

White Paper Series  
Electoral Fraud

# Assessing Electoral Fraud in New Democracies

## *A Basic Conceptual Framework*

Rafael López-Pintor

December 2010





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## **I. Introduction**

The purpose of this series of papers is to offer an assessment of electoral fraud from an international comparative perspective with the aim of providing a better understanding of the current nature of electoral fraud around the world. The papers also seek to present a set of strategies and tools that may help the international community to address the problem. This first paper in the series discusses the importance of focusing on fraud in new democracies, provides a definition for fraud (as opposed to corruption or malpractice), and assesses how international democratic standards intersect with the prevention of electoral fraud.

The International Foundation for Electoral Systems (IFES) is producing this white paper series to address the rising concern throughout the democracy and governance (D&G) community about the effects of electoral fraud on developing nations. To date, most work in this field has focused on after-the-fact fraud detection, generally through the reports of international and domestic election observer missions. However, election observation only addresses part of the electoral fraud problem, which requires a more comprehensive approach of deterrence, detection, and mitigation. Over the past two decades, IFES has worked to help countries around the globe establish electoral systems and procedures that mitigate fraud and meet international standards for democratic elections. Through this paper series, IFES seeks to expand on this work and provide the D&G community with the necessary tools to combat electoral fraud.

The credibility of current programs that aim to combat electoral fraud is sometimes based more on the monetary resources devoted to the problem than on the quality of the methodology and analysis employed. Some basic and effective anti-fraud mechanisms are, in fact, relatively inexpensive. One salient example is the method by which election results are released. To improve transparency and reduce the risk of fraud, countries could choose to post disaggregated election results outside of individual polling stations, instead of only releasing centrally aggregated results from the election management body (EMB). But these measures are not part of standard operating procedures in many countries that have suffered from major allegations of electoral fraud in recent years, including Kenya, Nigeria, Moldova, Pakistan and Zimbabwe.<sup>1</sup>

The time has come for democracy and governance practitioners to move beyond the generic guidelines provided by electoral observation groups and electoral management bodies (EMBs), which cover only the most visible parts of the electoral process, and to instead employ holistic tools that will systematically and comprehensively undermine fraud. An EMB should institute directed anti-fraud measures that will serve three functions: deter participants from engaging in fraud; allow for the detection of undeterred fraud; and, provide for mitigation of the harm caused by fraud that has escaped both deterrence and detection efforts.

## **II. Why Spotlight Fraud in New Democracies?**

Establishing legitimacy and credibility is vital to a newly formed government. The effects of electoral fraud can be especially devastating in new democracies since serious fraud is likely to result in instability and an immediate erosion of the new government's tenuous credibility. The term "new democracies" describes both emerging and consolidating multiparty political systems at different stages of development. Clearly, electoral fraud has not become completely irrelevant in older, more well-established democracies; but on theoretical and practical grounds, the focus of this paper will be those democracies where electoral fraud is more frequently alleged and darker in its implications.

While electoral fraud has existed since the advent of modern democratic development in the mid and late 19th century<sup>2</sup> and is still occasionally an issue in some well established democracies,<sup>3</sup> the global expansion of multiparty elections during the last thirty years has brought fraud to the forefront of democratic development and governance. Electoral fraud is clearly the gravest form of electoral malpractice, and should be combated overtly and publicly by all those with a stake in democratic development.

Accordingly, in the past year the technical elections assistance community has focused more closely on anti-fraud strategies. A major trigger for this shift in focus was the massive fraud committed in the August 2009 presidential election process in Afghanistan, which set in motion a panoply of audit procedures that concluded that a runoff election should take place (although the runoff did not actually occur, as the second candidate chose to withdraw from the race).<sup>4</sup> The events in Afghanistan were not an isolated occurrence in this decade of tumultuous elections. The governments of Cote d'Ivoire, Peru, and Serbia all fell in 2000 as a result of popular rebellions against fraudulent electoral commissions. Similarly, the so-called "Orange Revolution" in Ukraine in 2004 caused presidential elections to be completely re-held after extensive fraud was demonstrated.<sup>5</sup>

By focusing on new democracies, this paper highlights political environments where electoral fraud most often occurs. It is important to note that a variety of electoral contexts are grouped under the single label of "new democracies" (e.g. emerging democracies following a relatively

peaceful transitional model or, at the opposite end of the scale, in societies still at war). However, a proper definition must also consider consolidating democracies, with relatively stable electoral institutions, and reenacted democracies following an interim period of authoritarian rule. These distinctions are important to aid stakeholders in choosing and designing appropriate assessment, deterrence, detection and mitigation tools for combating specific types of fraud.

The essential fact and starting point for this paper series is that multiparty elections with varying degrees of democratic quality are held in almost every country of the world today. Electoral fraud is most likely to occur during elections in countries where basic freedoms and rights are not sufficiently guaranteed. From this starting point, the following hypothesis can be formulated: if electoral fraud is most likely to occur in countries where freedoms and rights are not sufficiently guaranteed, and elections in most countries today are still held under these conditions, then electoral fraud is to be expected in many elections around the world. The amount and severity of the fraud depends on the ability of government, the international community, and other social institutions (political parties, independent media, civil rights advocates, monitoring organizations, etc.) to effectively protect the freedoms and rights of voters and candidates.

Historical evidence shows that, from the eighteenth century until the latter half of the twentieth century, there were two basic paths towards elections and democratic consolidation. The first path was paved with concessions by the political establishment, made out of self interest, social pressure, or convenience. The second path involved political insurgents seizing power using various forms of pressure, sometimes including violence. In this case, important roles were played by the industrial bourgeoisie, trade unions, political parties, women's suffrage movements, and civil and political rights organizations.

