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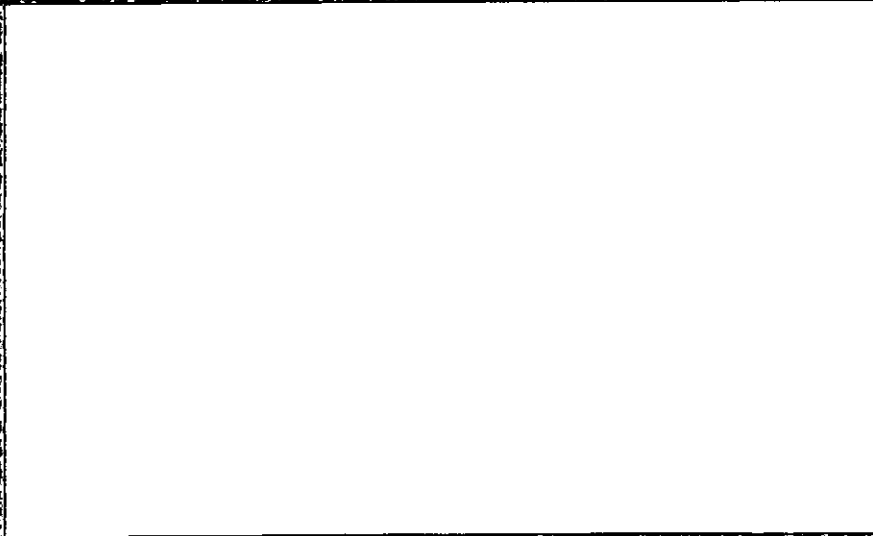
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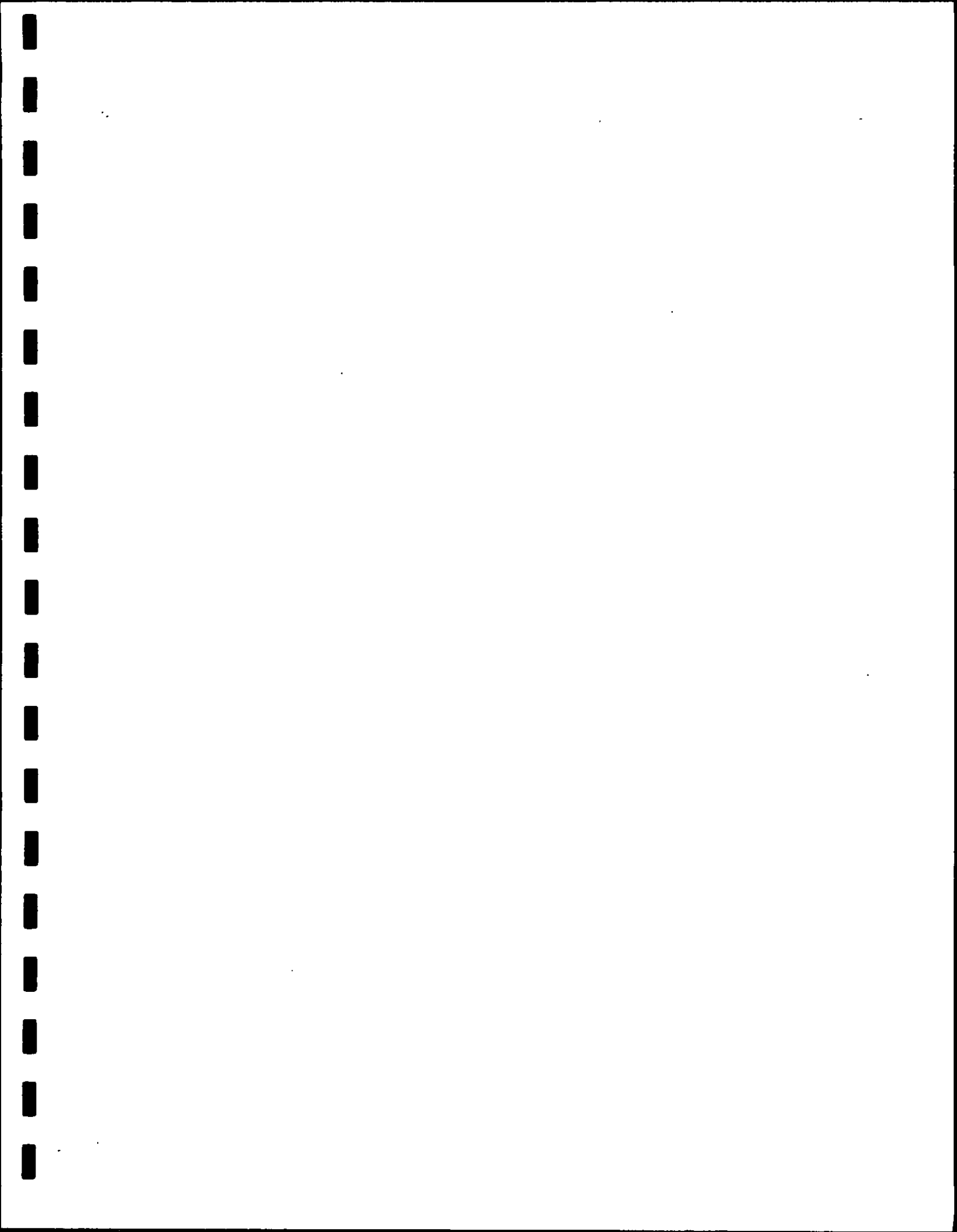


TRANSITIONAL ELECTION
PLANNING MANUAL
(Executive Summary)
REPUBLIC OF CUBA

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Prepared by
The International Foundation for Election Systems (IFES)

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I. EXECUTIVE SUMMARY

A. Introduction

This manual for holding free and fair elections was created in hopes of helping the Cuban people in the context of democratic transition. It is written from the perspective that information about democratic transitions and the important role that free and fair elections play in that process can be useful to a wide variety of people, both on the island and in exile, as well as friends of Cuba in the international community. This manual is based on the conviction that it will someday be useful, and needed, to support a democratic transition in Cuba.

The work draws upon the expertise of staff and consultants of the International Foundation for Election Systems (IFES), a non-governmental, non-profit and non-partisan organization based in Washington, D.C. For more than a decade, IFES has encouraged and strengthened democratic institutions, governance and practices worldwide. IFES has provided expert technical assistance in election administration in countries spanning the globe, particularly those countries holding competitive elections for the first time. IFES also works with newly elected parliaments and local governments, supports local non-governmental organizations engaged in civic education and broadening political participation, and conducts international and domestic election observations. IFES currently has field offices in 25 countries in Latin America and the Caribbean, Africa, the Middle East, Eastern Europe, the former Soviet Union and Asia.

What follows is a compendium of ideas and practices that might be useful for future Cuban officials and non-governmental leaders who are beginning a transition to democracy, or who are contemplating seeking reform of the current regime. Each section is written to be self-standing in order to facilitate its use by parties with specific interests in a particular topic. The document discusses the minimum international norms and standards for free and fair elections, as well as the legal, constitutional and administrative options that are available to transition authorities. It also offers ideas, based on examples from countries around the world, about what will be needed to establish and support an honest, efficient and transparent system of election administration, and what role the international community might be invited to play in that process.

IFES has taken care not to offer an invasive blueprint to be adopted or rejected, but rather a series of options based on history and experience that fair-minded people of various democratic political faiths might wish to consider. As an organization with experience in myriad cultures and systems, IFES seeks with its contribution not to foreordain a specific outcome, other than the return of rule by the people and for the people to Cuba. We have tried at all times to convey our view that, where practicable, Cuban models are preferable to those that might be emulated from even the most successful experiments abroad.

A summary of the report's observations, recommendations and findings follows. Subsequent chapters deal with specific topics of interest to policymakers and *aficionados* alike, both on the island and abroad.

B. Minimum International Standards for Free and Fair Elections

At a minimum, democracy provides the vehicle by which social conflict can be addressed non-violently and in a way that ensures the majority prevails while protecting the rights of the minority. As the most representative form of government known, it is diverse, *sui generis* and ever evolving. Once its institutions and practices have taken hold, it is also a hardy plant -- witness the examples of Costa Rica, Israel and, at least until recently, Botswana, all three nations amidst regions known for decades or even generations for their

convulsive and often deadly politics. Free and fair elections in which genuine choices can be made serve as the cornerstone of democratic rule, no matter how distant, diverse or distinctive the culture in which it is nurtured. Cuba will be no exception.

It is imperative to understand what constitutes a truly authentic exercise of the right to vote and how elections must be conducted if they are to ensure continued support from society.

1. Commitment to Democracy

Because democracy is diverse and its forms and customs reflect the soil upon which it grows, no one can question the sovereign right of nations to choose freely and develop their own social, cultural, political and economic systems, in keeping with the will of their people. However, governments, organized political forces and voters all have a right and a duty to help establish and strengthen democratic processes, practices and institutions. Society can enforce the outcome of elections on all candidates and political parties by ensuring that elections are truly competitive.

