 Methods to facilitate voting

In some legislations we found several methods to facilitate the exercise of voting:

- electronic voting or with mobile devices, in these cases it is important that the technologies work correctly and independent, they must be safe against fraud.
- early voting
- mail vote
- assistance vote for people with disabilities, Braille systems or assistance for reduced mobility and people who officially have legal assistance.³³
- voting abroad
- creation of voting centers in hospitals.
- creation of voting centers in jails and prisons
- voting for members of the armed forces (where permitted)

Within the requirements or conditions to facilitate voting, the NHRI must look that the electoral organization has sufficient staff, there is sufficient electoral material such as ballots and minutes in each voting center.

Voting centers must be sufficient for all voters, they must be located in public places and easily accessible, complying with inclusion standards. Its design must include safe spaces where secret voting can be guaranteed, so that no one can observe the voter when casting his or her ballot and no one can intimidate him or her.

Timetables must also be taken into account, that the polls station open on time, that voters have enough time and that the polls do not close before the official time. In the event that closing time arrives, it is expected that everyone who queues up at the appropriate table will be allowed to vote.

The design of the ballot papers must be easy to understand for any level of literacy, if there are several languages in the country, they must be available to everyone.

6.5 Personal security during voting

Security staff, police, armed forces, have an important role in the electoral process, providing protection to candidates, voters and officials of the electoral organization without interfering in the electoral process.

We understand personal security as a right related to life and personal integrity, the State must take affirmative measures to protect all parties in the process.³⁴

This aspect is related to the secret vote, allowing the voter to cast his or her vote without any intimidation or coercion. The State must take measures to prevent cases of multiple voting, removing evidence from the voting station, transhumance, and other electoral crimes.

33 CONVENCIÓN SOBRE LOS DERECHOS DE LAS PERSONAS CON DISCAPACIDAD Artículo 9

34 Declaración Universal de los Derechos del Hombre. Artículo 3

6.6 Observation of the electoral process

Electoral observation missions are very important for strengthening and maintaining confidence in democracy. There are international observers invited by the State and civil society observers.

National human rights institutions can work in conjunction with the electoral organization, coordinating some missions, and must observe and supervise compliance with international and constitutional obligations within the electoral process.

Within the observation that is done on election day, in addition to the work of the observation missions accredited by the electoral organization, candidates and political parties must have the possibility to observe the process and the counting to protect their right to be elected.

6.7 Right to information

As has been stated, access to information is essential to ensure transparency and accountability throughout the electoral process. The electoral stage, or voting day, is the most sensitive for candidates, parties and the media.

The State's obligation to adopt the necessary measures to enforce rights, is crucial in the case of information to achieve the transparency required for the legitimacy of an election. This strengthens the measures that the State can take to prevent corruption. In many countries, there is a restriction on information on election day to protect the integrity of the vote and the process, but these restrictions must be specific and not violate the right to receive the necessary information. The electoral organization is in the position of defending the right to information and regulating it.

6.8 Prevention of corruption

It should be reviewed whether the State has mechanisms to combat corruption within the electoral process. International obligations include that States adopt measures to prevent corruption³⁵. The electoral organization must provide mechanisms during all stages of the process.

According to the provisions of each legislation, the following types of conduct can be found:

- Influence peddling
- Act or omission of public functions for personal benefit or for third parties
- Conspiracy for corrupt activities
- Use of public property to obtain benefits or favors
- Request or acceptance of bribes

Depending on the entity that has the power to know about these acts in the electoral process, it may be a special court or if it is generally passed on to the prosecutor's office

³⁵ Convención de las Naciones Unidas contra la Corrupción. Artículo 7. No. 3.

or the competent body, it must be verified if there is an access route for the affected person to protect their rights through an effective remedy.

6.9 Right to an effective recourse on voting day

The State must provide an effective recourse on voting day. There is an express obligation to guarantee that every person has the possibility of filing an effective and timely recourse before a competent national court for acts that violate their rights or freedoms within the electoral process.

Due to the urgency and the fact that the decision must be taken quickly, so as not to delay the electoral results, it must be a simple remedy, with very short deadlines to find the solution. For this, the electoral administration should have simple forms available to the electorate, candidates and campaigns.

To provide legal certainty, it is necessary that the laws and regulations regarding resources, competence and responsibilities of all instances be clear, thus avoiding conflicts of jurisdiction.³⁶

6.10 Counting and tabulation of votes

The counting is the determining and most vulnerable moment in an election; it must be precise to guarantee the protection of the rights to elect and be elected. After having worked on the credibility of the process in all the previous stages, any irregularity in the counting will affect the entire legitimacy of the electoral process, directly affecting the acceptance of the results.

