

Promotion du dialogue pour la
réforme démocratique en Haïti

Pwomosyon dyalòg pou refòm
demokratik an Ayiti

Promoting dialogue
for democratic reform in Haiti



Electoral Challenges in Haiti from a Comparative Perspective

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Developed for the Club de Madrid's
High-Level Delegation to Haiti



WORLD LEADERSHIP ALLIANCE
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1. INTRODUCTION

1.1. Background

When President Martelly launched his Five-E Development Strategy - consisting of employment, *etat de droit* (rule of law), education, environment and energy - he would may have been well advised to include a sixth “E” for elections, an issue that is currently at an impasse and threatening to destabilize Haiti’s fragile institutions.

This paper has been commissioned by the Club de Madrid to identify lessons learned and comparative international experiences relevant to some of the key challenges faced by Haiti on the election front, namely:

- ◆ Electoral management design for the transition toward a Permanent Electoral Council;
- ◆ Voter turnout;
- ◆ Party fragmentation;
- ◆ Elections calendar;
- ◆ Party finance;
- ◆ Cost of elections.

While the present paper is not an attempt to analyse the Haitian context, a few salient elements of that country’s electoral system can serve as useful reference points while considering the global lessons and comparative experiences including:

- ◆ Haiti’s President is elected by popular vote to serve a 5-year term and may not serve consecutive terms. A run-off is held if no candidate receives more than 50% of the vote. The constitution limits presidents to two non-consecutive terms.
- ◆ The Senate is made up of 30 total members, three from each department. Senators are elected for six-year terms by first past the post (FPTP) system. Run-offs are held if the top vote getter does not receive more than 50% of the vote. The Senate has been struggling to maintain a quorum since 2012 when the term of one-third of its members expired. Another one-third of the senators will see their terms expire in January 2015.
- ◆ The Lower House is made up of 99 representatives elected for four year terms through a FPTP system. Their terms expire in January 2015.
- ◆ The term of the 130 elected local council members expired in 2012 and have since been replaced by government-appointed

“municipal agents”.

- ◆ Election organization and oversight has been entrusted to a provisional electoral council since 1987. The current council is the 16th in the last 25 years. Since that time, Haiti has held six presidential elections and nine parliamentary elections.

1.2. Caveats

The Club de Madrid was founded based on the belief that international lessons can assist countries that are facing democratic governance challenges. Over the last decade, the Club de Madrid has developed a special expertise in providing advice -based on concrete, proven experiences- for critical democratic transition and consolidation processes.

This paper has been developed in the same spirit, drawing on cross-country research and specific national experiences that have been tested around the world. At the same time, it must be stated that the utility of these international lessons are tempered by some key caveats:

- ◆ Choices related to elections are not technical but political. The provision of research, lessons learned and comparative global experiences are only useful to the extent that decision makers are open to listen, dialogue and make concessions based on the common good. *“At its root, electoral integrity is a political problem. Power, and the competition for power, must be regulated. It is not enough for governments to create institutions; politicians must respect and safeguard the independence and professionalism of election officials, judges and courts.”*¹
- ◆ The “perfect” electoral system does not exist. A system that works well in one context does not translate to another due to a myriad of particular national factors such as history, culture, geography, development, party development, etc. Rather than aiming for a set of ideal electoral standards, a more sensible focus starts from a national stocktaking to determine the current electoral “baseline” vis-a-vis the binding international obligations laid out in United Nations jurisprudence².
- ◆ The devil is in the details. Measures cannot be adopted in isolation, but rather are inter-related. Even a seemingly “minor” amendment to one aspect of the electoral process can trigger a ripple effect that impacts other aspects of the electoral and party systems. Additionally, the effects of a reform are not immediately apparent; there are likely to be unexpected consequences in the long run.

1 Global Commission on Elections, Democracy and Security.

2 Tuccinardi, This publication compiles the binding UN obligations on 21 dimensions related to electoral processes.

2. ELECTORAL MANAGEMENT DESIGN: TRANSITIONING TO A PERMANENT ELECTORAL COUNCIL

2.1. Background

The 1987 Constitution mandated that transitional elections be administered by a provisional council (Conseil Electoral Provisoire) until a permanent electoral council (Conseil Electoral Permanent) could be established. More than 25 years later, Haiti has still not transitioned to that permanent election council.

Article 289 of the Constitution states that the Provisional Electoral Council should be made up of nine representatives from diverse sectors of Haitian society including churches, universities, journalists, and human rights groups. Articles 191-199 of the Constitution specifies that the Permanent Electoral Council is charged with *“organizing and controlling with complete independence all electoral procedures throughout the territory of the Republic until the results of the election are announced”*. Its nine members will be named to nine-year terms by a 3+3+3 formula with three bodies—the executive, the judiciary and the National Assembly—each responsible for naming three members.

The indefinite extension of a provisional EMB puts electoral integrity at risk. The OAS-CARICOM Election Observation Mission of 2010/11 cited a *“lack of trust in the electoral body (which) constituted a permanent obstacle and influenced the behavior of political players in the electoral process”* and the need for a permanent election council to ensure accountability of the magistrates³. The impact is also felt in terms of national capacity for election management; *“Institutional memory and development of staff professionalism (is) a serious problem for election administration”*.

2.2. Composition and selection

While an independent and credible election management body is not sufficient on its own to guarantee electoral integrity, it is an essential ingredient. The composition of the EMB is a key starting point for ensuring independence⁵. Inclusive consultations and a transparent process for EMB composition can enhance public trust⁶. In particular, a high degree of consensus among political forces in defining the structure and composition of the election organization(s) has proven to be a critical factor in the prevention of electoral

3 Organization of American States

4 Bardell

5 López-Pintor

6 International IDEA (2012)

disputes later⁷. *"Such consensus contributes to the legitimacy and credibility of the electoral process and its trustworthiness in the eyes of voters translates into greater participation⁸."*

Models for EMB composition can be broken down between three types: multiparty, expert and mixed. Under the first, EMBs are made up of political party nominees with members serving as party representatives. *"...while each individual member may be seen from the outside as partisan, each is also ensuring that the others do not take partisan advantage, so the EMB can still be credibly perceived as an impartial body. The sum of partialities thus becomes a guarantee of impartiality.⁹"*

Members of expert-based EMBs may be nominated by political parties but cannot serve in a partisan manner. Expert-based EMBs are generally composed of respected public figures seen as impartial and with expertise in fields such as the law, public administration, political science or the media¹⁰. This model can be found in Australia, Bangladesh, Canada, Costa Rica, India, Indonesia, Poland, and Thailand, among other countries¹¹.