2. Rights and Rule of Law

As part of a world-wide trend, popular preferences for democratic rule, expressed most vigorously in Latin America in the 1980s, and then around the globe with the end of the Cold War, have generated considerable literature on what constitutes regular and genuine elections. Reflected in international laws governing State practice, these rules and standards pay special attention to voting and election rights, and the rights and responsibilities of candidates, parties and their campaign organizations, as well as those of citizens and states.

3. One Person, One Vote

Procedures for registering citizens as voters should be effective, impartial and non-discriminatory. On Election Day, voting should be equally accessible for all those qualified by means of registration. Every person denied either registration or the right to vote has the right to appeal the decision to a competent authority that should promptly determine the merits of the case. The vote of each citizen should have equal value to that of any other citizen ("one person, one vote"). This right should be manifested, among other ways, in the demarcation of electoral constituencies, or districts, with relatively equal numbers of citizens.

4. Candidacy

The right to become a candidate for election should be open to all adult citizens, as should the right to form or join a political group in order to compete in an election. The rare exceptions, if any, should clearly be stated in the electoral law or national constitution (or where one does not exist, unchallenged common law).

5. Freedom of Speech and Information

Free speech is essential to political expression. So, too, are the rights to seek and receive information needed for making informed choices; to have freedom of movement throughout the campaign period; and to be able to campaign on an equal basis with other political parties, including the ruling party. There should be equal opportunity of access to the

media. Where media are state-owned, the government should ensure the same opportunities for access to all parties and all candidates.

6. Security

Candidates should be recognized and protected. All candidates and parties should have equal protection of the law and equal access to remedies for violations of political or electoral rights. Express prohibitions on violence aided and abetted by candidates or political parties should be enforced. Individuals or political parties whose candidacy, party or campaign rights are violated should have recourse to an authority whose powers include the ability to correct errors promptly and effectively. Restrictions are permissible on candidate, party and campaign rights if these can be shown to have demonstrable impact on national security or public order, the protection of public health, morals and safety, or the protection of the rights and freedoms of others.

7. Responsibilities of the State

The State must, through legislation and other means, affirm its responsibilities to guarantee the institutional underpinnings and individual rights required for free and fair elections. These responsibilities include the protection of voting and election rights through the establishment of clear criteria on voter and candidate age, citizenship and residence. Political parties should be allowed the greatest possible freedom consistent with minimum standards of public safety and welfare. In addition, if the State decides to give financial support to parties or individual campaigns or to regulate their sources of financing, these decisions must be applied equitably to all, and conditions created whereby all candidates for public office enjoy a level electoral playing field.

In particular, steps must be taken to ensure that the ruling party does not usurp State electoral functions, or, through access to the national treasury, enjoy financial advantage. The right of candidates and parties to have reasonable opportunities to present ideas to the public is also a State responsibility. In addition, balloting conducted in secret is an internationally recognized right, as is an environment free of violence and intimidation on Election Day. The State is responsible for ensuring that all those involved in the political process are physically secure and that all measures necessary are employed to prevent violence. Human rights violations, as well as election-related complaints, should be heard by an independent and impartial authority--such as an electoral commission or the courts--before, during and after the election takes place.

8. Impartiality of the Electoral System

An unbiased and impartial mechanism for the management of elections must be created and its autonomy maintained through vigilant efforts by both citizens and State. Professionally trained election officials should ideally be skilled in various aspects of election management, including public education, voter registration, maintenance of electoral lists and balloting procedures, personnel training and pro-active measures against fraud and abuse. These officials should also seek to use their powers of moral persuasion to convince candidates and party organizations to adopt, and abide by, a Code of Conduct to govern their actions, and those of the media, during the election campaign.

9. Human Rights

The protection of human rights is another important state responsibility. It should seek to ensure that the freedoms of movement, assembly, association and expression receive full

protection, with an emphasis on their exercise during political rallies and meetings. Non-partisan coverage in state-controlled media should be guaranteed, and candidates and parties should be free to communicate their views to the electorate without interference.

C. Compliance with Minimum Standards

The following are some of the basic concepts that ensure that a genuine choice is offered at the ballot box:

A state must adopt a voting system that facilitates the will of the people through periodic and genuine elections carried out on the basis of equal access and secret ballot. Equal suffrage, however, may be effected through a variety of different systems, particularly in the election of legislative bodies.

Grouping voters into electoral districts and the ratio of population to representative are important considerations for ensuring that the will of the people is appropriately expressed through numeric representation. In the United States, the Supreme Court has invoked the Constitutional right of equal protection to strike down as unconstitutional congressional districts whose configuration did not provide for roughly equal numbers of voters. Other countries admit considerations such as geography, community history and minority representation as factors that may also be taken into account when determining electoral boundaries.

Independent and impartial election administration is vitally important to establishing the legitimacy of a government, even in the eyes of its opponents. Independent civic monitoring, a fair and probing media, and access to the courts all help to ensure administrative impartiality. Election administration is typically a branch of national and often local government, with disputes adjudicated by courts of general jurisdiction or, in many Latin American countries, by specialized electoral courts. Independent electoral commissions have also been established in many countries. In order to create confidence by all parties participating in the elections, in all cases it is imperative that those running them are not seen as having a commitment to any political party or leader. If impartial members who enjoy the confidence of all parties cannot be found, then the election machinery might include party representatives who, by their multiplicity and diversity, can constitute a check on each other and an assurance that no one party will be favored. International and/or domestic election observers can help to provide skeptical voters with an assurance that impartial observers will monitor both the fairness of those administering the election and the faithfulness with which the electoral laws are executed.

States can help to create an environment conducive to electoral participation by public recognition of the right, or even the obligation, to vote. States may limit the right to vote to certain people, such as prison inmates, as long as the restrictions are not arbitrary in nature or have the effect of distorting election outcomes. Citizenship, age and residency requirements are also considered reasonable restrictions in most cases. Restrictions should be declared well in advance of the balloting to allow time for challenges by those upon whom the restrictions are imposed or their advocates.

Voter registration must be accurate because it a) can either foment or discourage citizen participation, b) is vital to providing a sense of popular empowerment through participation and c) is the essential building block upon which election-day tabulations can take place. Voter registration poses a host of serious issues. There is the question of ensuring a credible registration system through "self-registration," extensive civic education efforts, and by other means. The periodic purging of those who have moved out of the constituency or who have died is also very important. Eligibility criteria need to be clear, effectively communicated and consistently applied by election officials. Inconsistent registration of names and double entries can also pose challenges. Re-registration, sometimes demanded in the face of

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intractable problems, is costly and time-consuming. The security of voter registration against fraud and tampering is also important in order to create and sustain public confidence and thus help to ensure free and fair elections.

As Cuba moves into a period of democratic transition, there will be an immediate need for comprehensive and long-term citizen information and education programs to create an environment in which the population understands and acts upon democratic values. Civic education and voter information efforts are essential in societies that lack experience in voting in a democratic environment. Voter information campaigns offer citizens instruction on the mechanics of voting. They also promote participation in the electoral process, as well as democratic norms of tolerance and non-violent change. More broadly, non-partisan civic education programs for adults can promote democratic values and should be a critical element of the general educational curriculum of the schools.

Every citizen, no matter what his or her status or station, has the right to participate in the conduct of public affairs, to be elected, and to have equal access to public service in his or her country. Genuine electoral choice is predicated on a clear separation between the State and political parties, and a ruling party that is not synonymous with the government. Ideological obstacles to participation should also be discouraged, except those consistent with public safety and democratic principles.

There are limitations and requirements, however, which may be considered reasonable. Candidates might be required to declare their political party affiliation, or else to run labeled as independents. The right to candidacy may be conditioned on criteria such as age, place of residence, length of residence, and the absence of disqualification, such as penal detention. In presidential systems, a member of one branch of government may be prohibited from serving in another. Legislative representation may be predicated on parties obtaining a certain minimum number or percentage of votes. Parties may lose their right to a place on the ballot if they fall below a certain minimum number of votes. Registration of new parties may depend on gathering the support of a certain number of adherents in all the country's states or provinces, subject to tests of reasonableness. Prohibitions can, under some circumstances, extend to political parties that promote religious, ethnic or racial hatred, engage in war propaganda, or advocate the violent overthrow of the government.