Since the mid-1970's, however, democratization has followed four different paths. The first is the relatively peaceful transition to democracy from an authoritarian regime, achieved through lengthy negotiations between the moderate factions in the establishment and the democratic opposition. Examples of this method include Greece, Portugal, Spain, Uruguay, Chile, and Argentina. A second path towards democracy in the late twentieth century has been that of countries coming out of civil war through internationally sponsored peace agreements, such as in Nicaragua, El Salvador, Angola, Mozambique, Cambodia, and the Balkans. These two paths account for most of the one hundred new democracies formed during this period. A third development is the forced democratization that has resulted from U.S. and allied occupations of Iraq and Afghanistan. Finally, Lebanon and the Palestinian territories of West Bank and Gaza have followed a fourth path to democracy, resulting from conflicts among Israel and its Middle East neighbors.

This latest wave of democratization will certainly be counted among the greatest political events of the 20th century. The number of countries where political freedom and civil rights were established, restored, or improved increased dramatically between the mid 1970's and the early years of the 21st century. Freedom House reports, which have been issued since 1972, are among the several indicators that illustrate this phenomenon. In these reports, which have assessed levels of political liberty and civil rights over a 31 year period, the number of countries classified as "free"<sup>6</sup> jumped from 51 to 89; "partly free" had a light increase from 54 to 58; and countries classified as "not free" decreased from 57 to 47. Although the total number of countries included in the survey moved from 161 in 1979 up to 194 in 2010 (an increase of 33), the number of countries classified as "free" and "partly free" together increased by 41.<sup>7</sup>

**Table 1. Number of countries, by category, in Freedom House reports in 1979 and 2010**

State of freedoms and rights	1979		2010	
	# of countries	%	# of countries	%
Free	51	32	89	46
Partly free	54	33	58	30
Not free	56	35	47	24
TOTAL	161	100	194	100

Source: *Freedom in the World 2010*, Washington DC, Freedom House

The fact that the total number of countries under consideration has grown during the 1979 to 2010 period makes still more significant the relative increases and decreases in the different categories: an increase in "free" countries of 14 percent; a decrease in "partly free" countries of 3 percent; and a decrease in "not free" countries of 11 percent.

This consistency in data should be considered at least partly supportive of the hypothesis that fraud is most likely to occur in those countries where freedoms and rights are not sufficiently guaranteed. It is indisputable that electoral fraud is a violation of some of the most sacred political rights, such as the right to freely vote and to stand for elections. In fact, the most frequent allegations of electoral fraud arose in countries classified by Freedom House as not free or partly free. Table 2, below, provides further evidence along the same lines, with the inclusion of "*electoral environment*" as an additional variable. This refers to the stage of democratic development in each country. From various international and domestic electoral reports, such as those already quoted, it is known that countries where fraud of some degree occurs tend to be consolidating and emerging democracies, which in turn tightly correlate with country contexts in which freedoms and rights are insufficiently guaranteed.<sup>8</sup>

For methodological purposes, three different electoral environments have been identified (corresponding to the first column in Table 2). The first is the *stable democracy*, where multiparty elections with increasing degrees of freedom and voter inclusiveness have been taking place since the last quarter of the 19th century, either uninterruptedly or with some



breakdowns due to internal or international warfare (for example, most of Western Europe, Uruguay, Chile and Colombia). There are 41 countries in this category, which represents 23 percent of all countries where multiparty elections are held. Other examples of stable democracies include Canada, Ireland and Japan. A second environment is the *consolidating democracy*, in which elections have been held for a number of years with good prospects for stabilization. There are 75 countries in this category (with varying degrees of freedoms and rights), which amounts to 52% of all countries considered. Examples of consolidating democracies include Argentina, Kiribati and Mozambique. A third environment is the *emerging democracy*, where elections have been held only once or a few times or, even if periodically held for a longer time, where the prospects remain dim for stabilizing democracy. We can place 60 countries under this category (again, with different degrees of freedoms and rights), which amounts to 35 percent of all countries considered. Examples of emerging democracies include Afghanistan, Guinea-Bissau, and Thailand. A subcategory of countries to be included within this environment could be labeled “war-torn democracies,” where elections take place in the midst of war with the possibility of having any enduring democracy largely dependent on the outcome of war (for example, Iraq, Afghanistan, Palestine, Rwanda, Burundi, Democratic Republic of Congo, Sri Lanka).

**Table 2. Number and percentage of countries, by electoral environment and Freedom House category**

<b>Electoral Environment</b>	<b>Freedom House Classification</b>	<b>Number of countries</b>	<b>Percent of total countries</b>
<i>Stable democracy</i>	“Free”	41	23
<i>Consolidating democracy</i>	“Free”	48	27
	“Partly free”	27	15
<i>Emerging democracy</i>	“Partly free”	35	20
	“Not free”	26	15
	<b>TOTAL</b>	<b>177</b>	<b>100</b>

Source: Composed by author by combining the 2010 FH survey data with expert assessment on democracy analysis and fieldwork in numerous countries<sup>9</sup>

From a purely quantitative perspective, two different readings of the table are possible. In one reading, following the logic of our main hypothesis, the probability of electoral fraud will decrease in the movement from “not free” countries where elections still take place towards “free” countries where democracy is more solidly established. In both theoretical and practical strategic terms, this reading seems the more fruitful one. Yet another reading is possible, shedding additional light on the issue at hand. This requires splitting the table into two halves, with 50% of the countries in each; the top part including all “free” countries with different

degrees of democratic stability and solidity. The lower half would include all the other countries which are “partly free” and “not free,” but also have elections. Using this approach, again on theoretical or hypothetical terms, 50% of all democracies would be those where fraud is most likely to occur, regardless of the varying degrees of restrictiveness used when determining the existence of electoral fraud.