During the counting and its result, it will be verified whether the state took all the necessary measures to achieve the highest possible vote and that all the votes cast are counted, and the people who do the counting must be clear about the basic conditions to validate each vote.

Within the counting, the ability of those who do the counting to identify the validity of the votes must be supervised, taking into account the intention of the voter, who can identify the truth or falsehood of the papers, if it is a manual vote. Candidates or their representatives and accredited observers must be allowed to observe the counting and tabulation of the votes.

The acts must be verified and copies given to the witnesses of the parties and campaigns.

With these basic points, access to information is guaranteed during the counting and tabulation processes.

6.11 Transmission of preliminary election results

Results are expected to be delivered on time and announced publicly at the vote counting center. For this, the transmission of the minutes from the voting centers to the computing

³⁶ Código de buenas prácticas en materia electoral. 3.3. Existencia de un sistema eficaz de interposición de recursos.

center is very important; it must be a transparent transmission by a faultless system that generates confidence in society.³⁷

Regardless of the voting method used, the secrecy of the vote must be guaranteed throughout the electoral process, including during voting and tabulation. In a democratic regime, it is not permitted to associate the votes cast with specific voters during counting and tabulation.³⁸

If electronic voting systems are used, there must be a complete and open audit to the public.

If the transmission of results generates confidence in citizens, the acceptance of results will be generated without further questioning.

37 Código de buenas prácticas en materia electoral. 3.3. Existencia de un sistema eficaz de interposición de recursos.

38 Artículo 23. Derechos Políticos 1. Todos los ciudadanos deben gozar de los siguientes derechos y oportunidades: b. de votar y ser elegidos en elecciones periódicas auténticas, realizadas por sufragio universal e igual y por voto secreto que garantice la libre expresión de la voluntad de los electores,

7 Resolution of electoral conflicts

As explained, electoral rights are the political rights that are part of human rights and they are protected by international human rights law. In addition to being enshrined in the law of each country, political rights are protected in international human rights instruments, as set out in the introduction to this manual:

Universal Declaration of Human Rights: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law” (art. 8).

American Declaration of the Rights and Duties of Man: “Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights. (art. XVIII).

International Covenant on Civil and Political Rights: “Each State Party to the present Covenant undertakes:(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity” (art. 2, para. 3, subparagraph a); To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;(art. 2, para. 3, subparagraph b); To ensure that the competent authorities shall enforce such remedies when granted.art. 2, para. 3, subparagraph c). All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. (art. 14).

General Comment 25 adopted by the United Nations Human Rights Committee: Right to participate in public affairs, right to vote and right to equal access to public office (art. 25 ICCPR, 1996): [...] “An independent electoral board should be established to

oversee the electoral process and ensure that it is conducted fairly and impartially and in accordance with legal provisions compatible with the Covenant [...] There should be an independent counting of votes and a recounting process, with the possibility of judicial review or other equivalent process, in order to ensure that voters have confidence in the security of the vote and the counting of votes” (pt. 20).

American Convention on Human Rights (Pact of San José, Costa Rica): “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature”. (art. 8). “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties”. (art. 25.1). “The States Parties undertake: a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b. to develop the possibilities of judicial remedy; and c. to ensure that the competent authorities shall enforce such remedies when granted” (art. 25.2).

Inter-American Democratic Charter, OAS: “Any person or group of persons who consider that their human rights have been violated may present claims or petitions to the inter-American system for the promotion and protection of human rights in accordance with its established procedures. Member states reaffirm their intention to strengthen the inter-American system for the protection of human rights for the consolidation of democracy in the Hemisphere.” (art. 8).

Electoral rights include the right to vote; the right to stand for election and be elected in free, fair, authentic and periodic elections held by universal, free, secret and direct voting; the right to political association, and other related rights. Other rights arise from the right to justice, the right to a public and impartial hearing and the right to due process, and lead us to the state’s obligation to guarantee access to electoral justice.

Citizens’ rights to be qualified as voters, according to the national legal framework, can be defended by administrative, judicial, legislative or international organizations. The administrative bodies can be the electoral organization; the judicial bodies can be ordinary courts, administrative courts or specialized electoral courts that work autonomously; and the international bodies can be those that have conventional jurisdiction in countries that have recognized an international or regional court, which makes them binding on the state.