Democratic transitions frequently occur in situations in which the ruling party has for many years possessed a monopoly on access to state resources. Even in countries where there is not the case, government funding of candidates or partisan organizations, private or foreign contributions to candidates and/or parties and limitations on campaign expenses are highly relevant issues for debate. Advocates of public campaign financing frequently justify it as a means of helping to "level the playing field," ensuring equal access to candidacy and popular participation, and helping to eliminate the more perverse elements of public corruption. However, simply leveling the playing field through a fairer distribution of resources may not resolve all of the issues. The United States Supreme Court, for example, has ruled that limits on campaign expenditures violate constitutional guarantees of freedom of speech. (Buckley vs. Valeo, 424 U.S. 1, 1976) Moreover, if the opposition party is limited to spending no more than the ruling party, and the ruling party enjoys the natural advantages of incumbency, is the playing field actually level?

Carefully planned election procedures and practices, together with appropriate legal guarantees and protections, are fundamental to the conduct of free and fair elections. What occurs on Election Day is not the only critical factor in determining the fairness of an election--although an election marred by massive irregularities carried out only on that day cannot be validated either. The electoral context--what occurs in the months and weeks before voters go to the polls--is a major factor in determining whether citizens have had the right to participate fully and freely in the conduct of public affairs, to be elected, and to have equal access to public service.

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The freedoms of movement, assembly, expression and association must be respected throughout the election period in order for any election to be considered free and fair. Political parties and associated groups must have regular access to the mass media, and be able to communicate their views generally to the people. Physical and material security are the right of all who participate in the process, just as it is the obligation of all to conduct activities lawfully. Ballot secrecy must not only be exercised but its benefits communicated to the population before the election. The citizens' franchise must be carried out without intimidation and fear. Fraud and manipulation must be prevented.

In transitional situations, such as that which Cuba would be facing, the presence of international observers provide significant benefits. For example, relevant aspects of the process, its organization and conduct can be examined by foreign experts in order to determine whether these have been carried out in accordance with the laws of the host country as well as with international norms and standards. In addition, foreign election observers should be seen by voters to be impartial supporters of the democratic process, and their presence as an assurance that the process will be respected. In rendering judgments on the process, observers seek to apply international standards to local conditions. They look for whether overall conditions were established that allowed for free and fair elections, rather than for technical violations of laws or regulations.

Agreements among the parties to limit incendiary rhetoric and to sanction violent conduct by their members will facilitate government responsibility to ensure peaceful campaigns and respect for human rights. Careful attention to situations that can receive undue amplification or magnification in the rarified atmosphere of campaigns and elections can help to improve campaign conditions over time, and limit the possibilities of spiraling violence. Nothing can bring into question a government's commitment to the democratic process faster than a failure to act quickly and effectively in response to violence or the threat of violence.

Access to the mass media is crucial. In the modern Information Age, and in a modern democracy, the dissemination of party platforms and programs, and the appeals of individual candidates, must not be limited to easily manipulated and controlled mass rallies and incendiary speeches in public squares. The right to make informed decisions at the ballot box requires a pro-active response by any Cuban transitional authority to ensure that many voices are heard. If government monopolies of broadcasting and print media exist and are not required to implement policies of equal access, the entire transition process risks falling into discredit.

Codes of Conduct established by governments or by the competing parties themselves can promote peaceful campaigns and elections as well as serve as a model for how democracy can serve as a means for resolving social conflict. In doing so, they can benefit all parties, and over time strengthen the system's own ability to react to the advocates of violence and undemocratic conduct. A code can establish basic ground rules while offering a mechanism for periodic consultations between the parties and the professional elections system. Regular communication channels can help to avoid misunderstandings and incidents that might lead to deepening conflict.

Mechanisms for handling complaints and resolving disputes need to be in place before a campaign period begins in order to establish a broad understanding among the various participants of the methods for adjudicating disputes. Election cycles, where passions and interests clash on the national stage, often give rise to disputes. These occur even in situations where competent professionals seek to apply established rules. In transition situations such as that likely to be experienced in Cuba, disputes can arise more frequently, become rapidly malignant, and create an enormous strain on the process and public confidence in it. The key to complaint and dispute resolution is timeliness, coupled with the use of an independent and impartial authority.

D. History and Comparative Analysis of the Law and the Constitution

As IFES legal scholar Stephen Nix notes in a subsequent section, constitutions serve as fundamental charters for the organization, regulation and restriction of the basic branches of government--executive, legislative and judicial. Cuba's rich constitutional history is replete with numerous attempts to organize the country under the rule of law, democratic principles, the concept of separation of powers and free and fair elections.

Cuba's first two constitutional drafts, the Constitutions of 1812 and 1858, although never promulgated by the Spanish colonial authorities, reflected Spanish, French and North American liberal doctrine that self-rule should be guided by a fundamental written law. In his revolt against Spanish rule, Jose Marti gave voice to this inheritance in the "Montecristi Manifesto," which called for an independent Cuba with its own constitution.

The end of the War with Spain saw elections held in Cuba for delegates to a constitutional assembly, convened in 1900, which drafted a constitution adopted in August 1901. The document was similar to that of the United States constitution, setting forth a democratic government and the rights of free speech, assembly and religion. It included basic due process rights and the right of habeas corpus.

In practice, however, many of the provisions of the constitution were not actually implemented by the various branches of government. President Grau abrogated the 1901 Constitution in 1933, decreeing provisional statutes to govern Cuba as a short-term measure. It was not until 1939 that elections were held for delegates to a Constitutional Convention meant to reconcile the clashing political interests within Cuba, which had led to the instability of the 1920 and 1930s. The delegates represented a broad spectrum of interests, and included representatives of the Communist Party. Thus, a short-lived experiment with political pluralism was begun in Cuba.

The Constitution of 1940 established some of the most advanced civil rights principles of its time. It radically changed the Cuban government into a semi-parliamentary system. The President remained the head of state, but was to be assisted by a Prime Minister, as well as a cabinet, the latter being accountable to the legislature, which could remove ministers at will by a vote of no confidence. The Constitution more clearly articulated property rights, prohibiting illegal takings. It also reaffirmed the powers of the judicial branch of government, as well as their separation from the executive and legislative branches. Local government was radically restructured, with power devolving away from a centralized government.

Some of the more notable differences between Cuba's first and second constitutions were in the areas related to family, culture and labor. The 1940 Constitution afforded far greater protections for these rights, although they remained only principles to which the Cuban government should aspire, having no clear means of enforcement.

In 1952, the Cuban Constitution was suspended by Fulgencio Batista following his coup d'etat of that year. Some of the guarantees of individual rights contained in the constitution were supposed to have been respected. However, throughout Batista's tenure, these constitutional guarantees were suspended, thus bringing to a halt Cuba's aspirations for a modern constitution reflective of democratic principles.

Although many of its far-reaching provisions were never implemented, the Constitution of 1940 is an extremely significant legal document in the history of Cuba. It served as a codification of Cuban aspirations for legal, economic and social development. When it was suspended, it became a unifying factor for many political parties and groups within Cuba.

Its restoration was also the stated goal of the revolutionary movements in Cuba during the 1950s, including that of Fidel Castro. In 1953, Castro himself stated:

The [1940] Constitution is understood to be the basic and supreme law of the land, defining the country's political structure, regulating the function of government agencies and determining the boundaries of their activities. It must be *sui generis*, stable, enduring--and to a certain extent, inflexible.

The 1940 Constitution will undoubtedly be one of the primary legal references for any Cuban transitional authority in the future.

E. Non-Governmental Groups and Organizations: Their Role in Today's and Tomorrow's Cuba

Throughout the Americas, IFES development specialist Martin Edwin Andersen notes, a revolution has occurred within civil society. Isolated interest groups that once acted independently and without much communication and coordination have now joined together in cross-border networks and coalitions of non-governmental organizations (NGOs). These have changed the political, social and economic landscape of each country in which they operate. Working within the context of the Information Revolution, the ever-expanding volume of information now available makes it possible to challenge the dependence on traditional hierarchical organizations for information gathering, processing and response. In its place a more egalitarian structure is developing, with far greater diversity in both types and channels of information. The result has been more complex and more interconnected societies.

NGOs throughout the region help to fill the yawning gap between politicians and other policymakers at the pinnacle of state systems, and the communities and individuals that comprise them. These provide a great deal of information, options and feedback to decision-makers, while bringing their own membership into more effective contact within the system. NGOs have expanded greatly with the return of democratic rule to Latin America, and have experienced some of their greatest effervescence during periods of open elections.

If past is prologue, the history of Cuban civic organizations is a good indication of the potential for NGO activity waiting to be unleashed at the first sign of freedom. As Cuban political thinker Ernesto F. Betancourt has noted:

Cuba is not starting from scratch in building a civil society. There are institutional memories left and certainly historical records of the powerful labor unions, the associations of sugarcane planters and sugar producers, the university student associations and the professional *colegios* or associations, all of which were very actively involved in representation of their clienteles in the political and economic life of the country. In fact, under the banner of the *Resistencia Civica*, or civic resistance, many of these entities played a decisive role in bringing Castro to power; not to install Communism, as he did, but to restore the Constitution of 1940.¹

If the experience of Eastern Europe is any guide, it is likely that the organizations civic behemoths of yesteryear will play very little role in a transitional Cuba. Few groups, no matter how non-political their stated objectives, have obtained a status that even approaches that of true NGOs. A small, courageous group of human rights activists and dissident journalists, together with the Catholic Church, whose activities are still greatly restricted, provide the only glimmer of an independent civil society.