The democratically-minded should be encouraged by the fact that freedoms and rights are increasingly being afforded to citizens around the world. At the same time, however, it is worrisome that electoral fraud is likely occurring in such a large percentage of democracies. For D&G practitioners, contextualizing different electoral settings will allow international engagements to become more strategically focused and we will be better able to fine-tune the instruments used for the deterrence, detection and mitigation of fraud.

### **III. Defining and Understanding Electoral Fraud**

#### *Corruption, fraud and malpractice: understanding the distinctions*

Electoral fraud can be defined as any purposeful action taken to tamper with electoral activities and election-related materials in order to affect the results of an election, which may interfere with or thwart the will of the voters. There are two main categories of electoral fraud: *outcome determinative fraud*, where the fraud affects the outcome of the election such that the winners and losers are different from what they would have been had the fraud not been committed; and *non-outcome determinative fraud*, when the outcomes are not affected (i.e. the winners and losers would be the same even absent the commission of fraud). Both types of electoral fraud entail criminal behavior that should be punished according to the law; however, outcome determinative fraud has more serious political implications, in that it allows a party or candidate to take over public positions contrary to the popular will.

Many observers view corruption as synonymous with electoral fraud. However, while fraud is certainly a form of corruption, it is only one of many forms that it can take, albeit one of the most obvious and high-profile. *Corruption* refers to self-serving behavior that deviates from the formal rules of conduct governing the actions of someone in a position of public authority.<sup>10</sup> This includes several deep and systemic problems with governance and the rule of law, normally involving mismanagement of public funds or bribes. *Electoral fraud* specifically refers to deceptive or negligent interference with the electoral process that intends to prevent the outcome from reflecting the will of the people.

Electoral fraud most frequently occurs as part of direct action or deliberate inaction by electoral administrators, permitting others (such as agents from the executive branch of government or political parties) to interfere with the process. For example, sub-national authorities clearly compromised the will of the voting public in Afghanistan when they hijacked and subsequently tampered with the ballots in the presidential elections of August 2009 (and most likely in previous elections as well).<sup>11</sup> Such an occurrence of *fraud* is a symptom of a lack of regulations and institutional inefficiency, especially from within the ranks of government. Electoral fraud is the most serious form of *electoral malpractice*, which is almost any wrongdoing affecting election procedures and materials, especially by government officials and political party and candidate agents. Not all malpractice rises to the level of fraud, however. The most frequent types of malpractice take the form of irregularities, deficiencies, or flaws in electoral management at different levels during the electoral process, which can be addressed and corrected if good will exists. Irregularities tend to relate to administrative shortcomings or failures, including the misspelling of voter names in public registries, unclear but deducible ticking of the voter's choice in the ballot paper, shortage or low quality of indelible ink, non-matching tallying totals, discrepancies between tallies from different levels of counting, technological failure of the EMB's web page during results posting, and delays in adjudication of complaints.

#### *Challenges in evaluating the scope of electoral fraud*

There are several additional considerations when determining the scope of fraud in a given election process. One major consideration on scope has to do with the difficulty of measuring the degree to which fraud has affected results. For example, by which mechanisms – material or psychological – and to what extent could intimidation or vote buying have affected the results of an election? “Material” means not only direct tampering with the physical aspects of elections, such as voter lists, ballot papers, vote tallies, and communication or computer equipment, but also tampering in the form of employment offers or threats of termination, payment of commissions on services rendered, commitments – oral or in writing – on future governmental contracts, offers of petty cash or food, and vote-buying. “Psychological” mechanisms are anything having to do with intimidation, either of individual voters or an entire community. Intimidation may imply the use of violence or just deprivation of certain goods and services expected from the government or local leaders.

Fraudulent actions such as tampering with civil registries or producing fake voter cards may seriously change the results of the elections and yet their effects may be extremely hard to quantify. A well reported case is that of the Guatemalan general elections of 2003, wherein the party in power conducted extensive vote buying from within military garrisons, and used violence and intimidation, including pressure on government workers with their job tenure at stake, in an effort to fraudulently sway the results of the election. Despite this extensive fraud

and contrary to the expectations of many, the party lost the elections by margins of 5 to 20 percent of the vote at the municipal, parliamentary and presidential levels.<sup>12</sup>

Unresolved irregularities may also accumulate to the point that they culminate in a fraudulent election result. Since the individual instances of fraud are so small, it may not be possible to fully assess the extent of the fraud during the process. A particularly complicated situation arises when vulnerable populations are purposefully and systematically prevented or deterred from exercising their political or social rights, through operational impediments in the civil, electoral, and other citizen registries. The result is that minorities, people with disabilities, the poor, women and youth may be denied their rights to vote on account of the ideology of or discrimination by the group in power. These groups are often in jeopardy of being denied the right to vote even though they have met the age and registration requirements. Where such a situation exists, the right to political participation as proclaimed in the UN International Covenant for Civil and Political Rights (ICCPR) is violated, and, therefore, the assumption that the outcome reflects the will of the people is incorrect since a large part of the qualified citizenry has been purposefully kept out of the voting population.

For example, voter list manipulation was frequently practiced in some Western European countries before World War II, in the southern United States until the Civil Rights movement of the 1960's, and it continues to be evident in many other countries, even today. When a large number of people are excluded from the voting system, the question arises of whether the results of any given election would have been different if said group had been enfranchised. Certain questions must be assessed on a case by case basis. For example, can electoral fraud be claimed under those conditions? And, if so, should the election be considered legitimate?

