

OCCASIONAL REPORT ON VENEZUELA'S POLITICAL ELECTORAL CONTEXT

THE
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RENEWAL OF THE ELECTORAL AUTHORITY IN VENEZUELA: PROCESS TO CREATE THE ELECTORAL NOMINATIONS COMMITTEE

Venezuela's National Electoral Council (CNE by its initials in Spanish) is comprised of five officials: three are proposed by the civil society, one by the colleges of law of the country's universities, and one by the Citizen Power¹. The terms of three of the five officials expired on April 28, 2013². Specifically, these officials include the current president of the Council, Tibisay Lucena, and principal officials Vicente Díaz and Sandra Oblitas, all of whom were originally nominated in 2006 by civil society³.

Pursuant to Article 295 of the Constitution and the Electoral Power Organic Law (LOPE)⁴ regarding the designation of replacements for Lucena, Díaz and Oblitas, the National Assembly shall create a Nominations Committee. According to Articles 17 and 18 of LOPE, the Committee is responsible for announcing, receiving, selecting and presenting before the plenary session of the National Assembly the lists of candidates the committee deems qualified to comprise the governing entity of the Electoral Authority. Therefore, the Committee's functions are: a) receiving nominations for the positions of principal and alternate electoral officials; b) verifying compliance with the constitutional and legal requirements for being an electoral official; and c) creating and presenting before the National Assembly the lists of eligible candidates in accordance with the procedure established by the law. Furthermore, LOPE also sets forth that the Electoral Nominations Committee shall be comprised of 21 members, 11 of which will be deputies designated by the plenary session of the Assembly with votes from two thirds of those present, and ten nominated by Venezuelan civil society.

The timetable to elect new officials provided for in the law amounts to a total of twelve steps. The following timetable shows the steps and times planned for this process. As indicated, the

¹ CNE is the agency in charge of exercising the Electoral Power. Thus, the agency represents one of the five branches of the Venezuelan government. It is responsible for the organization, implementation, administration, oversight and regulation of the country's electoral processes.

² The officials are elected for a period of seven years.

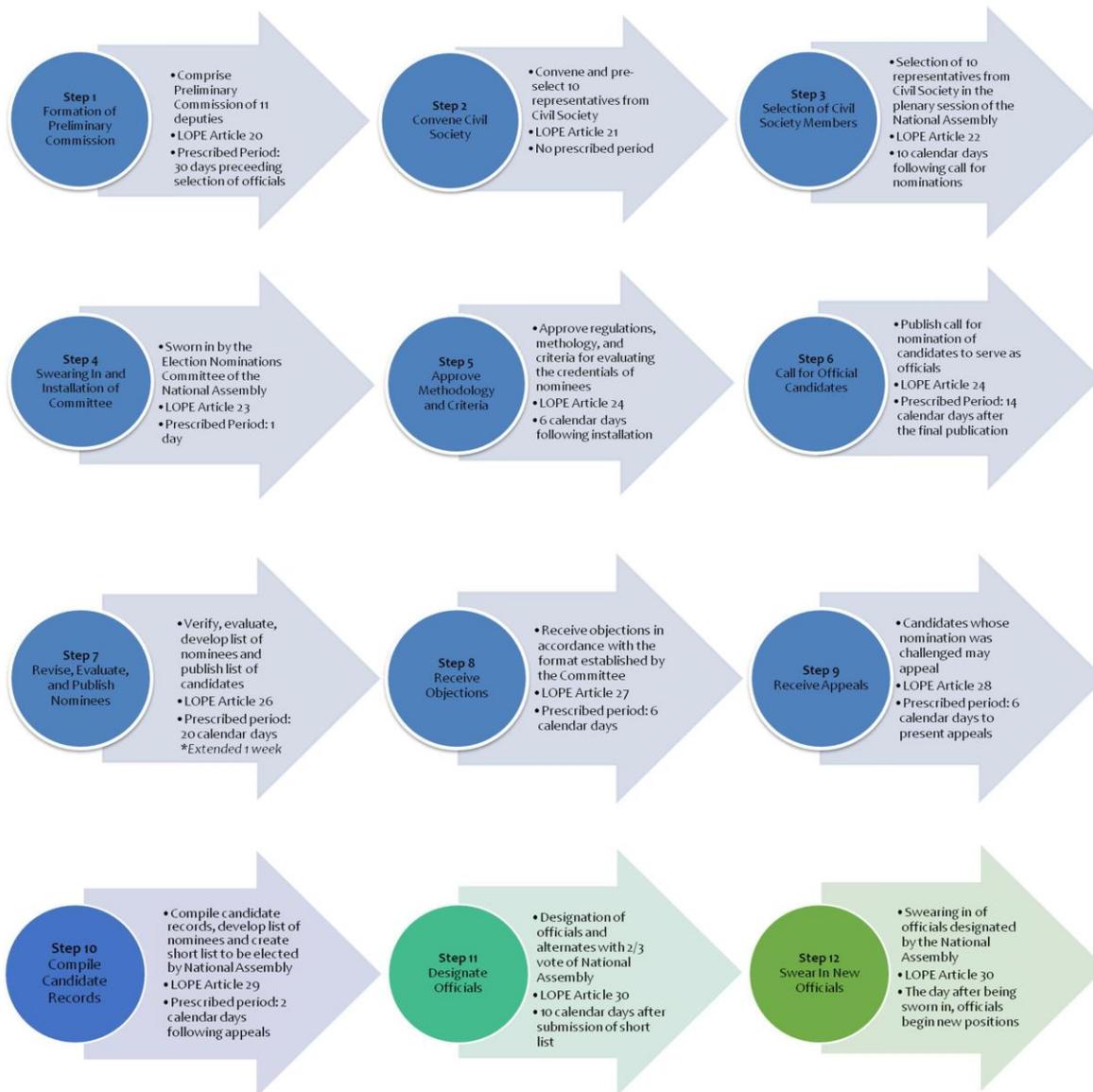
³ Said expiration date includes the term for the alternates Grisell López Quintero, Levy Arron Alter Valero, Maryclen Stelling, William Alberto Pacheco, Humberto José Castillo and Pedro Antonio Díaz Blom.