It is important then for a transitional government to recognize the value of authentic NGOs as vehicles for popular participation, without seeking to restrict their views or to limit their

freedom of expression. The legitimacy of the transition process itself can be enhanced by transition leaders listening to NGOs and encouraging their work.

A free press is also an absolutely essential part of any transition. In Cuba, the handful of independent journalists has been subjected to endless repression. Detentions, beatings by state agents, forced exile, confiscation of work products and materials, and regime-sponsored "acts of repudiation" in which government supporters verbally and sometimes physically assault them are some of the tactics used to muzzle the working press.

During the transition, it will be of paramount importance to strip away regime restrictions on individual journalists while ensuring that all political viewpoints are heard on what will likely continue to be, during the short term, Cuba's state-owned press. This includes not only the daily *Granma*, but also its scores of weekly and monthly periodicals, its five national, 14 provincial and 31 municipal radio stations and networks, and its two national television networks. Private ownership of some means of mass communication and training of journalists in their rights and responsibilities in a free society can help to create immediate improvements in the diversity and quality of information received by the Cuban people.

F. Options for Democratic Systems

1. Constitutional Options

A nation's constitution provides the legal framework for the exercise of rights related to the conduct of elections, including the right to vote, to stand as a candidate, to assemble or associate in political parties and to have electoral disputes resolved pursuant to the rule of law. At some point in time, a transitional government in Cuba will have to consider making changes in the current legal and political system. These changes could include modifying the current (1976) Constitution of Cuba, looking for guidance to previous Cuban constitutions; derogating the 1976 Constitution entirely and reinstating an earlier Constitution; promulgating an entirely new constitution; or governing de facto without a Constitution until general elections are held.

As already noted, many of the freedoms and rights set forth in previous constitutions have, for a variety of reasons, never been fully implemented or enforced. Nevertheless, the Cuban people have expressed a continuous and unabated desire to be ruled by a constitution that reflects their sovereign right to govern themselves. Cuba has demonstrated the ability to draft and adopt modern constitutions reflecting the modern ideals of the separation of powers, human and civil rights, and limitations on the power of government.

The Constitution of 1901 enshrined the concept of a sovereign Cuba, independent of Spanish rule. However, it is not a modern document in any sense and does not reflect the political, electoral and economic realities that confront the Cuban people a century later. It is not an appropriate model for consideration for use by a transitional government.

Nor do the 1959 Fundamental Law and the 1976 Constitution appear to be appropriate foundations for a modern, democratic Cuba. Bringing them into compliance with normative international standards governing electoral and other democratic rights would require drastic overhauling, particularly of those provisions having to do with a free market economy and the rule of law. The Communist dogma that currently serves as the central guiding force of the 1976 Constitution would have to be removed and provisions added to allow for the existence of other parties and beliefs within Cuba. Finally, governmental structures would need to be altered to allow for the separation of powers and judicial review of the actions of the executive and legislative branches of government.

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The restoration of the 1940 Constitution was a goal of many Cubans in the pre-Castro period and remains the goal of many Cubans who are dissidents on the island or who now reside in the United States. Of particular interest are those provisions that could appropriately serve as a guide for a transitional Cuba. The 1940 Constitution's affirmative protections and rights concerning the conduct of elections are certainly among its great strengths. The development of a multi-party electoral system in Cuba would greatly benefit from the rights and freedoms accorded political parties and other organizations. Having a Superior Electoral Court with specialized jurisdiction over the electoral process, an institution that has proved successful in other countries, could also be considered as a means of guaranteeing voting rights and the proper adjudication of disputes in a transition period.

There are, therefore, many positive aspects to the 1940 Constitution, not the least of which is that it was the product of an overwhelming consensus at the time of its adoption, and later was even a rallying point for many of those who supported Castro's revolution. If it received needed modifications, it might well be the constitutional option least likely to generate conflict during a transitional period. However, some contemporary observers hold that its identification by many with the Batista period suggests the need for a judicious selection of best practices from the document, rather than its wholesale restoration.

One alternative for a transition government would be to utilize the 1940 Constitution for three early and very basic purposes that would help guarantee confidence in the entire transition process. These are: 1) the election of executive and legislative office-holders; 2) the reinstatement of elemental civil liberties, with particular attention to the creation of an environment in which transparent and open elections can be held, and 3) the creation of a new court system. This last should include some independent authority, such as the 1940 Constitution's Superior Election Tribunal, that could ensure proper implementation of the provisions of the Constitution and the law relating to elections, and adjudicate electoral-related disputes.

Another approach would be for the transitional government to issue what might be called an "interim" constitution. This constitution would create a government with a well-defined, near-term horizon and limited objectives. These objectives might include the following: keeping the peace; consolidating political power within the democratic community; calling for elections, and developing a framework for the creation of long-term institutions under a new or amended constitution.

An interim constitution would allow Cuban officials to carry out certain basic functions during the transition, with the goal of adopting a permanent constitution after elections are held for parliament and for president. The interim constitution would provide for free and fair elections, apply international standards for their conduct, and demonstrate Cuba's intent to form a democratic form of government with separate and independent branches of government. Importantly, the interim constitution would include guarantees of basic human rights until the adoption of a new constitution, and would outline the procedure and timeline for the adoption of a permanent constitution.

In order to ensure a complete transition to a permanent elected government, the transitional authority should impose strict time limitations on the performance of its duties, and might even consider disqualifying members of the provisional authority from holding office in the subsequent government.

Whether the government chooses constitutional reform or amendment as a short-term option or as a comprehensive and long-term objective, the basic goals of the transition would be quite similar. The options set forth above are strictly that, options. The transition government will itself make the ultimate decisions with regard to the laws under which a transitional Cuba will be governed.

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When making decisions about the future, the Cuban people will face the task of choosing what kinds of democratic institutions and practices will best suit their needs. These choices will reflect the lessons of Cuba's past, as well as ideas about what constitute best practices in other countries. In making selections there is no "right" answer, except that which works best for Cubans today and in the 21st Century.

2. Other Political Options for Consideration by a Cuban Transitional Government

One of the choices the Cuban people will face is between presidential and parliamentary systems. A presidential system is one in which the head of state is also the directly elected head of government, rather than a member of the legislature. In parliamentary systems, government is drawn from an elected legislature that can dismiss it. Advocates of both systems can find examples of successes and failures in each in order to make their case. As noted above, Cuba has had experience with both presidential and semi-parliamentary forms of government.

a. **Presidents v. Parliaments** Some political scientists argue that parliamentary systems offer a better guarantee of stable democracy than do presidential systems. They claim that systems with a separation of powers that divides the legislature from the president, and whose fixed terms create a situation of inflexibility between elections, inherently have greater potential for conflict. The presidential office, one expert wrote recently, carries with it "winner-take-all" or zero-sum political calculations that are unsuited to societies that desperately need reconciliation. The fixed presidential term creates crises in government that can end in constitutional crises, as few lawful means exist for replacing a failed president in mid-term. Advocates of parliamentary systems say that, in contrast, these offer an array of policy outcomes, including multi-party cooperation and coalition governments. Crises may be resolved by merely changing leaders or calling for snap elections.

Other political experts dispute the idea that presidential governments are necessarily hampered by fixed terms, weak cabinets, and presidential abuse of power. One advocate of the presidential system noted that while presidents cannot be removed by a vote of no confidence, his or her fixed term is no more likely than the flexible terms of a parliamentary system to cause governmental crisis. In fact, this expert found that in fragmented societies shifting to a presidential system made sense, as its election regime actually fostered conciliation and consensus building.

A third view is offered by Seymour Martin Lipset, a dean of democratic theorists. The debate between parliamentary and presidential systems is complex and revolves around questions of political culture, he noted. When a Prime Minister has a clear majority in parliament behind him or her, the office has much more authority than that of an American president. Not to support the Prime Minister means that the government falls. Opposition parliamentarians, on the other hand, are free to try to shape and mold public opinion, but they rarely have much impact on executive branch policies, something that is not nearly as true in presidential systems.