#### *The role of modern communication and IT in detecting electoral fraud*

The spread of modern communication and information technologies represents both major challenges in detecting electoral fraud, and an opportunity to bolster detection methods. Use of electronic technologies as a whole has added new complexities to detecting fraudulent practices, at least in part by displacing them from traditional to less visible and understandable loci (e.g. from polling stations to computerized electoral registries accessed via the Internet). On the other hand, an IFES pilot program in Indonesia demonstrated that using an SMS reporting system can help identify and isolate possible instances of electoral fraud.

There are several sensitive areas of the electoral process where electronic technologies may impinge. First, there can be network breaches that cast doubts or suspicion on the actual result of the elections. Network breaches, or even just stoppages, may occur as part of a well planned system of aggregate counting and transmission of results in a way that can be illicitly manipulated at will by the EMB. Such was the case in Peru in 2000, where the vote data

transmission included stoppages at different levels before reaching the final aggregate counting level. This breach, among other instances of malpractice, was denounced by the main local monitor *Transparencia*, and the elections were considered fraudulent. Another kind of breach may take place by an accidental and complete failure of the network as happened in West Germany during a general election in the 1980s. In that case, manual counting followed and there was no suspicion of fraud by the stakeholders.

A second set of problems emerges on account of the intangible nature of the electronic information the networks hold. This regards web accessibility of results for the EMB and the general public. The example of local municipal elections in Nicaragua in 2008 is a recent case where changes of results on the EMB's website in the days after the voting generated fraud accusations both among opposition parties and the international community.

Finally, there are also certain tasks that are made harder for practitioners and certainly less visible to election monitors by the use of advanced technology. Most notably, identifying fraud may necessitate retracing the process through the various electoral operational systems, and carefully analyzing sensitive electoral materials, including: balloting records; implementing citizen identification procedures and ID card distribution; compiling, processing, analyzing and making public political finance records; aggregate counting of the ballots, and adjudication of complaints.

#### *Election personnel and possible agents of fraud*

There are several different categories of personnel that may be involved with elections in a given country. The standard election personnel list would include electoral officials from either the EMB or provincial and municipal governments who are tasked with some part of election operations on a permanent or temporary basis (permanent electoral officers are a relatively modern phenomenon, even in stable democracies). Polling station officials are most often provided by political parties, the government, other public institutions such as schools, or selected randomly from citizen registries. Political party representatives are duly accredited before electoral authorities, and police officers are tasked with ensuring security of polling stations and counting centers.

Although police involvement is fairly standard, it is not uncommon in new democracies, especially under weak security and warfare conditions, for military and police personnel to engage in the election process beyond simply providing security in transporting electoral materials or ensuring safety at voting places. Even under war conditions, the standard practice is that police officers are present at the polling centers while military personnel makes a second and more remote security ring. Sometimes, police presence inside the polling center may allow for intimidation, but very often – as in most of Latin America and also in Africa – it is taken for

granted, and allegations of intimidation based on their presence should be demonstrated rather than assumed. Similarly, other officials, such as governors, municipal employees, tribal and clan chiefs, imams, and even the candidates themselves, may also attempt to affect the outcome of elections by being present around the polling station during the voting day.

A prime example of this type of undue influence by political operators was directly witnessed by this writer in the first general election in Yemen after the civil war, in which separate polling stations for men and women had been provided. An imam, who was also a women's doctor and a well-known political supporter of one party, was stationed at the entrance of polling stations for women, greeting the voters as they entered. This is an unusual practice in most traditional Islamic and male dominated cultures, and could be considered a direct effort to suggest for which party the women should vote. In Afghanistan, governors' agents and prominent candidates participated directly in ballot stuffing, ghost voting, and ghost polling stations. Election stakeholders who are formally external to the process, such as political party-salaried militants, trade union staff, members of the business community, and governmental officers (civil or military) that are operating within wider corruption networks, are more likely to commit fraud or attempt to influence the outcome of the elections during the early stages of the electoral process (for example, during the formation of civil registries and voter lists, and the production and distribution of ID cards), rather than during the voting and counting. These agents' activities typically include jeopardizing civil or voter registration of certain categories of people (i.e. indigenous populations, the impoverished, the youth, and opposition party supporters).

Making an exhaustive list of fraud activities that would be valid for all countries is a nearly impossible task; however, the discussion above illustrates the importance of having an independent professional staff managing the electoral process. This is the first line of fraud deterrence, detection and mitigation. A more detailed list of common examples that will help practitioners and observers identify patterns, data points, and systems of fraudulent activities will be developed. Different types of fraud and irregularities call for different deterrence, detection, and mitigation approaches and measures.

#### **IV. International Standards and Electoral Fraud**

After reviewing the global reach of electoral fraud within new democracies, defining electoral fraud, and reviewing the actors involved in the electoral process, we now turn to how the democracy assistance community can draw upon generally accepted international standards in its efforts to assess and combat electoral fraud. In devising a conceptual framework to combat fraud, widely accepted international democratic standards will be used to assess the effectiveness of the electoral process in each country. These standards touch on every level of the democratic legal order, from constitutional considerations to ordinary legislation to rules and regulations promulgated by EMBs and other administrative bodies. More specifically, they

affect the technical aspects of elections from the conduct of voter registration at the beginning of the process all the way through the final adjudication of election disputes. Electoral fraud can be committed at and affect each step in the process. In this section of the paper, best practices as well as some examples of fraud are tied to the democratic standards that should inspire each stage of the electoral process.