⁴ The law that governs the creation and functioning of the Electoral Nominations Committee is the Electoral Power Organic Law (LOPE), specifically chapters II and III thereof.



Nominations Committee is responsible for the first ten actions (and as of the date of this report, they had not yet completed Step 3).

Expected Timeline for the Renewal of the Rectors of the CNE





Procedure to designate officials

On April 9, 2014, almost one year after the expiration of the three CNE magistrates' terms, the National Assembly designated the eleven deputies that would form part of the Electoral Nominations Committee. This Committee was comprised of six members of parliament belonging to *Partido Socialista Unido de Venezuela* (United Socialist Party of Venezuela—PSUV) and five belonging to the opposition party *Mesa de la Unidad Democrática* (Democratic Unity Table—MUD). The deputies designated by PSUV were Blanca Eekhout, Earle Herrera, Tito Oviedo, Rosa del Valle León, Hugbel Roa and Edgar Orlando Zambrano, while those designated by MUD were Nirma Guarulla (*Avanzada Progresista*—Progressive Advancement), Morel Rodríguez (*COPEI*—Social Christian Party), Bernardo Guerra (*Acción Democrática*—Democratic Action), Juan Carlos Caldera (*Primero Justicia*—Justice First), Elías Matta (*Un Nuevo Tiempo*—A New Time) and Julio Reyes (alternate).

The initial task of the Electoral Nominations Committee – formally constituted on April 21st – was to begin the selection process of the civil society members slated to join the Committee. According to the LOPE provisions, civil society representatives must be elected following a two-stage process. First, the eleven deputies designated to comprise the Nominations Committee constitute an internal committee—called the Preliminary Commission for Electoral Nominations—in charge of receiving the nominations of citizens interested in forming part of the group of ten civil society representatives (see steps 2 and 3 in the diagram).

Once the Committee finishes this task, the list of possible candidates is revised and sent to the plenary session of the National Assembly where, during the second stage of the process, the members present choose, in plenary session and with a two-thirds vote, the list of 10 citizens who will comprise the Nominations Committee on behalf of civil society.

The period established for the nomination of citizens interested in serving on the Committee was opened for ten days, in accordance with the provisions of the law, starting on May 12th. The minimum criteria set forth for nomination included: being Venezuelan, of legal age, being registered with the Permanent Electoral Registry, filling out an identification card with personal information⁵ and submitting a letter from the nominating organization signed by its representative.

⁵ The personal identification card had to be directly filled out at the National Assembly's document intake window by the government employee in charge of said task. The information recorded in the card included the nominee's first and last names, his/her national identity card number, the name of the nominating organization, the date of nomination and the organization's registration number.



Nomination process for civil society members

At the conclusion of the allocated time, a total of 130 nominations were submitted for citizens emanating from different sectors and institutions across the country, including: NGOs, domestic organizations for electoral monitoring, community councils, communes, neighborhood associations, different types of collectives, labor unions, organizations for people with disabilities, elderly groups, human rights defense organizations, ecological foundations and feminist associations, among others ([See list](#)). Some of the nominees included journalists, businessmen, attorneys, members of government “missions” (such as *Misión Vivienda*—Housing Mission) and representatives of organizations identified with the governing party (“*el oficialismo*”).