In presidential systems, Lipset notes, the terms of the president and cabinet are not affected by legislative action. Party discipline, therefore, is much less. Crosscutting issues mean that rolling legislative coalitions are created that depend more on the matter under debate than on partisan orthodoxy. In presidential systems, he notes, representatives look to their constituencies for direction so that they may be reelected; local interests are therefore better represented in Congress. The Member of Parliament, on the other hand, realizes that his or her fate depends to a greater degree on the position of the party, and therefore must at times vote against the interest of his or her specific constituency.

b. Referenda

Offering specific issues of public interest to the mass electorate for its support or rejection via a national referendum or plebiscite is one of the means democracies have of crisis resolution. Referenda can either suggest a solution to a problem or justify a proposed solution. In recent years, for example, referenda in Chile and South Africa terminated authoritarian and minority rule, respectively, and paved the way for sweeping changes in the political system. Advocates say that referenda help to ensure the rule of law as they represent one of the best ways to win and reflect the consent of the governed. In countries where judicial review is an important component of the system, the courts may overrule the majority opinion as expressed in referenda just as they can the actions of elected representatives.

Referenda may be advisory, meaning they serve as a definitive opinion poll that shapes and guides policies or legislation. Or they can be mandatory, as part of a statutory process. In the latter case, voter approval may be required for enabling a new law or constitutional reform. A petition by a requisite number of voters, called an "initiative," may be used to

place a proposal on the ballot in a scheduled election or force the calling of a special election. Supporters see referenda as generating change, competition, majority rule and citizen participation in the democratic process.

Referenda are frequently called to deal with constitutional issues in order to lend legitimacy to new institutional arrangements and to rules that will govern public conduct. Because such votes express popular sovereignty, new regimes that win a referendum make large gains in democratic legitimacy. Referenda can also help political leaders to reduce risks they face in changing the rule of the game; by posing tough questions for voter consideration, they can receive guidance, shelter, or both, in making difficult choices.

Authoritarian regimes resort to referenda to legitimate actions already decided upon by the ruling elite (e.g., Chile in 1980) or to promote an image of popular support that does not objectively exist. Referenda whose positive vote totals reach 95 percent and beyond are usually a reliable indicator of the undemocratic character of the sponsoring government.

Nationwide referenda have never been held in five major democracies--India, Israel, Japan, the Netherlands and the United States. However, several of the United States use referenda with regularity and frequency, as does Switzerland.

Referenda have had an interesting history in the countries of Latin America. Of the nearly 50 held there, 10 have been in Uruguay, a country with a long democratic tradition. In 1980, a military regime responsible for overthrowing an elected government in 1973 called a plebiscite on a proposed authoritarian constitution. Despite a tightly controlled media and a palpable climate of terror, Uruguayans rejected the proposal by 57 to 43 percent. In 1988, 55 percent of Chileans, given an opportunity to say "yes" or "no" to another eight years of rule by General Pinochet, said "no."

c. Constituent Assemblies

Constituent assemblies, another form of popular consultation, begin with the election of representatives from constituencies throughout the polity, who then sit as a legislative group to determine the fundamental laws and regulations that will rule future governments.

The use of constituent assemblies has an unfortunate historical antecedent in Cuba. In 1927, the Cuban Congress approved a plan for the election of a Constituent Assembly to revise the 1901 Constitution, to accommodate President Gerardo Machado's desire that his presidential term be extended. Machado's supporters then packed the assembly and forced a situation in which Machado could stand for reelection. Such blatant manipulation strengthened perceptions of Machado as a dictator, and helped galvanize opposition to his rule.

In Latin America, one important example of a constituent assembly playing a pivotal role for change comes from Colombia. In the late 1980s, wracked with guerrilla and paramilitary violence and under sustained assault from international drug cartels, Colombia's democratic government was a study in failing legitimacy. Congress was unable to pass needed constitutional reforms. If massive repression were to be avoided, a means needed to be found to solve the crisis through democratic procedures.

A civic movement called for a plebiscite to convene a Constituent Assembly. Colombian legislation did not provide for referenda as a means of calling a Constituent Assembly, so *La Septima Papeleta* (the Seventh Ballot) initiative did not have legal standing. However, as the seventh item on the ballot in the March 1990 general elections, it became an informal test of popular support for constitutional reform. The resounding "Si" in the March elections encouraged the government to draft a referendum text that sought formal authority for the Assembly. Thus the initiative was formally placed on the ballot in the May 1990 presidential elections, and this measure was also approved.

Some Colombians argued that it was unwise to place the future of the Constitution in the hands of an assembly comprised of just 70 people. Because of opposition in the Congress and from several former presidents, it was agreed to restrict the items the Assembly could reform. In addition, a number of caveats designed to reassure the political class were agreed to, including a prohibition of the dissolution of the National Congress, and a prohibition on assembly members from running for the legislative body for eight years. The new Constitution, approved in 1991, produced radical changes in Colombian political life and is considered by many to be one of the most modern and democratic documents of our time.

G. Electoral and Registry Systems

1. Cuban Election Practices

In the aftermath of independence from Spain, and during the deliberations of Cuba's first constitutional assembly, an electoral law was adopted which established a limited franchise for male citizens of Cuba. While the law provided a basic framework for democratic elections, the law was not always enforced. The lack of a strong independent judiciary to oversee elections meant that the resolution of disputes in the new nation-state was problematic. As a result, the elections conducted from 1901 to 1933 were characterized by numerous electoral disputes and charges of fraud; this was particularly so in the presidential elections, in which the most was at stake. Presidential candidates often disputed the results of the elections and at times refused to recognize the victory of an opponent.

The presidential and legislative elections in the 1940s were less problematic -- the result, perhaps, of the creation of the Supreme Electoral Court in the Constitution of 1940. The intention of the drafters of the constitution to have proper judicial enforcement of the election law and process is clearly reflected in the wide jurisdiction given to the Court. However, the electoral process in Cuba was suspended as a result of the 1952 coup by Batista. In 1958, a Batista-sponsored candidate was named the victor in presidential elections.

With the advent of the Castro regime and the adoption of the Fundamental Law in 1959, the electoral system came to recognize a single party, and most of the electoral provisions in the law were never implemented. After the adoption of the constitution of 1976, elections were held every five years for deputies of the National Assembly and for all of the delegates to the provincial and municipal assemblies. Voting was not required by law, but was strongly encouraged by government officials as a demonstration of loyalty to the state.

Elections at the municipal level were direct. Municipalities were divided into electoral districts, each of which sent one delegate to the municipal assembly. Biographies and photographs of the nominees were circulated throughout the election district by the government for a period of one month prior to the election. No other form of campaigning was permitted. Elections took place using paper ballots. In the event no candidate received a simple majority, runoff elections were conducted. Participation in elections during this period was high. The elections, however, did not permit discussion of policy alternatives, and certainly did not allow for participation of parties other than the ruling party. The prohibition on campaigning and the effective control of the nominating process for higher office by the Communist Party and other government-controlled organizations ensured that only those thought to be politically reliable were elected.

2. Possible Technical Electoral Practices to be Retained or Restored in the Transitional Period

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A number of ideas, systems and regulations drawn from prior Cuban experience might be maintained or reinstated in a transition period.

a. Elections Commissions

From a technical point of view, the two options for a transition period would be either to establish a completely new electoral system, or to use the existing staff and the same system of electoral commissions on the national, provincial, municipal and district levels. Funding levels and time frame are two of the key factors that will have to be analyzed by the transitional authorities. In the event that the current system is maintained, the Area Commissions and Special Commissions could continue to function under the current law, or any amended or new law adopted by a transitional authority. The hierarchy of the commissions corresponds with the types of elections conducted throughout Cuba's history (national, provincial and municipal) and broadly reflects (in theory if not in fact) modern notions in terms of the duties, obligations and rights of election commission members. Current commission staff is experienced in some of the basic duties required of election officials and has reached a significant level of administrative competence.

On one hand, maintaining the current system and staffing would eliminate the need to retrain commission members in basic election administration. In the event a transitional authority would wish to conduct elections under a new or amended law, existing commissioners could be trained to adapt to new or amended law(s) quickly and efficiently. The added expense of identifying, organizing and training entirely new election commission members.

On the other hand, maintaining the current system and its administrators could generate strong opposition from internal opposition figures and from overseas Cubans. Transition leaders will have to decide whether the process they chose for administering elections is likely to be so controversial as to damage the credibility of the elections as a whole.

b. Voter Registry System

Also from a technical standpoint, the current system of voter registration could also be maintained in a transitional situation. Registration is universal and closely linked with the official records of municipalities. Voters are automatically registered upon reaching voting age by the Area and Municipal Electoral Commissions. Consequently, it can be stated with some certainty that voter registries enjoy a high level of accuracy, and are updated to reflect changes in the population. While computerized updates of the various lists might be a long-term objective of a future Cuban Government, it will be much faster and less expensive to use existing voter registries for the first round of elections in a transition setting. However, as mentioned above, the other option of implementing a completely new registration system may support the credibility of the transition. The costs and available time for both options will have to be carefully analyzed by the transition authorities.

c. Restoration of Political Parties

Participation of a broad spectrum of political parties in both the political and electoral processes can be achieved using the rights articulated in the 1940 constitution. The 1940 provisions allow parties to serve as the primary means of organizing policy discussion and formulation in Cuba and to be the primary vehicle for the nomination of candidates. This would broaden public participation in the process and remove the need for the current candidacy commissions at the national, provincial and municipal levels.

d. Restoration of the Role of the Electoral Court

Another aspect of Cuba's electoral legacy that might be restored is the Superior Electoral Court. Vesting the power to supervise the electoral process and enforce the election law in

an independent court may help to restore trust in the process. By recreating the judicial body, legislative and executive branches are removed from direct decision-making in a process in which they have a vested political interest. The judiciary is also confirmed as the final arbiter of all disputes in the electoral process. The extraordinary powers granted to the court -- assuming it is composed of truly independent and impartial persons -- would serve to guarantee the efficient administration of the elections and, most importantly, ensure the peaceful transfer of power after election results are announced.