It is frequently asked: “What exactly is meant by international standards for democratic elections and do such standards even exist?” In fact, those standards can be readily identified in both international legal instruments as well as in those best practices widely shared among democracy activists, analysts and electoral practitioners.<sup>13</sup> Democratic standards address each stage of the electoral process, from designing the electoral system to finalizing electoral outcomes. The eight democratic principles enshrined in Article 25 of the ICCPR (see footnote 1) of 1966 can be used as concrete benchmarks for achieving free and fair democratic elections: 1) *periodic elections*; 2) *universal suffrage*; 3) *equal suffrage*; 4) *right to stand for public office*; 5) *right to vote*; 6) *secret ballot*; 7) *genuine elections*; and, 8) *allowing for the free expression of the will of the people*.<sup>14</sup>

Compliance with international standards for elections in a given country should be assessed after taking into consideration certain contextual variables directly affecting the effectiveness and transparency of electoral management and procedures. At a minimum, genuine elections require a level playing field where the real possibility for choice is provided to voters. Fairly equal access to resources for competition should not be denied in the political system; or at least the main obstacles to competition should be removed by the public authorities. If fair conditions are established for choice and competition, then the will of the people can be expected to emerge freely and effectively. Fair legal provisions, good will, and neutrality of law enforcement, election management bodies, and public authorities are important aspects of this, as are open and transparent decision making processes, production of electoral materials, and logistics for registration, voting and counting. Another salient feature of a democratic election is the secret ballot, which requires that voters not be subjected to intimidation or threats, in addition to the traditional screen for anonymity at the polling station.

In our efforts to objectively evaluate the impact of fraud on the electoral process, we can group the eight democratic standards from the ICCPR into four measurable categories, each reflecting a different dimension of the electoral cycle.

**Category 1: The Underlying Political Framework.** *The obligation to hold periodic elections and maintain an electoral system that allows for the free expression of the will of the people.*

- A. *Security environment:* Ensuring a fairly secure environment for voters and sensitive materials on Election Day in all areas of the country is a necessary condition for holding democratic elections. The absence of basic security measures will jeopardize, if not severely harm, the acceptability of the results. Although the level of political and psychological tolerance of security threats varies from country to country and is dependent on a number of factors, the free expression of the will of the people can hardly be expected when elections take place under severe security threats. This principle can be assessed by the type and degree of violence in the political system. Fully peaceful elections are still the ideal and the rule, but there are a growing number of exceptions.
- B. *The electoral authority:* Electoral management bodies (EMBs) administering the elections should perform in a neutral manner, regardless of whether they are part of the executive branch of government or if they form an independent electoral commission. The latter is currently the prevailing model worldwide. However, the manner by which electoral commissions are staffed - whether on a partisan basis, by independent professionals, or a mix of both - should not stymie their ability to maintain open and neutral relationships with political contenders.
- C. *Political communication, civic education and voter information:* Genuine elections allowing for the free expression of the will of the people require a level playing field. This is a precondition for political parties and candidates to be able to convey their programs and platforms to the public on a fairly equal basis in all areas of the country where they compete. A level playing field would also require that voters are given the necessary information to properly handle a ballot paper as well as to make a free choice among different options.

**Category 2: Free and Fair Elections.** *The right of the people to vote, and the obligation to maintain a secret ballot and to ensure that elections are genuine.*

- A. *Voting and counting operations:* This sub-category covers procurement and logistics for the election process. Voting procedures should be guided by the principles of transparency and equal application for all voters. Standards include: equal access to polling stations (including transportation and accessibility for the disabled); voting booth placement for secrecy of the ballot; neutral and effective polling station staff; safeguards against double voting (voter identification and/or indelible ink); facilitating the completion of the ballot (ballot format, vote by the disabled or the illiterate); and, presence of party and candidate representatives. Except as otherwise dictated by extraordinary security circumstances, the



first count of the votes will be made at the polling station level with party representatives and other observers present. More aggregated counts will also be completed and witnessed by party representatives and other observers. Party representatives should be entitled to receive a copy of tallies, and to audit the computer system.

- B. *Release of election results:* The announcement of results should be timely and comprehensive. Early publication of preliminary results enhances transparency and confidence in the elections and the electoral authorities.
- C. *Electoral grievance adjudication:* Adjudication of electoral claims, complaints and appeals should be prompt, neutral, and effective, no matter how the adjudication function is institutionally structured (i.e. ordinary judiciary, special judiciary, the electoral management bodies, or a mix). A system ready and able to remedy electoral irregularities allows for proper mitigation and punishment of fraudulent conduct.
- D. *Electoral observers:* Observation of all stages of election processes by international and domestic monitors ensures transparency and increases credibility. This category of rights from Article 25 of the ICCPR offers a justification and a standard for election observation. The cyclical nature of election processes would imply that short-term observation is not sufficient, and that observation must be long-term and take place throughout the cycle. The responsibilities of electoral observers are often established by the electoral laws and regulations. Observer codes of conduct are normally issued by international and domestic observer organizations.

Observer missions are often too focused on the later stages of the electoral process (i.e. final leg of the campaign, polling day and early counting) while some essential elements of the process are ignored, due to conceptual, financial, logistical, or other reasons. Observation methodologies do not normally include a specific chapter on early deterrence measures of fraud, its detection during the entirety of the electoral process, and mitigation of its effects once it has been detected. Nonetheless, they can be an integral part of fraud deterrence, in addition to fraud detection.