This means that any person who wishes to claim the violation of any of their rights must be guaranteed an effective remedy or recourse before a previously established impartial court, in order to protect or restore the exercise or enjoyment of the right that has been

violated in the electoral process.

As we have seen, national human rights institutions that comply with the Paris Principles have become essential for people to access national human rights protection systems as mechanisms that link international human rights standards and the State to which they belong, either by reviewing the route of access to justice or by urging authorities to protect rights in accordance with international public law standards.

Therefore, it is considered important that each national human rights institution reviews and observes the functioning of electoral justice and the resolution of electoral conflicts during the stages of the process in accordance with the standards of international human rights law.

7.1 Inter-American standards applicable to electoral justice

The criteria and jurisprudential precedents of the Inter-American Commission and the Inter-American Court of Human Rights constitute road maps for the work of National Human Rights Institutions in the continent. Specifically, the Inter-American Court has established that for an adequate understanding of the substantive norms of the American Convention on Human Rights, one must take into account not only the letter of the treaty itself, but also the interpretation that the Court has made of it.³⁹

One of the great advances in the protection of human rights in the Inter-American System has been the inclusion of conventionality control, not only as a doctrine but as a tool to “increase” the levels of enforceability of rights. Therefore, it is worth pointing out complementary criteria put forward to strengthen the work of electoral justice and find the correct application of guarantees to political rights. They have referred to several topics, of which we will present the most relevant ones in the protection of political rights in matters of conflict resolution, since it is there where true protection is required and where greater strength is required in an electoral process:

- **Jurisdictional function:** Decisions issued by domestic electoral bodies may affect the enjoyment of political rights.⁴⁰ Therefore, in this area, the minimum guarantees enshrined in Article 8.1 of the American Convention on Human Rights must also be observed, insofar as they are applicable to the respective procedure. In addition, all bodies exercising jurisdictional functions have the duty to adopt fair decisions based on full respect for the guarantees of due process established in Article 8 of the American Convention and in accordance with the principles of constitutionality and legality.⁴¹
- **Non-judicial authority:** Article 8.1 of the American Convention, which refers to the right of every person to be heard by the judiciary or a competent tribunal for the “determination of his or her rights,” is also applicable when a non-judicial authority

39 Corte IDH. Caso Almonacid Arellano, sentencia de 26 de septiembre de 2006, Serie C No. 154, párrafo 124 y Caso López Mendoza v. Venezuela, sentencia de 1 de septiembre de 2011, párrafo 95.

40 Caso López Mendoza v. Venezuela, sentencia de 1 de septiembre de 2011, párrafo 76

41 Caso Ivcher Bronstein, sentencia de 6 de febrero de 2001, Serie C No. 74, párrafo 102

issues resolutions that affect the determination of such rights.⁴²

- **Due process of law:** The right to due process has formal requirements and principles that must be observed to protect the rights of all persons, namely:
 1. Right of access to justice
 2. Procedural equality
 3. Prompt and complete justice
 4. Legality.
 5. Right to defense or hearing
 6. Pro “sententia” principle
 7. Congruence and exhaustiveness
- **Control of conventionality and constitutionality:** It must be verified that the norms and procedures do not contradict the constitutional principles and/or the international law of human rights. The pro persona perspective must prevail.
- **Justification and motivation duty:** The decisions adopted by internal bodies that may affect human rights, such as the right to political participation, must be duly justified and motivated, otherwise they would be arbitrary decisions. In this sense, the jurisprudential precedents of the Inter-American Court of Human Rights play a fundamental role in strengthening the validity of rights within the States.
- **Existence of an effective judicial remedy:** States are obliged to provide citizens with effective judicial remedies to protect them against possible violations of their fundamental rights.⁴³

Taking into account these standards established by the Court, national human rights institutions can have better tools so they can show the State what guidelines are necessary to provide electoral justice with standards shared in the region, as described in the following section.

7.2 What to observe or supervise in the electoral justice

In order to do the work of accompanying an electoral process and supervising the guarantees of human rights, mainly political rights as well as the right to justice under conditions of equality, in the conflict resolution stage, the National Human Rights Institutions must take into account primarily that there is an independent and impartial court, where justice is in accordance with the principles of legality, transparency and probity of a national character and based on international standards, thereby allowing an effective due process and in accordance with the characteristics of a democratic electoral context.