If the transitional authority is reluctant to restore the electoral court, courts of general jurisdiction, as in the United States, might be granted the power to oversee the electoral process in Cuba and to preside over the resolution of electoral-related disputes. Voters, political parties and candidates could file complaints regarding the elections directly with the courts.

H. Standards for Rights of Suffrage under the Laws and Constitutions of Cuba

When a transitional government calls for elections, one of the first questions it must decide, either by constitutional provision or by law, is who has the right to vote. Cuban authorities may find themselves in a situation analogous to legislative and electoral officials in the countries of the former Soviet Union. These had significant "diaspora" populations, who expressed a desire to return to the county of their birth or heritage in order to participate in the country's newly meaningful electoral process.

The historical and legal precedent for citizenship, and by extension, voting rights, which existed in Cuba in the 20th century, will be an important point of reference for transition officials. The Constitution of 1901 granted the right of citizenship to: native-born Cubans, defined as those born within the territory of the Republic of Cuba or outside it of Cuban parents; those born within the Republic of foreign parents who claimed the right upon becoming of age; and those born in foreign countries of Cuban parents who had forfeited their Cuban nationality, but who claimed citizenship upon reaching the age of majority. It also contained provisions allowing foreigners who met certain requirements to acquire Cuban citizenship by naturalization. Requirements included having established residency for at least five years and having declared an intent, after two years, to claim citizenship. Cuban citizenship and voting rights were forfeited if a citizen acquired foreign citizenship.

The Constitution of 1940 set forth similar standards. Like the Constitution of 1901, citizenship was deemed forfeited by the acquisition of foreign citizenship or by the "acceptance of dual citizenship."

The Fundamental Law of 1959 in general reiterates the citizenship standards in Cuba's first two constitutions, but adds provisions for those foreigners who had served in the revolutionary army and wished to claim Cuban citizenship. In addition, foreigners married to Cuban citizens, who had resided in Cuba for a period of two years and who forfeited their foreign citizenship, were allowed to become citizens of Cuba. Finally, foreigners residing in Cuba for five years and declaring their intention to acquire Cuban citizenship within their first year of residency were allowed to become citizens. Cuban citizenship was forfeited by those who acquired foreign citizenship or who entered the military service of another nation; and by those naturalized citizens who subsequently resided for a period of three years or more in their country of birth, unless they reaffirmed every three years their intention to maintain Cuban citizenship.

Voting rights and citizenship currently in force in Cuba are defined in the 1992 amendments to the Cuban Constitution and the current electoral law of Cuba. The Constitution reiterates the 1901 and 1940 provisions stating that Cuban citizenship is lost as a result of the acquisition of foreign citizenship and/or the acquisition of double citizenship. The Electoral Law states that in order to vote, a Cuban must "be a permanent resident in the country for a period of no less than two (2) years before the election and be entered in the Register of Voters of the Municipality where he resides."

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There is a widespread expectation among members of the internal opposition and overseas Cubans alike that the latter will enjoy some role in future Cuban elections. Modifications of the current system could provide for the possibility of participation by some or all members of the Cuban diaspora. Reasonable restrictions could be applied. For example, native-born Cubans living outside Cuba, or their children born abroad, who renounce any non-Cuban citizenship they may have acquired and who register as a Cuban at a Cuban consulate, might be granted the right to vote. Those who maintain another citizenship would lose their Cuban citizenship. A reasonable waiting period might be agreed upon for them to make that decision. There would remain, however, the difficult decision as to whether to create an expensive and complex system of voting abroad, or whether voting by the diaspora could take place only in Cuba.

I. Logistics of Election Administration and Security

1. Transitional Framework

Transitional elections in Cuba will require that a number of steps be taken to ensure that the framework is created for a free and fair vote. Even though there may well be good reasons and substantial internal and international pressure for elections to take place quickly, time and resources are needed to assure that the proper building blocks are set in place in a well-thought-out sequence.

As IFES elections specialist Juan Manuel Herrero explains, these steps include:

- Determining a time line for the election cycle, setting out the requirements of each phase;
- Creating an autonomous elections administration entity, with personnel capable of carrying out a variety of tasks during the campaign period and through balloting and vote counting;
- Planning and implementing a public information campaign about the electoral process, and establishing a framework for media coverage;
- Creating an appeals process for political parties and citizens to lodge complaints about presumed irregularities in the electoral process;
- Building a mechanism for allocating voters among election districts;
- Preparing, printing and distributing "registration books" and electoral lists to the polling places;
- Opening the voter registration process and implementing strategies for correction of the voters list based on new registrations and the verification process;
- Preparing and displaying new lists of voters, making these available for challenges;
- Instituting a process for the registration of candidates and their inclusion on the ballot;
- Establishing the rules for campaign financing;
- Determining where voting stations should be located, and what are the minimum requirements for their construction;
- Selecting and training poll workers at the local level, and establishing guidelines to regulate the conduct of partisan officials participating as poll watchers;
- Creating a system for elections security, including the safeguarding of ballot boxes; and
- Designing a system by which election results will be promptly and accurately made public, both the preliminary totals and the final count.

The mechanics of voting, when they result in well-run operations on Election Day, can look deceptively easy; in fact, they require enormous attention to detail and precision in planning. Because there are no second chances in elections, best practices should be identified to assure that knowledge and experience prevail at each step of the process. Some of these steps are outlined more fully below.

2. Election Commissions

The creation of a mechanism for the administration of the elections is the first step in the process, from which all other steps must logically flow. As noted earlier, the independent electoral commission has a prior history in Cuban constitutional law. Now very much a trend in Latin America, independent elections authorities are autonomous, in the sense that a) they operate without being controlled or influenced by the Executive or by either the ruling or the opposition parties, b) can appoint and dismiss their own personnel, and c) can make their own decisions concerning the development of the electoral process. Election commissions or tribunals do not "legislate" per se, but can avoid the problems often produced by loopholes in the electoral law by hammering out agreements and issuing decrees. In these instances, it is important that Constitutional requirements, election laws and the procedural determinations made by the commission are all consonant with each other.

The election commissioners are charged with monitoring the application of the electoral law and enforcing the regulations--hammered out by the commission's senior professional staff--necessary to make the election work.

The independence of electoral commissions should, as much as practicable, be reflected in their budgets. Commissions that must seek new funding from the central government at every stage of the electoral process may have great difficulty maintaining their independence from the government and the ruling party. In some countries, commissions are non-partisan in administration but political parties have a voice, and sometimes even a vote, in their deliberations concerning the most important decisions. In other countries, commissions are composed, formally or informally, of representatives of the political parties, with no one party having control, and the opposing interests of the various parties are relied upon to bring about decisions that are fair to all.

In Cuba, the transitional authorities might decide to leave the existing structures of commissions and departments in place for the first transitional election. It is possible that the commissioners appointed through the current process, if supported by the knowledge and expertise of outside specialists and staff personnel on a full time basis, could successfully carry out their new responsibility of administering a truly competitive and free election. In any event, professional criteria, as well as their acceptability to broad ranges of public opinion, should prevail in the selection of all new operational and administrative personnel. Whether retaining existing personnel or hiring new ones, it is important that all those involved in the process be accepted by the public as honest, capable people who are determined to apply the law equitably and wisely.

3. Creating an Appeals and Dispute Resolution Process

In order for elections to be judged free and fair, a process must be in place that provides for a fair and expeditious outcome to appeals lodged by both individual citizens and political groups. Among the types of challenges that may be heard are complaints about exclusion from electoral lists, threats to physical security, the presence of "phantom" voters on the official rolls, and the irregular handling of ballot boxes. Because the current elections system in Cuba does not allow for real challenges by citizens of the actions of the institution responsible for conducting elections, such a procedure will need to be created. The process should guarantee the right of complaint and a hearing before an official body. In some Latin American countries, such as Paraguay, the Electoral Tribunal both administers elections and decides complaints. In others, such as Peru, separate agencies handle administration and dispute resolution. In either case, the appeals process should not be excessively complicated, and cases should be promptly resolved.