**Category 3: Right to Franchise.** *The right of universal and equal suffrage.*

- A. *Political rights, electoral formulae, and gender and minority representation:* It is necessary to avoid excluding any significant sector of the electorate or potential candidates, and not to tamper with electoral procedures. Fair legal provisions, good will, and neutrality of law enforcement and of implementation by public authorities are required. The legal framework should provide for periodic and genuine elections. The main challenge of electoral legislation is to help accommodate the political divides of society at the ballot box, including

territorial, ethnic-cultural, gender or ideological differences. Progress can be measured by assessing elections in a country compared to previous experiences in that country, as well as against regional and global experience.

- B. *Voter registration and voter lists:* Voter registration should be inclusive of all voting age populations (normally 18 and over). Moreover, voter registries should be updated regularly to reflect deaths and address changes, and safeguards curtailing multiple registrations by one person should be established so as to not leave room for multiple voting. It must be ensured that no significant segments of the population are being disenfranchised either by law or in practice.

**Category 4: Right to Participate.** *The right of the individual to stand for and, if elected, assume office.*

- A. *Political parties and candidates:* Registration and accreditation of political parties and candidates should be subject to certain requirements for eligibility. But, accreditation requirements should not be such that relevant political actors (individuals, organizations or movements) can be excluded either by unfairly stringent barriers (financial, support signatures or other) or by arbitrary decisions of the electoral authorities. Assessing what is reasonable in a given country must take into consideration the country's cultural environment and the political conditions of a particular election. It is also important to consider the nature of political parties: is there a dominant party, a multi-party system, or no formal recognition of parties at all? In practice, requirements such as being a registered voter and duly certified by a political party are the rule for individual candidates. Other restrictions may exist, which are related to security and political conditions.

Political party candidate agents or representatives should be permitted to actively monitor the different stages of the electoral process. Furthermore, they should not be impeded or hindered by unnecessary or burdensome requirements. Unreasonable rules and practices of exclusion of parties and candidates' agents are democratically unacceptable. Limitations may exist on the number of agents per party or candidate, or the number of agents simultaneously present at a given electoral site (e.g. registration, voting or counting centers).

- B. *Campaigns:* Freedoms of speech, movement and demonstration, as they relate to campaigning, should be guaranteed. The main limits to freedom of speech are derived from criminal law on personal offenses. Freedom of movement and demonstrations should be limited only by clear necessity to preserve public order (e.g. a standard for demonstrations is that they would only require notification to public authorities, not authorization).

Campaign finance is a grey area of the electoral process. There are a variety of approaches toward regulating political party funding and campaign expenses, all of which are equally legitimate in principle. However, not all of these approaches contribute to a level playing field in practice. Standards require that legal provisions be established, that there is transparency in reporting on funding and expenses, and that public authorities have the responsibility of monitoring and the power to sanction.

Public resources may legitimately be used on an equal basis (e.g. equal availability of public facilities for meetings, fair access to state-owned media). It is the use of these resources to the exclusive or special benefit of one of contenders, normally the party in government, which is against democratic standards.

Codes of Conduct for political parties and candidates generally follow standard guidelines under overarching principles of legality, certainty, objectivity, independence and impartiality. These include, among others, the following requirements: to abide by all electoral, civil and criminal laws of the country; to accept the electoral results certified by the election commission; to avoid hate speech; to commit to peaceful campaigning; and to strive to achieve full transparency in political finance and expenditures. Some other guidelines may stem from security concerns such as ensuring the safety of election officials and voters from violence, insult or threat, and to refrain from announcing or commenting on election results before the electoral authorities' official pronouncement. Codes of conduct customarily include some prohibitions (e.g. campaigns must not make frivolous use of or abuse the right to complain to the election commission or allow weapons or images of weapons to be carried at meetings or rallies).

- C. *Media*: Legal provisions and practice should provide for fairly equal access by all parties to publicly-owned media, at a minimum. For private media, the standard is that access should not be denied to any contender, and that fares should not be charged at higher rates than those for commercial advertising. Most often, the main ruling on the use of media during the electoral campaign is embodied in the electoral law, but sometimes an extensive *Code for Media* is separately established. Sanctions for violations range from financial penalties to the suspension of licenses or operations. Moreover, the right to reply should also be regulated as per the standard practice.

## V. Concluding Remarks on Genuine Democratic Elections

Democratization and democratic consolidation in new and emerging democracies are long-term processes. They should be regarded in the same way that pacification and democratization in post-World War II Germany and Japan are assessed today – as an investment in time, effort, money and support by the international community that will eventually allow the recipient to become a self-sustaining stable democracy. Toward this end, the next paper in this series will propose a framework for dealing with electoral fraud centered on deterrence, detection, and mitigation. It will propose methods for deterring potential fraud, detecting any fraud that is committed, and mitigating the damage caused by that fraud. The third and final paper will deal with the role of the international community in encouraging, supporting, and assisting in anti-fraud measures.

Much like it took several decades for Germany and Japan to reach their current levels of democratic consolidation, the process of fraud prevention is not a swift one. Viewed from the short-term perspective of a decade, we find in some cases only modest positive effects of democracy assistance and in others negligible or negative results.<sup>15</sup> Perseverance, however, will eventually lead to a reliable electoral system.

## VI. About the Author

Rafael López-Pintor is one of the most respected and well-known names in the field of electoral analysis and technical assistance. He has led projects in more than 30 countries during his 20-year career. He was the main researcher and writer of a UNDP-commissioned policy book on electoral management bodies, co-authored a second UNDP book on the cost of elections, and has authored 10 books and many articles on democracy development. He is a tenured professor at Universidad Autónoma in Madrid.

