



# **Global Network on Electoral Justice**

## **Information Note**

## INDEX

|  |    |
|--|----|
| <b>INFORMATION NOTE</b> .....                        | 3  |
| <b>Background</b> .....                              | 3  |
| <b>Objective</b> .....                               | 4  |
| <b>Central thematic lines</b> .....                  | 4  |
| <b>First Plenary Assembly</b> .....                  | 6  |
| <b>Strategy</b> .....                                | 6  |
| <b>Membership</b> .....                              | 7  |
| <b>Nature of the decisions</b> .....                 | 8  |
| <b>Structure</b> .....                               | 8  |
| <b>PARTICIPATION GUIDELINES</b> .....                | 11 |
| <b>GENERAL AGREEMENTS</b> .....                      | 12 |
| <b>ANNEX: background of the thematic lines</b> ..... | 15 |

## **INFORMATION NOTE**

### **Background**

The Electoral Tribunal of the Federal Judiciary of Mexico (TEPJF) has summoned Electoral Tribunals, Constitutional Courts, Supreme Courts of Justice and other distinguished institutions, with the objective to create a network that allows the development, analysis and follow-up of a common global agenda on electoral justice in a Constitutional and Democratic State.

In this respect, the TEPJF proposed to create a Network of Electoral and Constitutional Courts at the VII Meeting of the Working Group on Electoral Jurisprudence in America. The aim would be to generate a common agenda that allows an exchange of experiences, best practices and projects relevant to this topic, and that contributes to the design and implementation of shared strategies to solve common problems.

The Global Network on Electoral Justice emerges as a response to the challenges that are faced by constitutional courts and electoral tribunals in contemporary democracies, from the perspective of the effective protection of political-electoral rights of citizens and of systems of representation.

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

To this end, an inclusive and representative space is sought to be generated, that involves three big groups of members:

- 1) Tribunals, Courts, bodies who either exclusively or partially dedicate themselves to the protection of political rights in electoral dispute resolution during the electoral cycle;
- 2) International institutions, being intergovernmental, civil or of other nature, whose mandate or area of action includes themes relevant to the Global Network; and
- 3) Research institutions and centers who specialize in this matter, as well as academic experts and independent specialists whose experience is of use for the purposes of this Global Network.

This design transcends academic and professional associations and specialized institutions, at a national and international level, offering a forum for collective reflections from different angles, preserving its thematic precision.



## **Objective of the Global Network on Electoral Justice**

To invigorate the global democratic governance, departing from the deliberation, design and recommendations of strategies with a jurisdictional perspective, at national, regional and global levels, and by promoting dynamic communication, active participation in the exchange of experiences, best practices and consultative opinions and any other kind of support that addresses the individual and collective needs of its members on this matter.<sup>1</sup>

## **Central thematic lines**

Four thematic lines have been identified as a result of previous investigations of the major challenges faced by democracies around the world: democratic disaffection, equal political participation, political financing of elections, and finally, digital revolution in the political life and the involvement of electoral jurisdictions.

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

For the active and qualitative participation in the Global Network, members have been asked to provide a written contribution about these four thematic lines. Said contributions answer the following questions:

#### Democratic disaffection

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

#### Equal political participation

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

#### Political financing of elections

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

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

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

The contributions addressing these themes can be found on the digital platform of the Global Network ([http://sitios.te.gob.mx/red\\_mundial/](http://sitios.te.gob.mx/red_mundial/)).

## **First Plenary Assembly of the Global Network on Electoral Justice**

The First Plenary Assembly of the Global Network on Electoral Justice took place on the 10<sup>th</sup> and 11<sup>th</sup> of November 2017 in the city of San Miguel de Allende, Guanajuato State, Mexico. It was directed towards representatives of Electoral Tribunals, Constitutional Courts, Supreme Courts of Justice, International and Regional Organizations, academia and other institutions related to the administration of electoral justice. A total of 47 institutions participated in the working sessions addressing the previously mentioned thematic lines. The objectives of the event were: formally establish the Global Network on Electoral Justice, present the progress generated from the preparatory meeting in May 2017, and to define future activities of the Network.

Moreover, the operation of the **Global Interactive Platform on Electoral Justice** was decided to be initiated and a specific working plan for the meeting in 2018 was outlined. Said plan allows the members of the Network to consolidate the pillars of cooperation and of exchange of information, court rulings, best practices, which in turn allow academics to plan strategies that optimize the administration of electoral justice in the world.

## **Strategy**

1. Construct a cutting-edge technological platform that allows to:

- Generate an exchange and disseminate documents of electoral-legal, institutional, jurisdictional and informative character.
- Organize trainings and/or educative activities.
- Create a database where legislative experiences, judicial decisions and articles of experts in this field will be shared.
- Develop periodical long-distance sessions between its members.
- Keep updating relevant information related to electoral justice, on the challenges of contemporary democracies and electoral systems.
- Create a mechanism that measures citizens' perception of the performance and progress of the institutions responsible of administering electoral justice.