Some countries opt for a mixed model that combines party-based appointees as well as non-partisan members. For instance, the Croatian EMB includes five (non-partisan) legal professionals as well as six members equally divided between the ruling and oppositions parties¹². The party-based members are only able to outvote the expert participants if they can agree among themselves¹³. Mexico's Instituto Nacional de Elecciones (INE) is made up of one President and 10 General Counselors while political party and parliamentary caucus representatives are included as non-voting members¹⁴.

A review of elections in 19 Latin American countries that covered 1980 -2007 found that the expert-based model—with professional and independent EMBs free from partisan influence—was more likely to lead to a higher quality electoral process, particularly in contexts of political polarization¹⁵. Party-based EMBs may bring the confidence that all major parties are represented but it can also lead to impasses or lower technical capacity if meritocratic hiring is not the norm¹⁶. When the partisan balanced model does succeed, it is usually with a high-level of presence of international support and monitors¹⁷. Another study in Latin America also found that EMB partisanship was associated with reduced levels of voter confidence in the EMB as well

7 Orozco

8 Orozco

9 International IDEA (2012)

10 Ibid

11 Ibid

12 Ibid

13 Ibid

14 Instituto Nacional de Elecciones de Mexico

15 Hartlyn, et.al

16 Ibid

17 Ibid

as in the election outcome¹⁸. Furthermore, confidence in the EMB and the election outcomes were predictors for greater levels of voter turnout¹⁹.

In some countries the designation of the EMB Chair and the rest of the membership is determined through a two-track process. In Romania, the legislature appoints the EMB Chair while the head of state appoints other members²⁰. In South Africa, the EMB Chair is appointed at the level of a senior judge, while the rank of other members is similar to a lower court judge²¹. In other countries (including Costa Rica), all members are appointed on the same terms, and the chair is elected by his/her peers²².

2.3. Conditions of employment

In addition to composition and selection, other key factors for EMB independence include the conditions of their employment. *“EMB members’ security of tenure and immunity from any harassment, ranging from salary cuts to malicious prosecution, will enable them to carry out their work impartially, professionally, and without fear or favour, and to resist political pressure.”*²³ Unspecified terms of office- lasting until death, resignation or retirement age -have the advantage of “protecting” EMB members from political pressure though they may hinder renewal and innovation. Staggered terms -found for instance in South Africa-can enhance institutional memory and leadership succession²⁴.

2.4. Trustbuilding measures

Once in office, EMB members themselves can exercise a great deal of agency to build public trust. One important initial step is publicizing dates of meetings and opening them to the public²⁵. In the event that closed meetings are necessary however, EMB members should take care to publish minutes and make public announcements regarding the decisions made soon after²⁶. Credibility can also hinge on the quality of the professional staff who should be fully and exclusively accountable to the EMB, and perform according to the terms of a (publicly shared) code of conduct²⁷.

18 Kerevel

19 Kerevel

20 International IDEA (2006)

21 Ibid

22 Ibid

23 International IDEA (2012)

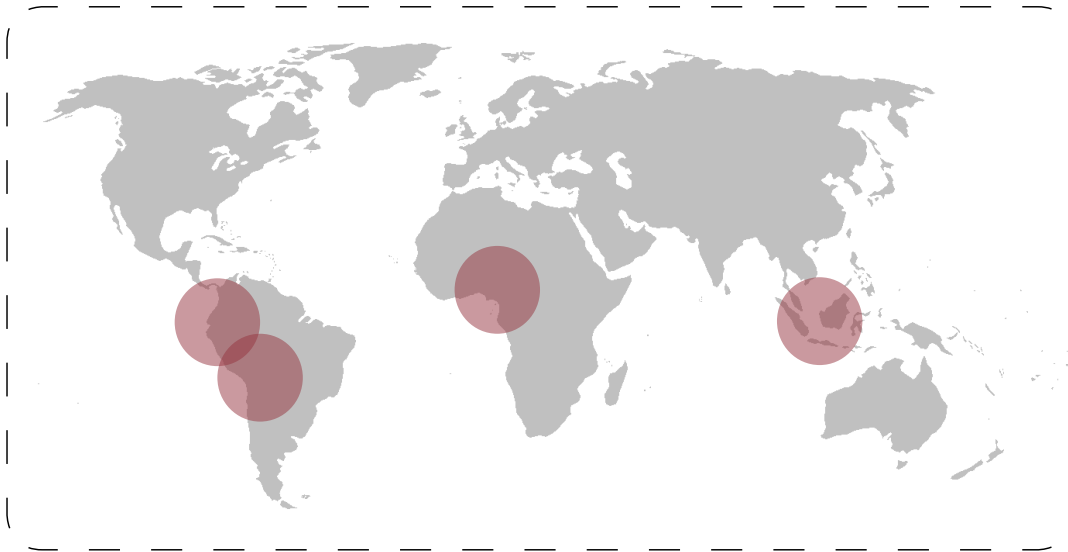
24 International IDEA (2006)

25 International IDEA (2012)

26 Ibid

27 Ibid

2.5. Cases



Indonesia EMB

Draws on International IDEA (2012) and Freedom House

The Indonesian General Election Commission (KPU) was a cornerstone of that country's transition to democracy in the late 1990s. During the initial stage while the key goal was inclusiveness, the EMB was composed of five government-appointed officials and representatives each of the 48 political parties. Each party representative had one vote (total of 48), while government appointees each had nine votes (total of 45). Two years later, after initial credibility was established, the EMB was able to depoliticize and transition to the 11-member expert model structure that would successfully organize and oversee the 2004 electoral process which included over 100 million Indonesians in what some called *"the world's most complicated one-day elections."*

Bolivia EMB

Draws on Romero and Interview with Alfonso Ferrufino

The experience of Bolivia demonstrates that it is possible to recover public confidence after it's been lost. An incident of fraud in 1989 -perpetrated by four of the seven commissioners (later known as the "banda de los cuatro") -led to deep citizen distrust in the Consejo Nacional Electoral. Reform came about through amendments to the Electoral Law. The party-based EMB model was replaced by an expert model with members chosen by a 2/3 vote in the legislature, as well as one member designated directly by the Executive. Key eminent public figures were named to the "Corte de los Notables" and civil society pressure ensured that appointments -at the national and departmental level- reflected cross-party consensus. The second essential element of the reform was eliminating the EMB's authority to modify or annul the electoral results of a polling station as had happened in 1989. These fundamental reforms put in place a stable and nonpartisan elections management model that was free of contested electoral results for more than two decades.

Ghana trust-building

Draws on International IDEA (2012) and Global Commission on Elections, Democracy and Security

The Ghanaian Election Commission has built a reputation based on sound electoral management and transparency. One key measure that helped build its reputation was the creation of an Inter-Party Advisory Committee in 1994—two years prior to the next election—to promote dialogue and trust in the process across parties and provide a space for the discussion of electoral complaints. “The Ghanaian EC’s actions to directly address the opposition’s criticisms of the previous election underpinned an effective strategy—to define itself by acknowledging past patterns of actual and perceived fraud, and to tackle those issues in a visible and consultative manner.”