In this section, the main elements that intervene in the dynamics of electoral justice are

42 Caso Yatama v. Nicaragua, sentencia de 23 de junio de 2005, párrafo 149

43 Caso López Mendoza v. Venezuela, sentencia del 1 de septiembre de 2011, párrafo 76.

described in order to have guiding criteria for the National Human Rights Institutions, in their supporting role during electoral processes.

1. Independent and impartial court.

The essence of electoral justice lies in the credibility of the authority in charge to resolve conflicts. It is necessary that the court that has the power to resolve electoral conflicts act impartially and independently, free of political coercion that may arise from the government in power. In this way, the judges or magistrates who resolve these conflicts are the main actors in achieving the protection of human rights in a democratic State.⁴⁴

To achieve independence and impartiality, the authority in charge of resolving electoral disputes must be independent from a legal point of view, that is, it must strictly adhere to the constitutional mandate and be oriented to ensure political rights and freedoms from a perspective of clear separation of powers in relation to electoral justice.

Conditions for achieving the independence of a competent court or judge:

a. Integration:

It is essential that the process of selection and appointment of electoral judges be based on personal merit and professional capacity, thus guaranteeing autonomy and impartiality.

b. Autonomy:

Electoral justice must have sufficient resources for its operation and not depend on other powers in the management of its financial resources.

Guarantees for the exercise of jurisdiction:

- **Objectivity in the assignment of cases:** The mechanism for assigning cases must be based on objective criteria, which must be public and precise to avoid undue manipulation during the process.
- **Professional career judges:** it is recommended that the electoral body have a career and promotion system, which allows the professionalization of electoral judicial officials.
- **Certain and public remunerations:** the remuneration of electoral justice officials, as in any jurisdiction, must be in accordance with what is defined in the public service, and in a public manner.
- **Personal protection:** There must be guarantees of protection for those who serve as electoral judges when their life and personal integrity are at risk, adopting an effective and exhaustive prevention strategy, in order to avoid attacks, aggression and harassment against them.
- **Stability in office:** The duration of the appointment to the position is a condition

⁴⁴ Comisión Interamericana de Derechos Humanos, Garantías para la independencia de las y los operadores de justicia. Hacia el fortalecimiento del acceso a la justicia y el estado de derecho en las Américas, OEA/Ser.L/V/II. Doc. 44, 5 diciembre 2013.

for the independence of the operators of justice. In this way, the official can act independently and without pressure from being subject to confirmation or ratification in his position by the administration or any branch of public power.

Responsibility regime:

Disciplinary processes that arise by virtue of the exercise of the jurisdictional position as an electoral official must have guarantees of the principle of due process and the principle of legality. That is, both the laws and the respective internal institutional regulatory frameworks must typify the conduct that affects the disciplinary regime. Likewise, the imposition of disciplinary measures must be clear and objective, clearly defining the seriousness of the infraction and the type of sanction to be applied. It is important that these processes and measures are in accordance with and in concordance with international obligations, such as that enshrined in Article 2 of the American Convention on Human Rights.⁴⁵

Nature of the decisions of the Electoral Court:

The electoral judge must be the interpreter of the constitutional and legal norms on the matter. In cases where the review of the sentences of the electoral body is considered, the electoral authorities must not suspend the execution of the questioned decision, taking into account the special characteristics of an electoral process. Strict adherence to jurisdictional independence is required so that the State itself has legitimate precedents that guide the development of electoral processes. That is, the guarantee of the right should not depend on other instances.

Conventionality and constitutionality control:

The Conventionality control has been defined by the Inter-American Court of Human Rights as an institution that is used to apply international human rights law, specifically the American Convention on Human Rights and the jurisprudence of the Court on the same, in domestic law. That is why the standards listed above are important.

Its application is “ex officio” by the organs of the Judicial Branch and complementary to the constitutionality control. Over the years, the Inter-American Court of Human Rights itself has defined that the scope of application of this legal institution is for all public authorities, which involves electoral authorities, whether jurisdictional or not.

For its part, constitutional control is understood as those legal resources designed to verify the correspondence between the acts issued by those who hold power and the validity of the Political Constitution of a State.