2. Design consultative and diagnostic mechanisms that, upon request of the members, evaluate concrete issues and suggest feasible solutions focused on public and legal policies.

The implementation of these and other lines of actions will seek to guarantee diversity in the approaches and solutions.



## **Membership**

The members of the Global Network are:

- 1) Those in charge of agreeing on the basic elements and the participants of the First Plenary Assembly of the Global Network.
- 2) The Electoral Tribunals, Constitutional Courts, Supreme Courts of Justice, International and Regional Organizations, academic institutions and independent scholars, who wish to join the Network and its efforts.

In the creation process of the Global Network, the membership will be free of charge and the Constituent Members will define the form of collective financing of the projects agreed to in the Initial Agenda, taking into account the consultative function of the Network.

The admission of new members should be confirmed upon the voting of at least two thirds of the members of the General Assembly of the Global Network on Electoral Justice present at the time.

Each member institution may nominate one person who will function as the liaison and communications officer within the Network.



### **Nature of the decisions of the Global Network on Electoral Justice**

The documents, recommendations and proposals adopted by the Global Network on Electoral Justice **will be non-binding**. The decisions will be taken in a consultative, deliberative space, with academic and methodological rigor, in a context of freedom of expression and thought, under the predefined ethical codes and with the shared commitment to protect the information provided by the members.

### **Structure of the Global Network on Electoral Justice**

The bodies of the Global Network on Electoral Justice are the Global Assembly, Governing Council, Advisory Council and the Technical Secretariat.

To guarantee the continuity of the work of the Global Network, the following structure is proposed:

- General Assembly
- Governing Council
  - o Presidency
  - o First Vice Presidency
  - o Second Vice Presidency
  - o Third Vice Presidency
  - o Fourth Vice Presidency
- Advisory Council



- Technical Secretariat
  - o Member of the previous presidency
  - o Member of the current presidency
  - o Member of the elected presidency

### *General Assembly*

The General Assembly is the main body of the Network and is vested with the power to discuss any matter and make decisions in relation to the Network. The Assembly is comprised of all the members of the Global Network on Electoral Justice.

### *Governing Council*

The Governing Council is the governing body of the Network with the mandate to supervise and present recommendations on any topic relevant to the Network. Its mission is to coordinate the work of the Network and maintain its effectiveness.

The Council will always be comprised by a Presidency and four Vice Presidencies that will be elected by the General Assembly of the Network. Those who are appointed are chosen from among the Assembly's representatives of the courts, tribunals or bodies whose exclusive or shared function is to protect the political rights with regard to the electoral complaints during the electoral cycle. Their appointment lasts for two years.

### *Advisory Council*

The Advisory Council facilitates, supports and strengthens the work of the Governing Council. It is comprised by the international organizations, civil society organizations, analysis and research centers and other members. Through this Council, they can suggest themes and new working mechanisms, develop analytical documents and policy proposals, among other kinds of input.

### *Technical Secretariat*

The Technical Secretariat is the executive body of the Red, vested with the powers to participate in all meetings of the General Assembly and the Governing Council, as well as make its own decisions. It reports to the Governing Council and should present its performance reports to the General Assembly every time that it convenes.

The Technical Secretariat is comprised by one person who heads this body and a substitute who acts in the absence of the first. The Technical Secretariat will operate with the support of staff from the courts, tribunals, and other organs who integrate the Governing Council, upon decision of this Council itself. The head of the Technical Secretariat is suggested by the Presidency of the Governing Council and its substitute, namely the Vice Presidencies. Both will be ratified by a simple majority of the General Assembly. The Technical Secretariat shall represent the Global Network on Electoral Justice and is renewed every three years.

### *Working groups*

For the performance of the Global Network and of its lines of action, the creation of working groups is foreseen. These groups will analyze court rulings, cases and priority themes or issues, and they can meet more frequently and organize necessary discussion for a to produce documents, data bases and other input.



## **PARTICIPATION GUIDELINES**

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

Because the working sessions are sought to be realized in an environment where the participants feel free to express their ideas, the following work guide comprising some participation principles is suggested to direct the Network:

- **Supremacy of the constitution and the law.** Compliance with the judicial-electoral norms.
- **Legitimacy of the electoral jurisdiction.** Judicial-electoral impartiality and independence.
- **Electoral participation.** Promote the organization of free, authentic and regular elections.
- **Loyalty to the information that is shared.**
- **Opportunities in providing input to this initiative.**
- **Respect for the internal autonomy and the resolutions of electoral bodies.**
- **Respectful and kind attention among the participants.**