Ecuador Supreme Court

While key decisions regarding the composition and selection of EMB membership are in the hands of national stakeholders, assistance can be requested to support the transparency and overall quality of the process. Though not an elections-related issue, the type of support provided by the international community in the selection of members of the Ecuadoran Supreme Court of Justice in 2005 may be instructive. After a protracted impasse that had left the country without a functioning court for more than a year, the Ecuadoran government requested support from the UN, Organization of American States (OAS) and Andean Community (CAN). Over a span of five months, the eight-member Comité de Veeduría oversaw a transparent, non-partisan and merit-based selection process that resulted in the appointment of 31 members of the Supreme Court of Justice.

3. VOTER TURNOUT

3.1. Background

According to elections expert Dieter Nohlen, voting is the most important form of political participation²⁸. First, electoral participation is the most democratic and egalitarian form of participation, including the highest number of citizens. Second, voting is the most central link between citizen preferences and political power. Finally, this critical input (votes) generates outputs (legislation and consequently national development) that affect the entire society.

In Haiti, there is significant room for improvement on voter turnout. According to the International IDEA Voter Turnout Database, Haiti's rate in 2011 was the lowest in the world²⁹. The next lowest turnout rate for a presidential election was 38% in Liberia and Afghanistan. In Haiti, voting is not compulsory.

Not surprisingly, rates of disenfranchisement were highest among populations more affected by the earthquake³⁰. Some of the other factors cited as obstacles to voting include insecurity, corruption, lack of information and poor communication, disqualification of some candidates, and organizational and technical problems³¹. Below is a brief summary of recent voter turnout rates in Haiti at the presidential level³².

Year	Voter Turnout
2011 (second round)	22%
2010 (first round)	23%
2006	59%
2000	78%
1990	50%

In Haiti, voter eligibility is dependent on the possession of an identity card and voter registration. A number of organizations have highlighted the

28 Tuesta (2004)

29 International IDEA Voter Turnout Database and IFES Election Guide

30 Bardell

31 Bardell

32 International IDEA Voter Turnout Database

deficiencies in Haiti's voter registration efforts. The OAS-CARICOM Election Observation Mission Report, for instance, focused on the need to establish voter registration deadlines sufficiently in advance (six months) of the election in order to give the National Identification Office time to process and transmit new data³³.

Voter information campaigns are aimed at informing citizens of how they can register, who can vote, where to vote and when to vote. These campaigns have been carried out in Haiti in the past and included the use of text messages in the most recent electoral processes. The OAS-CARICOM Mission Report noted the late launch of voter education activities during the first round of the most recent presidential elections, but found that the quality of outreach efforts improved considerably for the March run off³⁴.

3.2. Options for increasing electoral participation

More research is needed to better understand the factors behind Haiti's low voter turnout rate. To what extent does the reason lie with contextual factors such as the perceived effectiveness of political competition or the nature of the party system? Or are there specific barriers to voting -such as voter registration and access to polls- that must be overcome? In either case, what are the practical steps that can be taken to make a difference?

Twenty-eight countries have adopted compulsory voting for some or all of their electoral districts. A number of Latin American countries -including Argentina, Brazil and Peru- are among those with compulsory voting. Underlying this measure is the belief that turnout is a "public good" that leads to a sense of greater civic duty and stronger legitimacy of the elected representatives.

Automatic voter registration is another mechanism that a number of countries have adopted to encourage higher voter turnout rates. According to this scheme, it is the responsibility of the government to ensure universal registration on a continuous basis such that the voter is automatically registered on a voter list upon reaching voting age, with no requirement to appear before any public authority. This practice is common in Europe as well as Canada, Australia, Argentina, and Chile. The effectiveness of this measure will necessarily depend on the quality of the civil registry records or resident lists at the local government level. Maintenance of the records (adding names of those who come of age or attain citizenship and eliminating others due to death or move) requires ongoing capacity at the civil register or electoral management body. *"Continuous registers are used more often than periodic registers in all regions of the world, despite the complex machinery and high cost incurred. It is important to note, however that voter registration through a periodic voter register is ultimately a more expensive operation than maintaining a continuous register."*³⁵

33 Organization of American States

34 Organization of American States

35 Fischer and Lopez-Pintor

Electoral system design also has an impact on voter turnout. A review of 14 studies found that first past the post systems are associated with a lower level of electoral participation³⁶. Furthermore, research has found that non-simultaneous elections are also likely to depress voter turnout levels³⁷.

Voter turnout results are not generally disaggregated by gender. However a review of 12 countries for which data is available show that the gender voting gap has been closed in most of the developed nations included but the lowest income countries (Liberia and Guatemala) still see women voting at a lower proportion than men. One critical obstacle is that women are more likely than men to lack citizenship, birth or marriage certificates and other documents necessary for voter registration³⁸.

There have been a number of successful initiatives aimed at increasing female turnout. EMBs seeking to increase the rate of voter turnout among women should begin with a “gender audit” that identifies all potential obstacles and sets a baseline for action³⁹. EMB sensitivity can also be enhanced through the incorporation of women members at all levels. Additionally, care should be taken during voting day to ensure that key elements are in place such as secret ballot, accessible (or even mobile) polling locations, and ensuring security throughout the process. The ACE Project has identified 23 countries that use separate polling stations for women and men which may assist in ensuring that women are able to exercise their electoral choice without pressure⁴⁰. Security for women is also a critical aspect.

The issue of facilitating voting for people living with disabilities is receiving increased attention around the world⁴¹. Unfortunately, much of Latin America and the Caribbean do not have the necessary legal and regulatory framework in place to ensure that the disabled are effectively able to exercise their rights to suffrage. In Haiti, the CEP has announced that it will put in place new policies and procedures in accordance with the United Nations’ Convention on the Rights of Persons with Disabilities (CRPD) and the national Law on the Integration of Persons with Disability⁴².

Unlike the above case where people living with disabilities may be physically impeded from voting, there are many other voters who make a conscious decision not to vote. In these cases, turnout efforts may center on increasing the perception of the value of a vote, highlighting the civic duty aspect and even relying on social pressure. Often special emphasis may be put on encouraging young people to vote. Strategies range from the long-term (civic education in schools) to short-term (“get-out-the-vote” campaigns).

36 Geys

37 Geys

38 Bibler, et.al.

39 Bibler, et.al.

40 ACE

41 This issue is particularly relevant in Haiti which included an estimated 800,000 disabled people before the earthquake with an additional 300,000 injured in the disaster, many of whom will suffer long-term disabilities. World Health Organization.