Effective judicial protection includes the right of every person to question the constitutionality or conventionality of any law that allegedly violates, obstructs or undermines the validity of any fundamental right (in this case, of civil or political interest). In this sense, the electoral judge must exercise this type of control, by virtue of compliance

⁴⁵ CADH. Artículo 2

with the international obligations assumed by the States party to international treaties and in their direct role as agents of the State.⁴⁶

2. Access to electoral jurisdiction

A basic principle for the guarantee of due legal process has to do with the fact that all activities of the electoral administration can be challenged. Based on this, the legal framework of the process must regulate the procedures and persons entitled to access the electoral jurisdiction, indicating procedural terms and requirements, which cannot be an obstacle to access justice. This point must be observed from the legal framework of the electoral process, as well as the powers of the competent court or judge.⁴⁷

a. Main objects of challenge in an electoral process that affect the right to elect and be elected:

The registration or exclusion of voters in the electoral roll; the registration of political parties and political movements with the capacity to nominate candidates; the official registration of candidates, as well as respect for the rules of the electoral campaign. The application of sanctions to parties or candidates; access to the media, as well as public financing; the validity of the votes received and the counting of the results; electoral nullity; transhumance, among others.

It is necessary to verify whether the resource is effective within the electoral context, that is, that it has short terms, so that there is a response within the process and the right to elect and be elected is not affected.

b. Legally authorized subjects to challenge:

The electoral authority in general any aspect of the process; political groups, parties and candidates must be able to question the electoral registers, allocation or distribution of public financing or spaces for the divulgation of electoral publicity in the public media. The validity of votes individually considered in the election at certain voting tables or in the election in general.

Citizens to challenge their inclusion or exclusion in the electoral register, the refusal to nominate an independent candidate and any violation of their civil and political rights within the framework of the electoral process, the protection of the right to

⁴⁶ Caso Mendoza y otros Vs. Argentina. Excepciones Preliminares, Fondo y Reparaciones. Sentencia de 14 de mayo de 201321. 221. Al respecto, este Tribunal ha establecido en su jurisprudencia que, cuando un Estado es parte de un tratado internacional como la Convención Americana sobre Derechos Humanos, dicho tratado obliga a todos sus órganos, incluidos los poderes judicial y ejecutivo, cuyos miembros deben velar por que los efectos de las disposiciones de dichos tratados no se vean mermados por la aplicación de normas o interpretaciones contrarias a su objeto y fin. Los jueces y órganos vinculados a la administración de justicia en todos los niveles están en la obligación de ejercer ex officio un "control de convencionalidad" entre las normas internas y los tratados de derechos humanos de los cuales es Parte el Estado, evidentemente en el marco de sus respectivas competencias y de las regulaciones procesales correspondientes. En esta tarea, los jueces y órganos vinculados a la administración de justicia, como el ministerio público, deben tener en cuenta no solamente la Convención Americana y demás instrumentos interamericanos, sino también la interpretación que de estos ha hecho la Corte Interamericana.

⁴⁷ Article 25 CADH. Right to Judicial Protection 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

vote when the freedom to exercise it is considered affected, the non-compliance with the electoral campaign rules.

c. Formal requirements for access to electoral justice:

The requirements for claims or appeals requesting the protection of a right within the electoral process must be the basic ones:

- Identification (name and surname) and signature of the person filing.
- Address to receive notifications.
- Documents to prove legal status.
- Account of the legally relevant facts.
- Identification of the act and its impact.
- Evidence (if applicable).

In the case of correctable errors or omissions, the inadmissibility due to a formal defect must be interpreted restrictively, in this way a reprocessing will not be necessary to make the right effective.

d. Economic requirements:

As an essential element for access to justice on equal terms, free access should be guaranteed; however, to avoid rash complaints, it is acceptable for legislation to provide for bail, guarantees, fines or costs. This must be considered so that economic requirements do not become an obstacle, especially when dealing with populations that have been historically discriminated against or in a disadvantaged economic situation.

3. Fair and effective process:

In general terms, for the proper functioning of a State of Law, Article 25.1 of the American Convention on Human Rights establishes the principle of Judicial Protection. "Right to Judicial Protection 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

In the case of conflicts that arise in an electoral process, this remedy must be adequate to resolve the case in a timely and effective manner.

The time limits for filing claims, challenges and appeals must respond to the exhaustion or preclusion of the stages of the electoral process, that is, short time limits are required, of two or three days, or at the same time that they occur to respond to the dynamics of the electoral process.

Higher instances generally have longer time limits than first instance bodies, but it is recommended that they allow a decision to be obtained in a timely manner. Procedural

rules must ensure that the stages completed and the decisions issued are irreversible if they are not challenged in a timely manner. There must be time limits for the formulation of claims in matters that have a decisive impact on the development of the electoral schedule.