4. Voter Registration

The creation of a reliable electoral list takes time and resources. The electoral registration office should be responsible for voter mapping, a geographic profile of how many people are registered and where, in order to determine the optimum distribution of polling places and the shape and size of electoral districts, providing each with a local election administration office. Registration activities require the recruitment of technical personnel trained in organizing large operations and preparing detailed budgets and knowledgeable of systems management and organizational design. Registry data should be open to periodic review by outside organizations, to ensure that systematic omissions in the data do not occur.

Voter registry is a science, not an art, and requires appropriate standardized tools for successful implementation. The Electoral List should be a single national registry based on uniform procedures. Homogeneous forms must be designed to assure that duplicate registrations do not exist and to add or delete names or change addresses. Validation and comparison criteria must be established to maintain quality controls on information reliability and accessibility. Manuals need to be prepared for election officials with regular contact with the public, guiding them in how to respond to citizen inquiries and complaints. Agreements must be reached with the entity responsible for registering births, marriages and deaths, in order to share data, and with magistrates from the electoral courts, who should be invested with the authority to make additions or deletions from the lists.

In the short term, it is recommended that existing Cuban registry files be used, rather than to undergo the mammoth expense and effort of creating new ones. Otherwise, extensive efforts will be needed to create new and accessible registry offices, conduct an informational campaign to inform citizens about the need to register, and create public awareness of the time limits for doing so. Because preparation of the electoral list requires a huge amount of data, it should be computerized.

The period for the updating of addresses of existing voters and registration of new ones should not be less than 90 days, with a subsequent 30-day period in which the electoral lists are displayed for public inspection, a widespread custom in Latin America. This will allow citizens, civic organizations and political groups to report any anomalies contained in the lists, either through improper exclusion or inclusion, or errors. An information campaign should accompany this stage to make people aware of the importance of reviewing the accuracy of the lists. An additional 30-day period will be needed for the registration office to analyze citizen comments, and to respond to them in a way that generates correct information in the lists displayed. The 20 days required to print the lists by region, district and electoral area means that a total of 170 days will be needed, at a minimum, from initiation of the updating process to the publication of the final electoral lists. Once the geographic distribution of voters is obtained, districts and electoral areas should be reviewed in order to carry out those adjustments in districting needed to assure population parity among the jurisdictions.

5. Creating a System of Election Security

Security concerns are intrinsic to any free and fair election. These include the physical security of voters, candidates and political groups, as well as the safeguarding of the elements of the process--the secret ballot, measures to prevent multiple voting, and the chain of custody of ballot boxes.

No election is likely to be judged free and fair if there is a pattern of intimidation or violence against individuals or political groups. As stated more fully elsewhere in this report, failure by the State to curb such acts calls into question its commitment to democratic government. In this regard, it is important to bring the country's security forces into the process, underlining their duty to safeguard the lives and property of all citizens, and to give them the information needed for them to carry out their duties throughout the process. It is particularly important that they understand their role concerning ballot security and the

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impartial intervention of on-site disputes. On Election Day, in particular, security force vigilance is required to create a setting where full participation is not only possible, but also likely.

In some countries, the police have the primary mission of maintaining order on Election Day; in other countries the armed forces play a role, particularly in assuring the chain of custody of the ballot boxes before, during and after Election Day. In Nicaragua, public distrust of both police and military was such that the electoral commission created and deployed a temporary civilian electoral police, responsible only to the commission. In Cuba, the type of transition that occurs will likely have a large impact on the wisdom and public acceptability of security force involvement in the process. Transitional authorities may find that it is appropriate for the electoral commission to appoint its own election security personnel, as in Nicaragua. In any case, the eventual incorporation of the security forces as stakeholders in the democratic process, as has occurred in most of Latin America, is essential for all concerned.

Security controls must be devised for the centralized design and printing of materials, forms and ballots. Specific care must be taken to prevent the acquisition of voting materials by unauthorized persons, as well as the uncontrolled production of election materials and undocumented transfers and deliveries. Auditing procedures should be implemented for the processes of production and distribution of materials. Each step of the documentation process should be signed off as it is completed, which helps to reduce confusion and finger pointing if something goes awry.

Electoral stain (formerly called indelible ink) is used widely in Latin America and elsewhere in the world to identify those who have already voted, although it is no longer considered a foolproof device. It helps to reduce the possibility of multiple voting by individuals and, perhaps more importantly, to instill public confidence in the process. The stain should be acquired in sufficient quantities well before Election Day, and distributed according to the volume of need suggested by registry information. Screens or panels should be constructed and distributed with sufficient time to assure that every voter's right to a secret ballot is respected. The chain of custody of ballot boxes, including their inspection prior to the opening of the polls, needs to be coordinated with local poll workers, security officials, and party representatives.

Security considerations also extend to election results. Special communications, telephone lines, fax machines, coded forms and transport vehicles may be necessary to safeguard the results and assure that any falsified forms and data are detected.

J. Voter and Civic Education

A political transition in Cuba will create an immediate need for both short-term and comprehensive long-term citizen information and education programs. Voter information programs are short-term efforts that use electronic and print media. Generally voter information programs provide information about times, dates and places of voter registration; the posting of voter registration lists, the location of voting precincts, and voting procedures. They also include information about how and where the votes are counted, and about measures that have been implemented to insure the integrity of the election process.

Civic education programs are longer term and are designed to provide more detailed information and to impact on attitudes. These programs will be especially important for Cubans 40 years of age and under as they begin the process of choosing from competing political views and ideologies. Essential elements of the voter and civic education process include information about the inter-play of democratic structures, the role of free-market economies, necessary changes in laws and in the administration of justice, and the need for open and transparent elections. As IFES civic education specialist Gwenn Hofmann points

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out, Cuba's voting-age public will be forced to confront critical choices in the transition from a paternalistic and passive society to an active and open one.

The dynamic change accompanying a shift from authoritarian to democratic rule can create apprehension and uncertainty. In order to overcome the fear of change, it will be important to ensure the Cuban people as a whole are informed about the nature of the changes taking place, what they mean, and how they can benefit them personally.

Some of the most visible and immediate changes will be those concerning election laws, requirements and procedures. By ensuring that all Cubans understand what these mean for them, and how they will help create a modern, democratic society, the transition authorities can help to create a new and positive perception of the transition process, even during its most difficult moments. Such efforts can also increase support for new government institutions, including a new election system, which is likely to be a focal point of people's knowledge and perception of the new government structure.

Successful transition processes require an informed electorate that feels itself empowered to make independent choices in open and transparent elections. The primary objective of elections-related communications is to convey transparency, a sense of openness and candor, from those administering the process. The greater the frequency and effectiveness of these communications, the greater the confidence in the system will be, and, consequently, the more people will be willing to participate fully. Well-informed citizens feel empowered and know why and how to participate in government and in the election process. When Cuban election officials begin to implement programs and procedures that demonstrate democratic values, people will begin to trust that the changes taking place will ultimately benefit them.

It is important, therefore, that the new Cuban officials' willingness to adhere to democratic principles be fully explained to the public. Creating a positive environment for peaceful change does not happen accidentally. Rather it is the result of actions and pro-active programs developed through non-partisan civic education programs and continuing voter education efforts. Political parties, civic organizations and the mass media all have important roles to play in this effort. By involving non-governmental organizations in information and education, the transition government will signal its own intention of being a partner in, rather than the owner of, the process.

An essential first step for new election officials is to develop a lexicon of democracy and civil society. The Castro government misuses and abuses the meanings of words used to describe democratic institutions. The transition government will have to define what they mean by democratic institutions, then help the people to understand the words used and how elements of democracy and civil society fit together.

Election administrators face the challenge of providing most of the initial information and education to the public. They need to be able to articulate a vision about what constitutes civil society, how it is structured and how a new elections system will work within a dynamic environment. The development of a civil society within a democratic context should be explained in a way that demonstrates the correlation between the two. In general terms, an active civil society is an essential component of democratic government, incorporating as it does aspects of state accountability and citizen participation. The involvement of non-governmental organizations in civic action, education, public policy, advocacy, government oversight, state accountability and citizen participation further these goals.

K. Potential Role of the International Community

1. The Role of International Observers

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For more than a decade, international electoral observation has been seen as critical to transition processes, helping to promote citizen confidence and participation, while also providing election officials with needed insight and impartial advice. The role of international observers can also be crucial in highly polarized situations, particularly in those in which transitions are beginning with significant numbers of officials from the old regime still in place.

Observation of an election by independent and impartial foreigners -- who may represent foreign governments, international organizations, non-governmental organizations, or some combination of these -- can help to provide objective information about the process. The observers' primary mission is to report significant incidents or patterns of fraud and other manipulation. They can also help to ensure the integrity of the election by examining how the overall human rights situation in a country affects the election process, with special emphasis on the role of the state in protecting individual rights and freedoms. In the best of situations, the very knowledge that foreign observers will be present on the days immediately preceding and following the election can serve to prevent violations of law and human rights that might otherwise have occurred. The frequent criticism of observers' reports as "bland" may therefore not tell the full story.