42 IFES

3.3. Cases

Outreach to under-represented groups

Draws on UN Women, UN Kenya and IFES (2014)

- ◆ Lowering the voting age. Some countries, such as Austria and Brazil, have lowered the voting age to 16. Adolescence is seen as the phase of life when it is possible to form positive civic habits. When young people live with their families, they may be more likely to vote and develop a pattern of electoral participation.
- ◆ Introduction of youth quotas in political parties. In Peru, parties are required to include young candidates (under 29) as 20% of their electoral lists for municipal offices. Primarily aimed at ensuring that youth perspectives are reflected in policy making, many believe the measure may also promote more active engagement of youth in politics (including voting).
- ◆ Election observation. A number of civil society organizations have supported youth engagement through opportunities for election observation. The Asociacion Transparencia Peru, for instance, has mobilized more than 110,000 volunteer observers in the past of whom approximately 75% are young people.
- ◆ Women's turnout. UN Women and the High Judicial Elections Committee in Egypt in 2012 developed a "Your ID, Your Rights" campaign to ensure that millions of women received the public ID cards necessary for voting. In Kenya in 2013, a Women's Situation Room was set up with the participation of 500 observers who identified, monitored and followed up on 554 threats against women during the electoral process.
- ◆ Outreach to voters with disabilities. In partnership with 18 organizations that represent the disabled, the Junta Central Electoral of the Dominican Republic implemented a comprehensive series of activities including: review of the legal framework, political rights trainings, voter registration drives, national awareness raising activities, poll worker training, election access observation and JCE staff training.

Public Information Campaigns and Incentives

Draws on Ellis, et. al.

- ◆ Advertising campaigns. This type of initiative communicates why voting matters. They may be carried out by the election management body or by a civil society organization. Targeting can be general or aimed at a specific audience such as youth, women, or an ethnic group. They often incorporate entertainment-related messages or personalities such as "Rock EnRol" in the UK or New Zealand.
- ◆ Inducements. Norway and Bulgaria have experimented with the creation of lotteries as a incentive for voter turnout. Inducements have included flights, a car, computer equipment and electrical appliances.

4. POLITICAL PARTY FRAGMENTATION

4.1. Background

In recent years, citizens around the world have taken to the streets to make it clear that they are dissatisfied with the performance of their governments and political leaders. In many cases, the public sees political parties as a key source of their frustration. In Latin America, for instance, parties are consistently identified in public surveys as the least trusted institution, with almost a third of the population believing that democracy can function without them⁴³. In Europe -the birthplace of the modern political party- less than 5% of the population joins a political party⁴⁴ and the average age of members has increased sharply⁴⁵.

In most of the world's lower-income democracies, political representation generally finds itself stuck in one of two models: dominant party mode with an entrenched ruling party or a more competitive system whereby elite factions -rather than stable institutionalized political organizations- vie for power and resources. According to Carothers, party systems in young democracies emerged from an "electoralism-from-the-start environment" that centered on winning elections, without real citizen participation⁴⁶.

In other words, political party systems are facing deep challenges around the world. Unfortunately, Haiti is no exception to this trend. Fragmentation is a particular challenge as evidenced by the 121 parties recognized by the Ministry of Justice⁴⁷. The Lower House includes representatives of 17 political parties, though just six parties make up about 75% of the seats. Seven parties are represented in the Senate. Party volatility in Haiti is also high with political organizations often lasting only one or two election cycles. Additionally, the personalization of the party system is evidenced by the tendency for presidential candidates to create their own parties rather than come up through the ranks to lead an already established party⁴⁸.

All of these factors combine to make a political party system that experts have characterized as anemic, ephemeral, and lacking in ideology ("tous les chats sont gris")⁴⁹. Parties are described as "empty shells", with low levels of institutionalization to the point that "few elected presidents in the past 55 years have been members of an organized party, instead they have been

⁴³ Latinobarometro

⁴⁴ Van Biezen

⁴⁵ For example, in Germany, less than one in ten Social Democrats is under the age of 35. DW

⁴⁶ Carothers

⁴⁷ International IDEA (2014)

⁴⁸ Examples include Fanmi Lavalas (Aristide), INITE (Preval), and Tet Kale (Martelly).

⁴⁹ International IDEA (2014)

handpicked by loose alliances created for electoral and temporary goals⁵⁰." These political party factors have also affected governance by impeding the formation of parliamentary majorities and stable government.

Number of political parties in Haiti⁵¹

Electoral Period	Number of parties founded	Cumulative total
Before 1986	4	4
1986-1990	31	35
1991-1995	22	57
1996-2000	12	69
2001-2003	1	70
2004-2006	32	102
2007-2010	42	144

Theoretical and empirical research demonstrate that party fragmentation has an impact on democratic processes and even development. A dispersed political system has been linked to less effective government⁵². Within the legislature, party system fragmentation -particularly in a context of high polarization- means that very small parties have disproportionate impact in determining policy and receiving patronage. Fragmentation also complicates executive-legislature relations making it difficult to achieve support for the president's agenda and potentially leading to gridlock⁵³. In addition to the governance challenges, high levels of party fragmentation are also associated with reduced levels of voter confidence, "suggesting that party system fragmentation may reduce individual level confidence in elections."⁵⁴

4.2. Party registration

Most countries impose some form of "entry barrier" for the registration of political parties⁵⁵. The more onerous the demands, the greater the likelihood of discouraging the formation of new parties and the risk of limiting democratic pluralism. Generally, parties are required to provide electoral authorities with a written declaration of principle and party statutes, a list of party officers as well as a determined number of signatures⁵⁶. In Peru, for instance, parties need to collect signatures of at least 1% of the population that voted in the

50 International Crisis Group

51 International IDEA (2014)

52 Rocha Menocal

53 Inter-American Development Bank

54 Kerevel

55 Norris

56 Norris

last election and form committees in one-third of the provinces located in at least two-thirds of the departments.

Regulations can also be put in place that cancel a party's registration. In Latin America, the most common trigger for a party's dissolution is the inability to obtain a determined number of votes in one or more elections⁵⁷. However a wide variety of other factors are also in place around the region including: electoral fraud; not carrying out internal elections for party leadership or to determine the candidate lists for elections; or participation in a coup d'état⁵⁸.

4.3. Fragmentation in the Legislature

Electoral system design influences the number of parties represented in a legislature. A high degree of concentration is associated with a first past the post system combined with simultaneous presidential and legislative elections⁵⁹. On the other hand, a run-off system (set at 50% or above) is a disincentive to the formation of party coalitions, thus tending to increase the likelihood of party fragmentation⁶⁰.