## GENERAL AGREEMENTS

Mexico City, Mexico

9<sup>th</sup> May 2017

On May 8-9<sup>th</sup> 2017, the Founding Members of the Global Network on Electoral Justice gathered in Mexico City to partake in the Preparatory Meeting of this initiative. The group of participants consisted of representatives from the Electoral Tribunal of the Federal Judiciary of Mexico (TEPJF), the United Nations Development Programme Chapter in Mexico (UNDP), the Organization of American States (OAS), the International Institute for Democracy and Electoral Assistance (International IDEA), the National Electoral Chamber of the Republic of Argentina, the Superior Electoral Court of Brazil, the Qualifying Tribunal of Elections of Chile, the National Electoral Council of Colombia, the Supreme Tribunal of Elections of Costa Rica, the Constitutional Court of the Republic of Indonesia, the International Foundation for Electoral Systems (IFES), and the Foundation of Getulio Vargas. Together, the Founding Members **agreed:**

1. To reaffirm the interest to create a network for the generation and distribution of knowledge on electoral justice, in order to protect the integrity of the electoral processes. This, and given the diversity of institutions and mechanisms protecting electoral justice in each country, implied the creation of the Global Network on Electoral Justice (GNEJ).
2. To explore different kinds of membership of the Network, taking into consideration that it should consist of institutions whose main function is to protect the political rights connected to an electoral cycle, whether it is on an exclusive or shared basis. The participation of international organizations, foundations, research centers (*think tanks*) or universities who contribute with knowledge and resources on electoral justice, with the aim of addressing challenges to contemporary democracies, shall also be considered. The Founding Members established criteria for the inclusion of potential new members of this Network.

3. To consider the four Electoral Dispute Resolution (EDR) mechanisms outlined in the *Electoral Justice: The International IDEA Handbook* of the International Institute for Democracy and Electoral Assistance (International IDEA), so that the composition of the Network includes members who represent each of these four mechanisms:
  - a. A legislative or other political assembly
  - b. An institution within any of the following categories:
    - i. Ordinary Tribunals of the judicial branch
    - ii. Constitutional courts or councils
    - iii. Administrative courts
    - iv. Specialized electoral courts or tribunals
  - c. An electoral administration institution with jurisdictional power
  - d. An *ad hoc* institution created with the participation of the international community or as an international solution for a specific electoral process in the country.
4. To emphasize that the agreements resulting from meetings of the GNEJ are solely recommendations of non-binding nature for the members of this Network.
5. To establish a Code of Ethics that should be adopted by the members of the GNEJ, which shall consist of indispensable principles outlining the conditions for membership of this Network.
6. To ensure dynamism and continuity of this Network by maintaining regular communication with other members. Each member shall appoint a person as its representative, who will in turn be responsible for the communication with other members of this Network. Moreover, the following activities shall be developed:
  - a. A study and assessment of institutions in charge of protecting political rights on a global and/or regional level.
  - b. The Electoral Tribunal of the Federal Judiciary of Mexico (TEPJF) shall provide the members with a virtual platform where fundamental documents of this Network, already existing research and studies conducted by the members can be shared.

- c. The International Foundation for Electoral Systems (IFES) will contribute to the consolidation and strengthening of regional networks on political rights.
7. To define the thematic focus of and topics to be discussed at the meeting of the Plenary Assembly of the GNEJ, taking into account that gender equality should be a crosscutting theme, at the latest by June 30<sup>th</sup> 2017.
8. To explore different models of financial sustainability of the GNEJ.
9. To implement the plenary meeting of the GNEJ that shall take place on 10-11<sup>th</sup> November 2017 in the city of San Miguel de Allende, in Guanajuato state, Mexico.

## **ANNEX: background of the thematic lines**

### **Democratic disaffection**

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

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

According to Freedom House, year 2016 was the eleventh consecutive year in which populist and nationalist forces made notable progresses in the detriment of political rights and civil liberties worldwide. Although there are free and periodical elections in many contemporary democracies, citizens are disappointed with democracy itself and have little trust in its institutions (Latinobarómetro, 2016). Nevertheless, democracies across the globe keep channeling the dissatisfaction of society into the ballot boxes: through elections, plebiscites and referenda.

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

### **Equal political participation**

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

Some of the greatest challenges that democracies face are inequality, exclusion and discrimination. It is necessary to recognize the unequal access of different population groups to political rights, and to encourage citizen participation. For instance, there are groups that are in a vulnerable situation due to their sex, legal situation, migratory, ethnic, age, and so forth, that make it more difficult to protect their political

rights and that restrict their access to electoral justice. To mitigate these challenges, targeted strategies must be designed within the different groups for the effective and universal protection of the political rights of the citizenry.

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

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

### **Political financing of elections**

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

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



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

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

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

The effects of new means of communication on democracy would not be understood today if it was not for the use of information technologies in elections, especially when the messages of the candidates are beginning to differentiate between the electorate and in this way create a market of voters. Therefore, the propaganda aimed to manipulate Big Data is becoming and working more and more as the publicity for commercial products on the internet. This must be combined with the absence of boundaries in the internet, and of clear and suited regulation to these new realities: “realities of the XXI century, rules of XX century”.<sup>2</sup>

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