## Endnotes

<sup>1</sup> These fraud allegations were covered in many international publications. See, e.g., Stephen Ndegwa, "Kenya: Raila Calls for Vote Recount," *The Standard*, Dec. 30, 2007, available at <http://allafrica.com/stories/200712300020.html>; Chris McGreal, "Ruling party named winner in disputed Nigerian election," *The Guardian*, Apr. 24, 2007, available at <http://www.guardian.co.uk/world/2007/apr/24/chrismcgreal.international>; "Moldova students raid parliament," BBC, Apr. 7, 2009, available at <http://news.bbc.co.uk/2/hi/7987608.stm>; "Pakistan election underway amid fears of fraud," CTV News, Feb. 17, 2008, available at [http://www.ctv.ca/CTVNews/Canada/20080217/pakistan\\_elxn\\_080217/](http://www.ctv.ca/CTVNews/Canada/20080217/pakistan_elxn_080217/); "African observers detect fraud in Zimbabwe," Reuters, Mar. 30, 2008, available at <http://www.abc.net.au/news/stories/2008/03/30/2202807.htm>.

<sup>2</sup> Seminal works on political parties and elections include those by Moisey Ostrogorsky, *Democracy and the Organization of Political Parties* (1902), in comparing practices in the US and the UK; Robert Michels' *On the Sociology of Political Parties in Modern Democracy* (1911); and studies by Andre Siegfried in the 1920's on various countries including France and New Zealand. An obligatory reference in the field, albeit by proxy, is Nikolai Gogol's novel *Dead Souls* (1842) on the manipulation of property registries for over-taxation on deceased owners, a behavior later translated into electoral malpractice via "ghost voters" on many countries' voter lists.

<sup>3</sup> For an example in the United Kingdom, see <http://www.independent.co.uk/news/uk/politics/police-investigate-electoral-fraud-claims-after-journalist-is-beaten-up-1962536.html>

<sup>4</sup> Sabrina Tavernise and Abdul Waheed Wafa, "U.N. Official Acknowledges 'Widespread Fraud' in Afghan Election," *New York Times*, Oct. 11, 2009, available at <http://www.nytimes.com/2009/10/12/world/asia/12afghan.html>.

<sup>5</sup> Kamil Tchorek, "Protest grows in western city," *The Times*, Nov. 26, 2004, available at <http://www.timesonline.co.uk/tol/news/world/article395652.ece>

<sup>6</sup> "A Free country is one where there is broad scope for open political competition, a climate of respect for civil liberties, significant independent civic life, and independent media. A Partly Free country is one in which there is limited respect for political rights and civil liberties. Partly Free states frequently suffer from an environment of corruption, weak rule of law, ethnic and religious strife, and often a setting in which a single political party enjoys dominance despite the façade of limited pluralism. A Not Free country is one where basic political rights are absent, and basic civil liberties are widely and systematically denied." Freedom House, "Freedom in the World 2010" pg. 3.

<sup>7</sup> From the 194 countries included in the 2010 Freedom House report, there are 17 under the category "Not free", which should be considered as not having elections at all or elections which could not be considered meaningful from the perspective of building a pluralistic democracy (multiparty, polyarchy): Angola, Brunei, Burma, China, Cuba, Eritrea, Laos, Libya, North Korea, Oman, Qatar, Saudi Arabia, Somalia, Swaziland, Syria, United Arab Emirates, and Vietnam. The following 41 countries could be considered as stable democracies. They are all classified as "Free" by the Freedom House index, and some of them are the oldest and more stable democracies in world history: Australia, Austria, Belgium, Brazil, Canada, Chile, Costa Rica, Denmark, Finland, France, Germany, Ghana, Greece, Hungary, Iceland, India, Ireland, Israel, Italy, Jamaica, Japan, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Monaco, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, San Marino, Spain, Sweden, Switzerland, Trinidad and Tobago, United Kingdom, United States of America, Uruguay. The following 48 countries could be considered as consolidating democracies, which have already achieved relatively high levels of liberty and civil rights. They are all classified as "Free" by the Freedom House index: Andorra, Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Benin, Botswana, Bulgaria, Cape Verde, Croatia, Cyprus, Czech Republic, Dominica, Dominican Republic, El Salvador, Estonia, Grenada, Guyana, Indonesia, Kiribati, Lesotho, Mali, Marwill islands, Mauritius, Mexico, Micronesia, Mongolia, Namibia, Nauru, Palau, Peru, Romania, Saint Kitts and Nevis, Sainte Lucia, Saint Vincent and Grenadines, Samoa, Sao Tome and Principe, Serbia, Slovakia, Slovenia, South Africa, South Korea, Suriname, Taiwan, Turkey, Tuvalu, and Vanuatu. The following 27 countries could be considered as consolidating democracies, although they have not reached similar high levels of liberty and civil rights as the countries mentioned above. They are all classified as "Partly Free" by the Freedom House index: Albania, Bangladesh, Bolivia, Bosnia Herzegovina, Burkina-Faso, Colombia, Ecuador, Guatemala, Jordan, Senegal, Ukraine, Lebanon, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Nigeria, Pakistan, Papua New Guinea, Paraguay, Philippines, Seychelles, Sierra Leona, Singapore, Solomon Islands, and Venezuela. The following 35 countries could be considered as emerging democracies, which have attained similar levels of liberty and civil rights to the countries mentioned above. They are all classified as "Partly Free" by the Freedom House index: Armenia, Bahrain, Bhutan, Burundi, Central African Republic, Comoros, Djibouti, East Timor, Ethiopia, Fiji, Gabon, Georgia, Guinea Bissau, Haiti, Honduras, Kenya, Kosovo, Kuwait, Kyrgyzstan, Liberia, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Moldova, Nepal, Sri Lanka, Tanzania, Thailand, Togo, Tonga, Uganda, Yemen, and Zambia. The following 26 countries could be considered as emerging democracies, still with the lowest levels of liberty and civil rights. They are all classified as "Not free" by the Freedom House index. Two of them (Afghanistan and Iraq) hold periodic elections in the middle of an armed conflict, including occupying forces: Afghanistan, Algeria, Azerbaijan, Belarus, Cambodia, Cameroon, Chad, Congo-Brazzaville, Congo-Kinshasa, Cote d'Ivoire, Egypt, Equatorial Guinea, The Gambia, Guinea, Iraq, Iran, Kazakhstan, Mauritania, Russia, Rwanda, Sudan, Tajikistan, Tunisia, Turkmenistan, Uzbekistan, and Zimbabwe.