The Preliminary Commission reviewed the list of nominees and, following about two months of deliberations, it was reduced to 21 candidates. The names of the preselected candidates were announced on the National Assembly’s official website on July 25, 2014 ([See list](#)). Two days prior, deputies Elías Matta (*Un Nuevo Tiempo*) and Juan Carlos Caldera (*Primero Justicia*) had reported that, in accordance with a prior agreement, the Commission had narrowed the list of candidates to 20 people, and that same day also announced, via Twitter, the names of the candidates. Taking into account that, as of the release date of this report, deputies Matta and Caldera have not objected to the additional nominee⁶, it can be presumed that the discrepancy between both lists could be the result of a simple omission in the list published by the deputies through social networks.

Pursuant to Article 22 of LOPE, the ten civil society representatives should be selected by the plenary session of the National Assembly “within ten calendar days following the expiration of the call to be part of the Electoral Nominations Committee.” This process, however, had close to a two-month delay as of the date this report was completed (08/15/14).

Deputies of the PSUV and MUD have accused each other of being responsible for delays in the work of the Preliminary Commission. Deputy Eekhout blamed the opposition for not attending the meetings held up to June 18th ([See note](#)), whereas deputy Caldera indicated that if opposition deputies had been in charge of the call for members, the process would now be in the election phase for new officials ([See note](#)).

Taking into consideration the national ramifications resultant of these delays, on June 10th the Supreme Court of Justice (TSJ) issued a decision whereby it permitted electoral authorities whose terms had expired to remain in their positions by way of exception until the election of new officials.

⁶ The official list published on the National Assembly’s website added the name of *Ciro Vladimir León*, who was nominated by the Community Council of the *Coromoto* Neighborhood, *Iginio Peraza* Community House.



The Justices of the Constitutional Chamber of the TSJ held that although the officials' terms had legally come to an end, they could not allow for “the halting of discharging a public function indispensable to the exercise of democracy.” For this reason, based on the principle of “administrative continuity,” the court ruled that the election authorities had to continue exercising their functions in a legitimate way until the National Assembly designated new authorities for the Electoral Power ([See note](#)).

The presence of delays in the process to designate the new officials is not a new occurrence in Venezuela. In 2003, the lack of agreement between government and opposition members provoked the intervention of the Supreme Court of Justice (TSJ), the entity that ultimately designated the new officials. Similarly, in 2009 the process to renew two of the five officials, whose terms had ended on April 28th⁷, began with an eight-month delay although at that time the government party had the 110 votes required by Article 296 of the National Constitution for the selection of electoral officials ([See note](#)).

Criteria to nominate and pre-select candidates

Though the law does not establish any limits regarding the political militancy of the citizens who are nominated to comprise the Electoral Nominations Committee, some civil society organizations that monitor electoral issues believe that the criteria of impartiality, partisanship and independence provided for in Article 294 of the Constitution regarding the election of candidates to be officials, as well the parameters mentioned in Article 9, Number 4, of LOPE, which set forth that the nominated citizens must not be connected to political organizations, shall also be applied to the selection of the civil society representatives ([See note](#)). According to Deputy Caldera (Primero Justicia), the political representation criterion is reflected in the nomination process of the eleven parliament members that make up the committee. For this reason, the remaining ten members shall be elected by applying the impartiality and independence criteria so that they can be representative of society as a whole ([See note](#)).

The political affiliation or militancy of a nominee, or whether he/she represents a particular political or party interest, cannot be established based on the information required in the nominees' personal identification cards. Nevertheless, the NGO Súmate indicated that 76 of the 130 initial nominees actively participated in political organizations closely related to the national government and/or the government party ([See note](#)).

⁷ The officials were Germán Yépez and Janeth Hernández.



There was a debate inside the Preliminary Commission regarding the determination of an evaluative criterion to be used to pre-select the nominees since there are no specific regulations on this topic. According to Deputy Eekhout (PSUV), the nominees shall represent “the different social sectors,” with an emphasis on the presence of “women, young adults, the elderly, people of African descent, indigenous people, workers and farmers” originating from all states across the country. The goal of using these criteria, the Deputy indicated, was the creation of a group that is “very diverse, same as the Venezuelan people.” (See note) According to statements given by Deputy Caldera, the criteria that were finally established included the following: citizens who do not have a criminal record, who do not perform high-profile political functions and who are representative of the different sectors in the country (See note). The application of these criteria, according to the information provided by Caldera, made it possible to reduce the number of nominees from 130 to 47.

Although one of the deputies of the Commission indicated that the list of pre-selected nominees was a “balanced” list, the political and party affiliation of nominees is a topic that generated controversy. Venezuelan NGOs have expressed that of the 21 chosen nominees, 11 had some kind of political affiliation: five belonging to organizations that clearly support the government party, and six who participate in PSUV (See note). The ten remaining nominees do not have a proven political affiliation; therefore it can be presumed that they come from independent political organizations.