For countries looking for a fast-track to concentration, an electoral system can be framed to exclude parties with relatively low levels of support. The most direct means is a threshold requiring that parties obtain a certain percentage of votes in order to secure seats in the legislature. Thresholds are in place across the world, ranging from 0,67% (Netherlands) to 10% (Seychelles)⁶¹. With the objective of limiting the election of extremist groups, Germany's regulations include a 5% threshold for proportional representation seats or the requirement that a party win at least three seats to overcome the 5% barrier⁶².

In addition to engineering a stable party system through electoral system design, some countries have opted to work through legislative reform. In Peru, the congressional rules were modified such that legislative bills could not be presented by individuals, but rather required at least six co-sponsors. This measure -combined with a growing level of awareness- aimed to strengthen the role of the party caucus over the needs and interests of individual legislators.

A final note of caution is necessary however on this subject. Electoral engineering measures can sometimes go too far or produce unexpected side effects. For instance, by excluding parties that otherwise would have gained a seat, a threshold actually increases the general level of disproportionality. Such was the case in Turkey, for instance, where a high electoral threshold

57 Nohlen (2007)

58 Ibid

59 Payne, et.al.

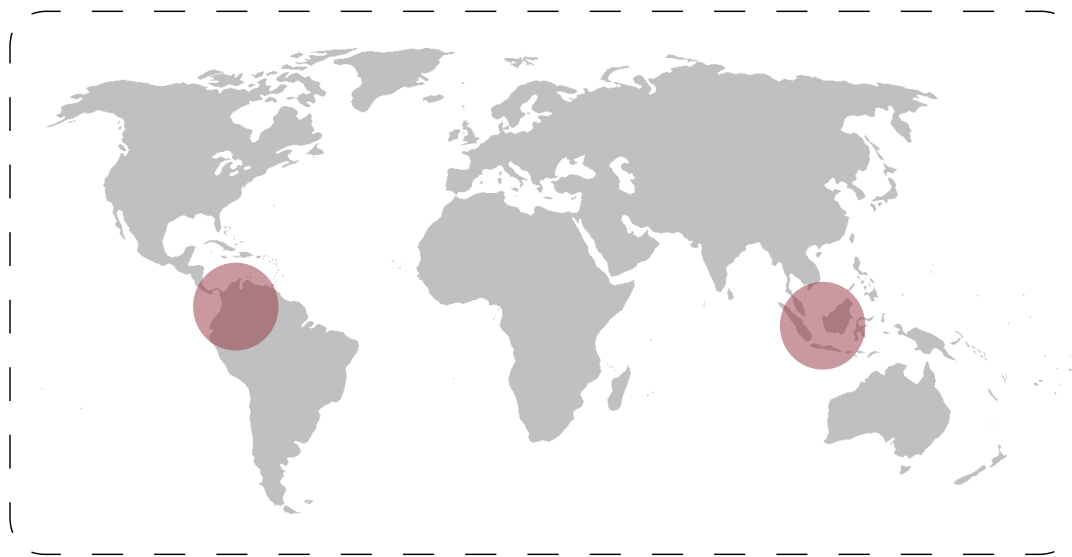
60 Ibid

61 Tuesta (2007)

62 Ibid

(10%) meant that many parties were excluded from the legislature and 46% of the votes were wasted⁶³. Clearly a balance needs to be struck between the objectives of building stable, broadbased parties while at the same time ensuring a system that is inclusive enough to permit the emergence of new and genuine political organizations.

4.4. International Cases



Indonesia party building

Draws from Reilly (2003)

The fear of a potential separatist threat was a strong incentive in Indonesia for the building of a national and broadbased political party system. Accordingly, a number of party reforms were put in place to bring the number of registered parties down. By the 2004 elections, new parties were required to prove that they had branches in in two-thirds of the provinces and in two-thirds of the regencies within those provinces, no easy task considering that Indonesia has over 32 provinces and more than 400 regencies. An electoral engineering “distribution requirement” was also used to encourage national parties: if no candidate obtained more than 50% of the vote in a first round, the top two vote getters would face a second round and need to achieve over 50% of all votes and at least 20% in half of all provinces.

63 Horowitz

Colombia fragmentation

Draws from Franco and Romero, Giraldo and Lopez, and International IDEA (2007)

One of the objectives behind the 1991 Colombian Constitutional Assembly was the need to open up the national political system. While the constitution building process is still heralded as a remarkable model for inclusion and participation, Colombia was a victim of its own success in at least one way: a more inclusive political system led to fragmentation in the Colombian legislature. By 2002, the number of parties in the Senate and Lower Chamber had reached 64 and 40, respectively. In response the Congress passed a political reform in 2003 designed to strengthen the party system, including reducing the level of fragmentation. A 2% national-level threshold was introduced in the Senate that reduced the number of parties competing in the 2006 elections to 20, of which only 10 were able to pass the threshold and secure seats. In the case of the Lower House, the number of parties decreased to 23 after a threshold was established equal to 50% of the electoral quotient which results from dividing the valid votes among the number of seats in the constituency.

5. THE ELECTIONS CALENDAR

5.1. Background

There are a number of options available in terms of the timing of a country's elections. The principal variations are simultaneous (elections held the same date between branches or levels) or separate. If a country has a combination of these it is known as a mixed electoral calendar. Haiti's president is elected to five year terms and the legislature to 2, 4, or 6 year terms. Run off elections are held if no candidate secures more than 50% of the vote. The frequent elections included in Haiti's election calendar elevates costs. Separate elections are also more conducive to fragmentation and would appear to be one more in a series of factors in the Haitian political system that *"was designed to forestall strongmen, and as such, gives parliament a lot of power"*⁶⁴.

5.2. Presidential and Legislative Elections

The choice between simultaneous and separate elections present a number of trade-offs and at least five salient effects:

- ◆ Perhaps most fundamentally, elections are seen as an essential mechanism for ensuring that politicians are accountable to citizens. More elections—theoretically—provide more opportunities for citizens to manifest their support or discontent with incumbent politicians and parties.
- ◆ Legislative elections held during a president's term mean that the executive is less likely to secure a majority in the legislature. Along the same lines, separate elections also tend to widen the field of parties competing for the legislature, thus increasing the likelihood of party fragmentation in the legislature. Conversely, when elections are simultaneous, presidential candidates can galvanize supporters who will then vote for his/her party candidates in the legislature⁶⁵.
- ◆ As explained in Section 3 above, separate elections are associated with lower voter turnout, particularly if there is "voter fatigue" with frequent campaigns and elections.
- ◆ There are higher costs associated with frequent elections since potential economies of scale are lost for the recruitment, training and deployment of polling place staff. Additionally, materials such as voter lists, ballots and electoral education

⁶⁴ The Economist

⁶⁵ This effect is most pronounced when a voter has to choose the president and legislative list from the same party. The link is less strong when the elector can choose a presidential and legislative candidates from different lists.

cannot be developed and delivered simultaneously.