<sup>8</sup> This writer has himself witnessed fraud of different extents and modalities as an electoral observer or international official in many countries, including El Salvador, Nicaragua, Guatemala, Honduras, Ecuador, Peru, Liberia, Nigeria, Angola, Ethiopia, Kosovo, Cambodia, and Afghanistan.

<sup>9</sup> The original 194 countries of the Freedom House report have been reduced to 177 where elections with varying degrees of freedom and plural competition are held. The 17 countries excluded are those where either elections are not at all held, or where voting takes place under a one party system (see list of countries for each category in note 7).

<sup>10</sup> Khan, Mushtaq H.: "A Typology of Corrupt Transactions in Developing Countries" in IDS Bulletin, vol.27, no.2, page 12, April 1996.

<sup>11</sup> Ben Farmer, "Hamid Karzai 're-elected' by landslide, poll data shows," Telegraph, Aug. 23, 2009, available at <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/6077203/Hamid-Karzai-re-elected-by-landslide-poll-data-shows.html>.

<sup>12</sup> "Guatemala general 'accepts loss,'" BBC, Nov. 11, 2003, available at <http://news.bbc.co.uk/2/hi/americas/3261329.stm>.

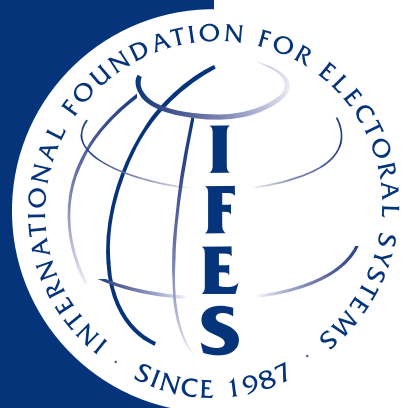
<sup>13</sup> Democracy standards stem from international conventions as well as from widely shared guidelines by international associations of practitioners and organizations engaging in electoral observation; among the latter are the United Nations, European Union, Organization for Security and Cooperation in Europe, International IDEA, and Inter-Parliamentary Union. Main international relevant legal instruments are excerpted as follows. *The Universal Declaration of Human Rights* of 1948, where Article 21 reads: "1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2. Everyone has the right to equal access to public service in his country. 3. The will of the people will be the basis of the authority of government; this will be expressed in periodic and genuine elections which will be held by universal and equal suffrage and will be held by secret ballot or by the equivalent free voting procedures". *The International Covenant on Civil and Political Rights (ICCPR)* of 1966 enshrines the right to suffrage in Article 25: "Every citizen will have the right and the opportunity without any of the distinctions mentioned in article 2 and without unreasonable restrictions: a) to take part in the conduct of public affairs, directly or through freely chosen representatives; b) to vote and to be elected at genuine periodic elections which will be by universal and equal suffrage and will be held by secret ballot, guaranteeing the free expression of the will of the electors; c) to have access, on general terms of equality, to public service in his country". Still within the UN system, there are, *inter alia*, the *Convention on the Political Rights of Women of 1952*; the *Convention on the Elimination of all forms of Discrimination Against Women*; of 1979; the *Convention on the Elimination of Racial Discrimination of 1966*; the *Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion Belief of 1981*; the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities*; the General Assembly Resolution of December 17, 1991 on *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections*; and the October 27 of 2005 *Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers*. At the regional level, there is, *inter alia*, the *1950 European Convention on Human Rights*; the *1990 Copenhagen Document of the Organization for Security and Cooperation in Europe, OSCE*; the *1948 American Declaration of the Rights and Duties of Man*, and the *1969 American Convention of Human Rights*; the *1981 African Charter on Human and Peoples' Rights*; the *1994 Inter-Parliamentary Union Declaration on Criteria for Free and Fair Elections*; the *British Commonwealth 1991 Harare Declaration*; and similar instruments from other international organizations such as the *Commonwealth of Independent States (1995)*, the *League of Arab states (1994)*, the *Organization of American States (1969, 2000)*, the *Council of Europe (1950-1999)*, and the *African Union (2002)*. Besides international legal instruments, detailed guidelines for good electoral practice have been developed by international organizations such as UN, OSCE, IDEA, and the Inter-Parliamentary Union.

<sup>14</sup> "To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors." ICCPR, art. 25 (b).

<sup>15</sup> Rafael Lopez-Pintor (2005). *Post-conflict Elections and Democratization: An Experience Review*. Washington, DC: USAID. See following references within the essay: López-Pintor 2004; von Hippel 2000, 11–18; Burnell 2000, 341–46; Kumar 1998, 229–37; Kumar 1999, 19–22; Kumar 2000, 201–2; Carothers 1999, 308; Sisk 1996, xii–xiv, 87–118; von Hippel 2000, 24–25.

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