Final creation of the Committee

In its report on the 2013 Venezuelan presidential elections, The Carter Center Study Mission expressed its concern for the low probability of reaching consensus within the National Assembly on topics regarding the designation of new officials due to the confrontational and polarized atmosphere that characterizes political debate in the country. In this sense, the Study Mission recommended making all necessary efforts to promote agreements that will guarantee that the necessary votes to elect an independent or impartial electoral authority will be obtained, which will help to strengthen confidence in the electoral system.

The final creation of the Electoral Nominations Committee requires consent from at least 110 deputies. Given the fact that neither the PSUV nor the MUD possess the requisite deputies to reach this figure, and keeping in mind the political polarization that has defined the dynamic between the government and the opposition over the last 15 years, achieving the minimum consensus required to select the ten civil society members of the Nominations Committee presents a challenging task. This is made more evident when taking into account that since May 14, 2014, the political dialogue between the government and the opposition, launched on April 10th at the Miraflores Presidential Palace, has been stalled.



In case no consensus is reached in this regard after three rounds of votes, a “legislative omission” shall be issued and the Supreme Court of Justice may be the one responsible for making a decision on the selection of the ten civil society representatives. This charge is provided by Article 266, Number 4 of the Constitution, which assigns to this Court the task of “resolving administrative controversies that arise in the Republic, a State, Municipality or another public entity, when the other party is one of these entities (...),” as well as Article 297, which sets forth that the Electoral Chamber of the TSJ will have jurisdiction over electoral appeals.

Article 22 of LOPE also articulates that the civil society members shall be selected “within the ten calendar days following the expiration of the term provided for the call to form the Electoral Nominations Committee.” This ten-day period began on the 23rd of this past May and ended on June 2nd. As was previously mentioned, the lack of congruence between the timing of legally established terms and the dynamics within the National Assembly has been institutionally recognized by the Supreme Court of Justice through its decision to extend the terms of the three officials at issue.

Nomination of the candidates for officials

Once it is created with a total of 21 members, the Electoral Nominations Committee will proceed to designate a president, vice president and secretary (the latter must be someone who is not part of the Committee’s core). Starting at that time, and within the subsequent six days, Committee members will discuss and approve a regulation for the establishment of criteria and terms for the nomination process of candidates to serve as officials of the CNE.

The term provided by the law for receiving nominations for official candidates is fourteen calendar days, starting on the date of publication of the call for candidates in a national newspaper. These nominations must be presented in writing before the Committee and should include the resumes of prospective candidates.

Articles 26, 27, 28 and 29 of LOPE also provide that within twenty calendar days after the nomination period has closed, the Committee shall: verify that the candidates comply with the established requirements, evaluate the professional profile of each candidate, prepare a list of the eligible candidates, verify that at least half plus one of the pre-selected candidates are Venezuelan by birth⁸ and publish in two national newspapers the names of the nominated candidates and the origin of their nomination. From this point forward, the secretariat of the Committee has six calendar days to receive objections, which must be in writing and follow the format established by the Committee.

⁸ According to Article 30 of LOPE, for the selection of members of the National Electoral Council, the National Assembly shall take into account that at least three (3) of the officials or elected directors must be Venezuelan or Venezuelan by birth, to be appropriate for consideration in the election of the Presidency or Vice-presidency of the National Electoral Council.



Upon expiration of this period, the objected nominees have six calendar days to present their defenses or arguments against the objections made against them. Upon expiration of the term to present defenses, the Electoral Nominations Committee shall create, within the next two days, a single file per nominee, which should include all the requirements for nomination, the profile and selection criteria used, as well as any objections and defenses, if any. After compliance with the aforementioned, the Committee will send the list of eligible candidates and their corresponding files to the plenary session of the National Assembly.

Once this has occurred, the National Assembly has a period of ten calendar days to select the main and alternate electoral officials, pursuant to Article 30 of LOPE ([See Article](#)). According to statements given by Deputy Juan Carlos Caldera ([See note](#)), the selection process for CNE officials could be finished within three months at the latest. For this reason, if the terms provided by the law are followed, the process will culminate in October 2014, at the latest. Given that the first legislative session of the National Assembly ended on August 15th and that deputies will not resume their functions until September 15th, the creation of the Nominations Committee may remain pending until mid-September. Other sources have indicated the month of December as a possible date for the renewal of electoral authorities ([See note](#)).

The basic criterion for the selection of CNE officials is impartiality or independence, as set forth by Article 296 of the Constitution, which indicates that they shall not be connected to political organizations. The criterion of impartiality differs from the criterion of party balance. Although the former holds legal precedence in Venezuela, the latter has been predominant, with a few exceptions, since the inception of a formal branch of Electoral Power.

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