- ◆ Separate elections have also been found to increase the policy distance between the president and his/her party platform as the presidential candidate and party label are not linked at the same time⁶⁶.

In a review of 18 Latin American countries, 12 were found to hold simultaneous presidential and legislative elections⁶⁷. Brazil and Chile presented slight variations with a portion of the senate being elected on an alternating basis⁶⁸. In these cases, elections for the two branches are nonetheless held on the same day. Among the countries that do not have simultaneous elections, Colombia is unique because the legislative elections are held two-and-a-half months prior to the first round of the presidential elections⁶⁹.

5.3. Variations

As always, the devil is in the detail however and effects will vary depending on the contextual specifics, such as:

◆ Run-offs

A number of countries -including Haiti- have opted for run-off systems in cases where the top presidential candidate does not secure a determined percentage of votes. The idea behind a run-off is that a president's legitimacy is influenced by the margin of his/her election victory.

When a country requires a run-off if no candidate achieves at least 50%, the tendency toward vote dispersion and a weaker parliamentary result for the ruling party is exacerbated. Under this type of system, voters have no incentive to concentrate their vote, which thus provides more options for the emergence of minority parties.

Run-off elections also have an impact on the party system. In a runoff system, there is no push for parties to seek alliances or organize coalitions to present a unified candidate⁷⁰. In fact, there is an incentive toward party proliferation since a solid finish may improve their leverage in a runoff. There is also a risk to legitimacy if the first-round winner does not succeed in the run off. In a review of 23 run off elections in Latin America, there were nine cases in which the first round vote getter did not win the presidency⁷¹.

On the other hand, at least one study focused on Latin America has found

⁶⁶ Benoit and Wiesehomeier

⁶⁷ Payne, et.al.

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Inter-American Development Bank

⁷¹ Payne, et.al.

that a plurality system (elections without a run-off round) also presents disadvantages particularly in a context of party fragmentation; the expected pre-elections alliances have rarely materialized and plurality favors the continuation in power of the incumbent⁷².

◆ Mid-term elections:

If legislative elections are held early in a president's term, the ruling party may benefit from a "honeymoon period". Later in the term, the effect is more likely to be the opposite. In most cases, mid-term elections allow voters to vent their discontent with the incumbent president, hence they favor the opposition⁷³.

5.4. National and subnational elections

Cases of vertical simultaneity (between the national and subnational levels) are less common. When this occurs, the relationship can play out three different ways: a. national elections may overshadow the regional contests; b. the regional level may overshadow the national level; or c. the two contexts play out as distinct arenas.

Conventional wisdom has been that when regional and national elections are held on the same day, the stakes in a regional election decrease. Thus, when the objective is to empower the local level—as independent from national politics—the separation of national and subnational elections is often seen as a helpful instrument.

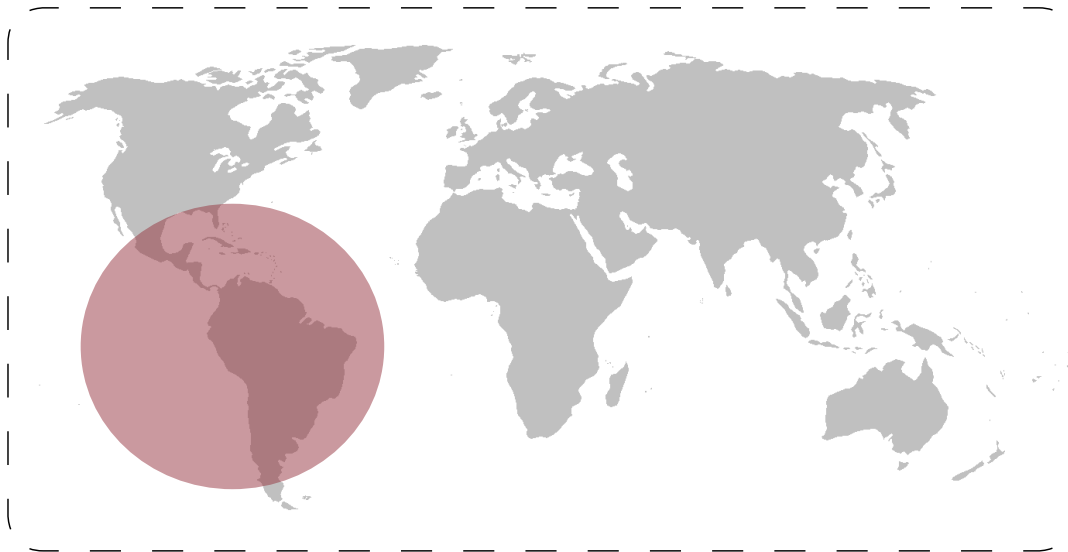
Nonetheless, others have taken the "all politics are local" perspective to argue that voters feel more connected to local officials and hence more invested in subnational elections. Clearly there is no universal answer; rather, the question of which level is more important to voters during an election will depend on factors such as the level of regional authority and the existence of any territorial cleavages.

The "right" timing for subnational and national elections and their effect on the development of local and national parties has been subject to a great deal of study in post-conflict contexts. There is no consensus as yet. One camp argues that national elections should be scheduled first to consolidate national parties across territories, whereas others believe that simultaneous processes will incentivize coordination between leaders at the regional and national levels. However, others hold that starting with subnational elections in a post-conflict environment makes sense in order to lower the stakes and avoid overtaxing the election management body.

⁷² McClintock

⁷³ Ibid

5.5. International Cases



Latin America

Draws from McClintock and Molina

Practical experience in Latin America has demonstrated that “mid term elections... have shown a tendency toward periodic, ineffective executive policy making over the course of their term because of the greater likelihood of a shift in the balance of partisan power, and because of the shift in congressional attention from the policy agenda to electoral strategizing and campaigning.” Another study in Latin America found that in countries with simultaneous elections and no run off, the president enjoyed a majority in parliament in 54% of the time. Whereas simultaneous elections with a run-off saw the president with a majority only 15% of the time. Finally, countries with separate elections only had a president with majority support in parliament 9.7% of the time.

Post Conflict Contexts

Draws from Reilly (2004)

Indonesia followed the vertical simultaneity model—holding national, provincial and local elections at the same time-- which helped to bolster the new party system as well as party coordination. In post-conflict contexts such as East Timor, Kosovo, and Afghanistan, policy makers have chosen to separate the elections and begin with the local level first to allow strengthening of the democratization process gradually.

6. POLITICAL FINANCE

6.1. Background

Haiti's ranking of 161 out of 175 countries on the 2014 Transparency International survey highlights the deep corruption challenges that the country faces. Though groundbreaking anti-corruption legislation was passed in 2014 by the Chamber of Deputies, regulations specific to political finance have been described as "lax" in terms of transparency provisions⁷⁴.