As we can conclude, the evaluation of conflict resolution within the electoral process must be done throughout the entire process. As a general rule, the most relevant conflicts arise after the voting day and therefore it is necessary to continue monitoring the process for a longer period. Electoral Observation organizations normally finish their work with the announcement of the results, and in these cases a thorough follow-up of the conflict resolution mechanisms must be carried out, verifying that they comply with the international obligations of international human rights law. For this, the work of national human rights institutions is necessary, who can continue monitoring and protecting the rights of citizens.

Taking into account the basic requirements set out and the applicable international instruments, the human rights institution must monitor and supervise the guarantee of the rights of access to justice, the right to information, a fair trial, the right to an effective remedy, non-discrimination and equality before the law, personal security, and related rights that are in the process of being resolved.

8

Necessary analysis of the National Human Rights Institutions regarding their powers

National human rights institutions must carry out a self-examination of their legal powers regarding democratic processes. From this examination, each one can establish protocols regarding the defense, promotion and dissemination of political rights as fundamental human rights.

In electoral and citizen participation contexts, national human rights institutions must adopt a human rights approach, prioritizing the right of citizens to participate in public affairs and all the rights that derive from them, as explained in previous chapters. Their power as a control body allows them to urge respect for political rights.

Some legislation has express prohibitions regarding electoral observation, but these are specific prohibitions on intervention in the electoral process or not interfering in a judicial appeal that is about to be resolved before a court. However, in general, no national human rights institution is less responsible for the protection and promotion of human rights in its country, and one of its main functions is to ensure that international human rights standards are applied and complied with in the country.

Whether or not, NHRIs have an express mandate in the area of electoral rights, they play a very important role in safeguarding a number of enabling rights to ensure free and genuine elections and an enabling environment for human rights. NHRIs must ensure and monitor that elections take place in a climate of respect for human rights and fundamental freedoms. In this regard, a number of fundamental rights and freedoms are of great importance. Elections offer people the opportunity to freely express their will and exercise their civil and political rights, especially the right to participate in public affairs. They can also exacerbate existing tensions and heighten the risk of human rights abuses and violations.

Some rights may be particularly threatened in the context of elections, in particular the freedoms of opinion and expression, association and peaceful assembly, and the right to participate in public affairs. As shown in this manual, these rights are interconnected with several human rights that are not designated as political rights, such as personal security.

The responsibilities of NHRIs include:

- **Monitoring and Surveillance:** When monitoring and observing the human rights situation, they cannot ignore political rights and those rights that are affected at any stage of the electoral process.
- **Advice and Recommendations:** They can offer advice to electoral authorities and/or the government on how to guarantee free and fair elections, as well as make recommendations in the context of violence or threats or to improve electoral legislation and practices.
- **Education and Awareness-Raising:** In their mission of promotion and divulgation, they must carry out education and awareness-raising campaigns on human rights, including political rights.
- **Research and Documentation:** They have the capacity to investigate human rights violations related to electoral processes, document cases and prepare reports that can be used by electoral bodies, the government or taken to international bodies.
- **Defense and Protection:** They can act in defense of citizens' rights, offering complaint mechanisms, requesting protection for those who face threats for their participation in electoral processes.
- **Collaboration with Other Institutions:** As a general rule, human rights institutions work in coordination with the organizations in charge of the electoral process, with international bodies, civil society and other institutions that allow the strengthening and protection of human rights in the electoral and participatory field.
- **Guarantee non-discrimination or promote inclusion:** They promote and supervise the inclusion of vulnerable groups in the electoral process, ensuring that their rights are respected and that they have access to political participation.
- **Evaluation of Policies:** Within their reports on human rights, they can evaluate electoral policies and practices from a human rights perspective, alerting to the need for reforms that guarantee equality and justice in electoral processes.
- **Encourage the State to ratify these international instruments for the protection of human rights or adhere to these texts and ensure their application.**
- **Control organizations to the government and public administration.**⁴⁸

Taking into account these powers and especially their nature as control bodies, national human rights institutions directly control the performance of the public administration and indirectly the performance of the legislature. Finally, it is the legislature that can change laws and they are limited to recommendations in general reports.

The natural object of control of national human rights institutions is the public administration, since it is the subject against whom citizens can make their claims, requests and complaints. For this reason, national human rights institutions direct their attention to the administration, following up on each specific case and proposing the necessary measures or processes to prevent the loss of human rights guarantees and to comply with international obligations.