In any transitional situation in Cuba, there will almost certainly be significant demands on the new regime to allow observers sponsored by both local and international organizations to participate in election monitoring. Many of these organizations will likely have been involved for some time in monitoring Cuban political and human rights. Their expertise can be invaluable. As Cuba moves away from non-democratic government, they can help transitional authorities infuse the process with legitimacy.

All foreign observers coming to Cuba should have an understanding of both international standards for the conduct of elections, and specific knowledge of the electoral laws and procedures adopted by transitional authorities. Practical experience in politics can be a plus, if it does not cloud independent judgment; and expertise in electoral administration is invaluable. Knowledge about international standards and practices governing human rights is also important. Persons with skills in systems analysis and those with investigative talents (used appropriately) can round out a delegation.

Observation missions can vary in size and in the length of time they participate in the process. Cuba's geography, population density and political situation suggest that small missions will not be useful. Each additional delegation member can help increase the mission's breadth of expertise, the number of people interviewed about the process, and the number of polling sites covered. While the length of stay can vary widely, depending on the mission's objectives and history of involvement with Cuba, delegations should arrive at least 4-5 days before Election Day and leave at least a technical team in country until the results of the balloting have been announced.

IFES has pioneered the concept of long-term election observers, who help officials at each stage of the electoral process during the months before the election and then provide objective feedback about the success of their efforts on Election Day. In the run-up to voting, observation missions can perform a number of highly useful and necessary tasks. International experts may also help train election officials and can serve as consultants on voter and civic education projects designed to increase public awareness and acceptance of the changes taking place. They can also provide insight into issues such as voter registry, campaign and ballot security, and media relations.

Both prior to Election Day and during the actual balloting, observers should be deployed as widely as possible in order to obtain information about the process first-hand, and to investigate, where appropriate, complaints that indicate patterns and practices of manipulation. Deployment of observers should be based on a detailed plan in which, typically, each mission member is paired with another, and each pair is assigned to a specific, predetermined area. Within their assigned area, IFES does not tell observers which

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polling sites to visit, nor in what order, nor is the decision left up to the host government or election commission. The observer team chooses polling places at random within its assigned area, in an effort to counter any "Potemkin village" syndrome. All observers should be briefed about what specific procedures they are to follow on-site, and how to handle citizen complaints or problems discovered in the field. Observers should be present at both the opening and closing of the polls as well as during the vote count.

Election monitoring can help create public confidence through a number of actions. These include:

- *checking* to make sure voting stations open on time and close as stipulated by previously agreed-to rules;
- *looking* for any instances of improper voting, such as multiple voting, or impersonation of other registered voters;
- *ensuring* that ballot boxes are sealed and empty before voting begins;
- *checking* that voting is carried out in secret;
- *checking* that all those people qualified to vote who show up at the appropriate voting stations are allowed to do so;
- *documenting* problems as they occur;
- *monitoring* agreed-upon changes in rules, such as the opening up of additional voting stations, or a decision to extend the hours of voting due to climatic or other conditions;
- *looking* for unauthorized partisan activity in and around the voting stations;
- *monitoring* acts of intimidation and violence;
- *observing* the counting of the votes, and receiving a copy of the final tabulations as a means to verify the accuracy of regional or national counting procedures; and
- *documenting* procedures used to settle challenges on issues such as damaged or voided ballots.

The primary mission of international observers is to determine whether the electoral process actually results in a genuine expression of popular will. Flawed processes, in which random imperfections occur, can be successful nonetheless if that standard is met. Observers must take care not to interfere with the polling and with the work of elections authorities, unless these specifically request assistance. On the other hand, once the election is over, observer missions must be free to "call it as they see it," to state publicly their findings concerning the process.

Although their work is sustained by a fast-growing body of international experience and literature, those participating in international observation missions have special responsibilities. For example, sponsoring organizations should notify relevant government officials and agencies of their plans to send an observation mission; indeed, the normal procedure is for organizations to await a formal invitation from the election commission. Foreign missions in any country are, by their nature, guests in that country.

International observation missions should be impartial in word and deed. Their composition must be limited strictly to impartial observers. In practice, however, many delegations seek to ensure their own legitimacy by constructing a careful balance of interests and ideas from which it is hoped an independent consensus will be formed.

International observers have the obligation of being familiar with the terms of those international human rights instruments governing popular participation in elections and their free and genuine conduct. Sensitivity to issues of historical development and special problems associated with the transition situation is important.

Transitional elections are times of great national and international moments -- moments of great popular expectation and confusion. It is therefore important that observation missions be coordinated among themselves and with the appropriate election authorities. International delegations should seek, where possible, to create proper and cooperative

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relationships with host country election authorities. As noted earlier, international missions can play the role of informal troubleshooters, alerting officials to potential problems and difficulties before they become major roadblocks to truly free and fair elections. Despite the hostility of Chilean dictator Augusto Pinochet to the presence of international observers during the 1988 plebiscite in Chile, delegations were able to create cooperative working relationships with senior election officials in that country. As should always be the case, relations with the ordinary Chilean citizens who were chosen by lot as poll workers were excellent.

International interest in Cuba ensures that any transition scenario will be crowded with real or would-be observers, and coordination, to the extent possible, will be highly desirable. Foreign organizations should consider creating an organization similar to the "donors' committee" used by foreign aid agencies, in which regular consultations between the groups and national election officials could help in determining needs and relative responsibilities and preventing duplication of effort. All coordination efforts should seek to bring the greatest amount of resources into play in well-thought out sequences, and to identify strategies to promote cooperation and exchange between international organizations and local non-governmental groups (NGOs). Host country NGOs may be able to field their own domestic observers on Election Day, and, if so, they are likely to be far more numerous and able to cover many polling places than the international observers.

Particular attention should be paid to opportunities for each observer group to share information and insight with other observer groups. Joint announcements by observer delegations of findings, both before Election Day and after the votes are tabulated, can reduce confusion and multiply the effectiveness of their findings. Efforts should be made to plan and coordinate the observation activities to ensure that they do not inconvenience already over-burdened local elections officials any more than absolutely necessary.

2. The Role of the United States

The current policy of the United States Government toward a transition in Cuba is governed by the Cuban Liberty and Democratic Solidarity Act (the "Libertad Act").² The Act sets forth, as one of its stated purposes, to "encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers."³

The Act further states that the United States is prepared to provide assistance to a transitional government in Cuba in the event that such a government has, inter alia, done the following:

made public commitments to organizing free and fair elections for a new government, to be held in a timely manner, with the participation of multiple independent political parties, to be conducted under the supervision of internationally recognized observers.⁴

The Libertad Act also requires, as a condition precedent to providing U.S. Government assistance to Cuba, for a transition government to demonstrate that it "...has made public commitments to, and is making demonstrable progress in: Establishing an independent judiciary; allowing the establishment of independent social and political organizations."⁵

L. Conclusion

When the hour of decision approaches for the Cuban people, it will likely be a time filled with anxiety and many questions about what the future holds. It will be a time in which all Cubans, at home on the island or in the diaspora, must take stock of their history and its lessons, and their hopes for future generations.

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If there is a single lesson to unite the peoples of our Hemisphere, it is the importance of making governments, and the people who lead them, responsible for their actions. This accountability can only be truly achieved through a system in which leaders at all levels of state power must periodically face popular judgment in electoral contests in which they may be turned from office if they do not live up to the expectations they themselves helped to create. The notion that political leaders are above the law is rapidly becoming as antiquated as the divine right of kings.

Accountability depends upon electoral system that is capable of allowing citizens to express their views about their government through free, fair and genuine choices at the ballot box. An appropriate balance must be struck between the executive, legislative and judicial branches of government so that a system of checks and balances on state power is created that enhances individual liberty, while enforcing citizens' responsibility. Finally, conditions must be created to forge a strong civil society, so in keeping with Cuba's own best traditions, that will promote participation and initiative.

In their moment of greatest uncertainty, Cuba and its people will not be alone, but supported by millions of friends around the globe, who will be generous with their support and their assistance. In the end, however, it must be the people of Cuba, at the moment of transition, who make the critical decisions to create new democratic institutions or to retain flawed structures and flawed principles, inherited from Castro or Batista.

Endnotes

¹ Report review and commentary in a letter to IFES, November 2, 1998

² 22 U.S.C. §6021, et seq. (1996); Pub. L. 104-114, Mar. 12, 1996

³ *Id.* at §6022(4).

⁴ *Id.* at §6065(a)(4)(A-C)

⁵ *Id.* at (a)(6)(A,C).



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