Public funding was provided to the Haitian political parties in the 2010/11 election cycle. Per the Political Party Law published in January 2014, 1% of the national budget's internal resources should be allocated to fund political parties. Allocation is based on electoral performance and representation in the parliament and local government.

6.2. Political Finance Trends

The last 10-15 years have seen a wave of political finance legislation approved around the world focused on issues such as enhanced disclosure, contribution and spending limits, and bans on anonymous donations. As more countries pass regulations, the real challenge becomes the need for full enforcement including the application of sanctions. And, while the push to more comprehensive regulations is a positive trend, the gap between the legal framework and enforcement can lead to public cynicism, and can give violators an unfair advantage vis-à-vis their rule-abiding contenders.

Enforcement weaknesses generally lie in a mixture of mandate, capacity and (political) will. In most cases, it is the last factor (will) which makes the difference, given that politicians –who often participate in the appointment of election management bodies- prefer a hobbled enforcement agency.

A number of options have been explored for ensuring the independence of the agencies responsible for political finance oversight, particularly in terms of protection from political pressure (through firing or demotions). There may also be a need for enforcement "firewalls" such as special powers for the election monitoring body (Mexico) or collaboration with other government oversight bodies (Peru)⁷⁵.

Along the same lines, legislation should be developed keeping in mind the current state of rule of law in the country. In countries with weak rule of law, new regulations could be phased in over time through a combination of initial heavy investments in party compliance strengthening that gradually

⁷⁴ TI Haiti. La Fondation Heritage pour Haiti.

⁷⁵ Falguera, et.al.

gives way to more stringent demands on the regulatory agency.

In those cases where regulatory agencies are not able to ensure enforcement, it is up to media and civil society organizations to build pressure by pointing out gaps or inconsistencies. Under certain circumstances, international pressure can also make a difference in ensuring enforcement of political finance corruption.

6.3. Avoiding the abuse of state resources

Article 121.1 of the Electoral Law of 2008 specifies that *"except for state media, no equipment, no property, and no government vehicle can be used for the election of one or more candidates, for one or more parties, political groups or political groups."*

Nonetheless, Haitian elections have traditionally been characterized by a disparity of resources between the ruling party and other political organizations. According to one expert, *"la tendance à manipuler les élections depuis le pouvoir en place est nette."*⁷⁶ As evidence, some observers point to the Provisional Electoral Council's decision to exclude 15 candidates from participation in the 2010 presidential campaign, including from Fanmi Lavalas—generally considered Haiti's most popular party.

Like other types of political finance corruption, abuse of state resources subverts the public will by influencing elections. Depending on how it occurs -for instance through manipulation of security forces, imbalances in media coverage or public administration partisanship- it can also affect the legitimacy of other key institutions.

Incumbents and ruling parties have grown increasingly sophisticated in the ways that they chose to take advantage of state resources during election periods, through a wide variety of ploys and state assets. Some examples include the use of the security apparatus to intimidate voters; manipulation of public service provision as a means of vote coercion; pressure on civil servants to join the party or make political donations; and the non-disbursement of public funding to opposition parties.

Though equal electoral conditions are not sufficient on their own to achieve competitive party systems, they are an essential first step. Abuse of state resources is among the most frequently regulated types of political finance legislation.

Unfortunately however, enforcement against abuse of state resources is even more difficult to detect, prove, enforce and penalize than other types of political finance corruption. The principal difficulty is based on the fact that abuse of state resources is committed by the individuals or party in

⁷⁶ International IDEA (2014)

power. Given this, the regulatory agency may be unwilling or unable (due to pressure) to denounce and sanction abuses. In addition to the political challenges, there are real difficulties associated with detecting the use of in-kind resources such as staffing, vehicles, facilities, and communications. Though there is no easy answer, some possible strategies for regulatory agencies seeking to exercise their independence in the face of the abuse of state resources can include⁷⁷:

- ◆ In those cases where the judiciary is responsible for sanction enforcement, but is not sufficiently independent from the government, the regulatory agency may seek to develop its own sanction system independent from the judiciary. Even if the sanctions are limited in scope, they can bring attention to the issue and thus pressure the court to take action.
- ◆ Lower the burden of proof away from “intentional bias”. That is, the regulatory agency should not have to prove that government abuse (ie raising salaries or increasing public relations spending) was undertaken to curry favor with voters. Rather, it should simply be made clear which actions are not permitted during a particular period.
- ◆ Going public with findings will help the regulatory agency to gain credibility and will put pressure on the government and other agencies to follow the established legal framework.

In addition to the role of the regulatory agency, the effective combatting of abuse of state resources requires concerted action by a number of other organizations, including:

- ◆ An **independent media** is a powerful tool to ensure equal media coverage and reporting of abuses. The Peruvian experience from the 90s of Fujimori and Montesinos attests to the value of media as a watchdog actor: television station owners received bribes worth 100 times that of judges, opposition MPs and other government officials⁷⁸.
- ◆ **Independent election observation** can reduce manipulation. One study found a statistically significant difference in the vote tally for the incumbent between monitored and unmonitored polling stations⁷⁹. Other initiatives by civil society or international organizations can include media monitoring, surveys to detect bias, and observation of official vehicles or infrastructure or other means. In support of this effort, a larger commitment to government transparency is critical, even when it happens on issues beyond political finance.

77 Ohman

78 McMillan and Zoido

79 Hyde

- ◆ The **international community** is not always consistent in its condemnation of abuse of state resources. At a minimum, donors should avoid embarking on and announcing major projects during the run up to an election. On a more proactive level, international donors should pressure behind the scenes to discourage such abuse and/or make public statements denouncing abuse as needed.

6.4. Gender and Political Finance

Recent years have seen a wave of political finance reforms aimed at supporting gender equality within politics. To date, these regulations are in place in 27 countries⁸⁰. Latin America is leading the way, with one-third of the countries in the region conditioning public financing on gender equality requirements⁸¹.

Haiti is among those countries that have used public funding as a carrot for gender equality efforts. In fact Haiti goes a step beyond other countries by basing fund distribution on list inclusion and the number of women actually elected. Political parties that run at least 30 per cent women candidates—and succeed in the election of 20 per cent of them will double their public funding⁸². This legislation seeks to avoid the common situation of women nominated to hard-to-win seats or included at the end of electoral lists. Haiti's new law also requires that half of the public funds received must be used for training and to support women's campaigns⁸³ and reduces candidate registration fees for lists that include at least 30% women⁸⁴.