⁴⁸ Diagnosis of the capacities of National Human Rights Institutions in the observation, supervision or oversight of electoral and/or participatory processes – Adriana Piquero E

Generally, it is individuals and not public powers who violate the rights of other citizens, but the State has the duty to protect and it is the national human rights institution that urges the State through a recommendation, alert or warning to repair its failure to comply with the general duty to protect rights. The State must have foreseen the situation and its solutions. In electoral contexts, the national institution must continue its exercise, monitoring the performance of the public administration in specific cases, urging it to take immediate action.

It must make recommendations from the pre-electoral stage, in cases where it finds that a right may be violated or if the legal framework does not have a human rights approach, harming certain populations, a gender approach, so that there is an objective guarantee for the development and enjoyment of political rights.

In its work of promotion and dissemination, if necessary, it must review the information, general or specific, on the scope of the political rights of participation of citizens, work that it must do from its mandate independently or in collaboration with the electoral organization and civil society organizations.

In cases where legislation determines that the electoral jurisdiction will be the only one to resolve conflicts, it must refer complaints relating to participation rights to the competent authorities. Either an administrative or judicial solution.

In cases of social conflicts generated in the electoral context, it must act as a mediator to avoid anticipated violations. There are cases where democracy is threatened and where NHRIs must be alert given that arbitrary arrests and imprisonment, ill-treatment and torture, extrajudicial executions, disappearances and other human rights violations may be triggered.

Some individuals and groups may be at risk of violence or discrimination when exercising their rights. Depending on the context, these may be people who regularly and visibly participate in public debate on essential issues, namely human rights, good governance and corruption, such as members of the opposition and political activists, human rights defenders, representatives of non-governmental organizations (NGOs), journalists or media workers. Within these contexts, we must also include specific groups requiring special protection who regularly suffer discrimination and violence, such as women, young people, LGBTIQ+ people, minorities, indigenous peoples, people with disabilities or different abilities, refugees, migrants, etc.

In parallel with the electoral process, national human rights institutions must continue to monitor and protect human rights guarantees, even if it is perceived that the country is focused on the electoral process, within which it is necessary to guarantee their related rights.

As examples and according to the context and reality of each country, taking into account the competences mentioned above, some of the functions or actions that the NHRI can implement in the electoral context, such as:

- Surveillance for alert and prevention purposes, when the possibility of acts of violence and/or violations of human rights has been detected, especially against groups in vulnerable situations.
- Support for activities and organization of promotional and difusion activities that include electoral legislation, requirements, opportunities for citizens and electoral institutions to be respectful of human rights, in order to facilitate the full participation of the electorate.
- Preparation of reports on human rights violations before, during and after election day, in particular on violations of the rights to freedom of opinion and expression, association and peaceful assembly, and not to suffer any type of violence, ill-treatment and torture, within the period prior to the elections, in the electoral period and/or in the case of “post-electoral” protests.
- Investigate when human rights violations occur, including serious violations related to elections, and request the State to take measures to prevent such incidents from recurring.
- Review the obligation to guarantee protection to all persons, especially in the most volatile or sensitive contexts, with special attention to the most vulnerable populations.
- Support the creation of peace processes, with mechanisms specific to NHRIs such as mediation and conciliation.
- Include in their promotion and dissemination processes awareness-raising on the importance of equality, such as gender equality, the participation of minorities, indigenous peoples and persons with disabilities in the exercise of the rights of democratic participation.
- Support for civic meetings and other actions aimed at achieving free and genuine participation of potentially excluded or at-risk populations.
- Support and promotion of human rights defenders, their mechanisms guaranteed by national law and the procedures of the international system for the protection of human rights in accordance with international treaties sanctioned by the country, as well as the holders of special procedures mandates such as electoral tribunals, providing the necessary assistance for the participation of the latter in the promotion and protection of human rights.
- Another form of participation by NHRIs is to request authorities and candidates to refrain from promoting hate speech. Hate speech and discrimination can be amplified by online disinformation campaigns and, in turn, can generate risks to people’s safety and lead to hate crimes.
- Freedom of expression and access to information can be affected if voters or a group of them can only access news through a social media platform that regularly or even exclusively disseminates disinformation. The spread of misinformation can erode coexistence between people with different opinions or backgrounds and exacerbate polarization by exploiting and distorting people’s negative perceptions of others. It can be used to divide and manipulate public discourse, depriving voters of essential information that helps them make their own decisions.