These measures are considered necessary to counteract a male financing advantage that includes their greater wealth in general, the tendency of parties to support male candidacies, stronger ties to well-resourced networks, and their (usually) incumbency advantage⁸⁵. Empirical research beyond North America is limited, though one study in the province of Lima, Peru found that male candidates on average expended on political advertising 4.6 times more than female candidates⁸⁶.

80 Falguera, et.al.

81 Ibid

82 Ibid

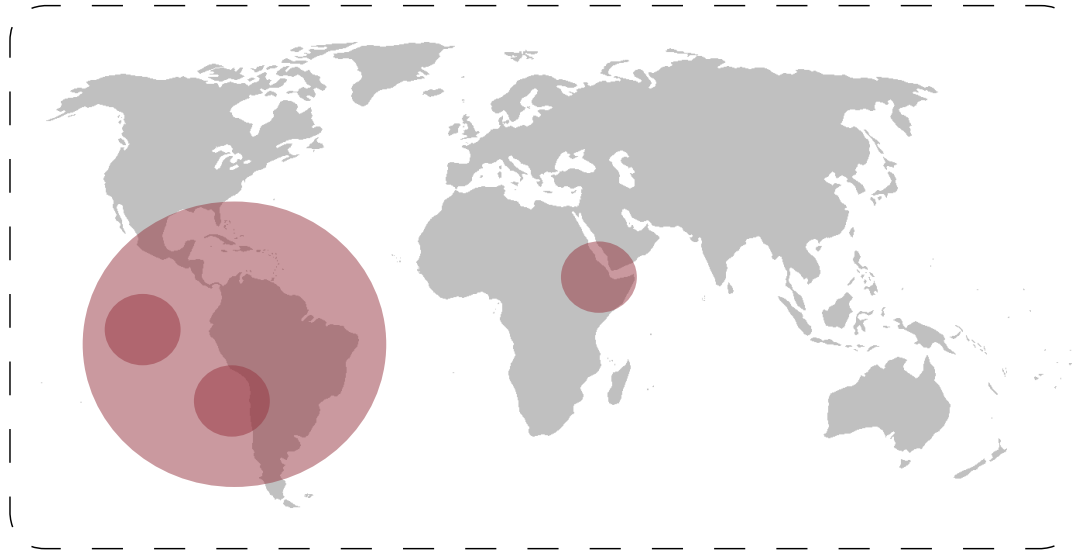
83 Ibid

84 Le Moniteur

85 Falguera, et.al.

86 Llanos and Dador

6.5. International Cases



Abuse of State Resources

Draws from Falguera, et.al, Fontana and Speck, and Ohman

A number of countries have sought to put in place regulations that eliminate the use of state resources during electoral campaigns. Some examples include:

- ◆ bans on disproportionate government spending during the campaign period (Guatemala);
- ◆ bans on signing of new public contracts during campaigns (Brazil);
- ◆ clearly specifying the rules for relevant authorities on the issuing of permission regarding rallies and other campaign activities (Former Yugoslav Republic of Macedonia);
- ◆ provisions to hand over control of security forces to the national electoral court (Panama and Costa Rica);
- ◆ requiring publically owned media to be impartial in reporting on political actors and election campaigns and to devote equal time to all competitors (Moldova).

Georgia transparency

Draws from Kenny

In Georgia, an inter-agency body independent from government and political structures has been established to oversee the misuse of administrative resources. Significant progress in the country on open access to public information -particularly on procurement- has also contributed to the fight against abuse of state resources. For instance, Transparency International Georgia has been able to use the available data to analyze 430,000 state purchases that were single sourced and awarded without a tender and found that 60% of the donations disclosed by the ruling party had come from owners, directors and lawyers of companies that received this sort of procurement contract.

Latin America media access

Draws from Falguera, et. al

In an attempt to ensure a level playing field, 15 Latin American countries have passed legislation providing some level of free airtime to parties during campaign periods. Of these, four countries -Brazil, Argentina, Chile and Mexico- prohibit parties from buying additional television time. For example, Mexico's political finance reforms of 2007-08 were seen as a qualitative leap forward. Regarding media access, the major changes included: prohibition of all private advertising on radio and TV; authority of the Instituto Nacional de Elecciones to monitor and sanction; the assignment of the amount of free airtime available to parties; and the establishment of criteria to distribute airtime, per the formula used for public funding.

Colombia's "silla vacia"

Following a political finance scandal that implicated one-third of the national legislature, Colombia has passed a series of far-reaching political finance reforms. Key among these measures was the "silla vacia", or empty chair reform that was designed to incentivate more rigorous candidate selection by political parties. According to the reform, if an elected official is convicted of drug trafficking or ties to the guerilla or paramilitary groups, the party cannot replace him or her and thus loses the seat. Furthermore, parties or political movements that endorse politicians with connections to illegal armed groups or have been sentenced for drug trafficking, electoral offenses and/or crimes against humanity may be forced to pay back public money received for campaign financing or could even lose their legal status.

Mexico Gender Equality Promotion

Draws from Cardenas Morales

In recent years, Mexico has passed a number of measures aimed at promoting greater gender equality in politics. Among these is a 2008 political finance reform stipulating that 2% of public party funding must be dedicated to “training, promotion and development of women’s leadership.” One review of implementation of the law identified a number of challenges including: a portion of the 2% was being used for activities unrelated to gender such as utility expenses or staff salaries and benefits; lack of clarity on a definition of “training, promotion and development of women’s political leadership”; and financial sanctions set too low to make a difference in parties’ calculus.

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About

The Project

Promoting dialogue for democratic reform in Haiti

A Club de Madrid Initiative implemented
with the financial support of the European Union

The Club de Madrid and the European Union have launched a project aiming at supporting Haitian leaders to overcome the current political challenges and, at the same time, promoting dialogue to address Haiti's structural obstacles to democratic reform. The main objectives of the project are:

- ◆ To establish multi-stakeholder areas for dialogue and negotiation so as to bring together the country's key players in order to reflect on commonly identified democratic governance priorities.
- ◆ To accompany Haitian leaders in the management of immediate political challenges and support them in their search for solutions.
- ◆ To promote dialogue regarding democratic reforms in the medium and long-term in order to find pragmatic agreements leading to political actions.

For more information visit the project's website:

http://www.clubmadrid.org/en/programa/promoting_dialogue_for_democratic_reform_in_haiti

Club de Madrid

The Club de Madrid is an independent non-profit organization composed of more than 100 democratic former Presidents and Prime Ministers from more than 60 different countries, constituting the world's largest forum of former Heads of State and Government, who have come together to address the challenge of democratic governance and political conflict as well as that of building functional and inclusive societies, where the leadership experience of our Members is most valuable.

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European Union

The European Union is made up of 28 Member States who have decided to gradually link together their know-how, resources and destinies. Together, during a period of enlargement of 50 years, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.

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