Annex I

Contribution of the Ombudsman's Office of Bolivia to the strengthening and evolution of the RINDHCA manual on human rights and electoral processes

Introduction

The Ombudsman's Office of Bolivia, in the exercise of its constitutional mandate to protect and promote human rights, carried out a comparative analysis of the RINDHCA Manual on accompaniment and observation in electoral processes. This exercise did not seek to question the value of the original document, but rather to contribute constructively and proactively to its strengthening, taking as reference the international practice in electoral observation and the lessons learned in the region.

The analysis was based on the accumulated experience of organizations such as the European Union (EU), the Organization of American States (OAS), and the OSCE Office for Democratic Institutions and Human Rights (ODIHR), whose manuals and methodologies have been reference points in multiple contexts. Comparing these instruments with the RINDHCA manual made it possible to identify both its particular advantages and possible areas for future improvements, always from the conviction that it is a living document, in constant evolution.

Recognized strengths of the RINDHCA manual

The Ombudsman's Office of Bolivia especially highlighted the differentiating elements of the RINDHCA manual, which make it uniquely valuable in the Latin American and Caribbean context:

1. Centrality of the human rights approach: Unlike other electoral observation instruments, the manual places human rights at the center of the action of NHRIs, explicitly linking electoral monitoring with the protection of fundamental rights.
2. Protection of groups in situations of vulnerability: The document incorporates, in a cross-cutting manner, attention to women, indigenous peoples, persons with disabilities, the LGBTIQ+ population, people of African descent, and other collectives, highlighting the differentiated risks they face during electoral processes.

3. Flexibility and adaptability: Unlike more rigid international manuals, the RINDHCA manual allows each NHRI to adjust it to its national reality, respecting contexts, institutional capacities, and regulatory frameworks.
4. Integration of the accompaniment function: It is not limited to observation in the strict sense but also recognizes the accompaniment function of NHRIs, creating closer spaces with authorities, political parties, and citizens.

Areas for strengthening in the future

In a proactive manner, the Ombudsman's Office of Bolivia also identified some elements that could serve as points of progress for future versions of the manual, in order to make it increasingly operational and methodological. Among them are:

- Incorporating practical and operational methodologies (checklists, indicators, and concrete protocols).
- Establishing risk analysis and early warning systems.
- Developing differentiated observation by stages of the electoral process.
- Translating rights into observable indicators.

Inspiring elements of international practice

The Bolivian analysis also highlights that the experience of international manuals offers lessons that could inspire RINDHCA in its process of continuous improvement. Some of the most relevant are:

- Methodological standardization: Comprehensive and comparable tools that allow uniformity in information collection and analysis.
- Clear protocols for data collection and reporting: Ensure consistency and credibility in observation reports.
- Preventive approach: Beyond documenting irregularities, international manuals prioritize identifying risks and mitigating them before they materialize.
- Use of new technologies: Digital systems for the systematization of information in real time.
- Post-electoral follow-up: Includes not only election day, but also dispute resolution, proclamation of results, and implementation of recommendations.

Distinctive advantages of the RINDHCA model

The contrast with international manuals, far from being an exercise in substitution, reaffirms that the RINDHCA manual has unique advantages that differentiate it positively:

- Greater contextual relevance, as it is designed from and for the realities of the region.
- The dual role of NHRIs: observation and accompaniment, which grants social and institutional legitimacy.
- Its methodological flexibility, which allows it to respond creatively to complex and changing environments.

Practical recommendations and projections

The Ombudsman's Office of Bolivia proposes that the collective process of RINDHCA consider, in future updates of the manual, actions such as:

- Developing concrete methodological tools (checklists, indicators, field protocols).
- Implementing a monitoring system by stages of the electoral process.
- Strengthening risk analysis capacity and the construction of early warning systems.
- Expanding the human rights perspective with an intersectional approach that incorporates gender, indigenous peoples, people of African descent, and political violence.
- Promoting the exchange of experiences and regional good practices, favoring horizontal learning among NHRIs.

Conclusion

The contribution of the Ombudsman's Office of Bolivia falls within a logic of collaboration and collective construction. It recognizes the intrinsic value of the RINDHCA manual and, at the same time, invites us to think about its future evolution, incorporating more systematic, comparable, and operational methodologies.

In this way, the manual not only remains a regional guide for electoral observation and accompaniment from a human rights perspective but is also projected as a document in permanent development, capable of responding to the challenges posed by democracy and political participation in the Americas.

This annex therefore reflects the will of the Ombudsman's Office of Bolivia to add its lessons and perspectives to the collective effort of RINDHCA, reaffirming that the joint work of NHRIs is the most effective way to guarantee inclusive, transparent, and human rights-respecting elections in our region.

