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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS

ON

THE METHOD OF NOMINATION OF CANDIDATES

WITHIN POLITICAL PARTIES

by

Ms Carmen ALANIS FIGUEROA (Substitute Member, Mexico)

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1. Latin-America is the region of the world best result has had on the implementation of democratic governments, as well as has been demonstrated in the last two decades. From the independence movements of the colonies established in America, is that they could implement democratic governments in the continent. Specifically, the last three decades have witnessed robust transformations that have given life to democratic regimes in Latin-America.
2. In fact, it can be said that the rules and institutions not only resemble the more mature democracies of the world, obviously, recognizing shortcomings of the continent.
3. Part of the success achieved in democratic systems in Latin-America, has been the construction and expansion of the rights of citizens as tools of forefront of human rights. The continent presents a characteristic in which deeply unequal societies are politically organized under democratic regimes (IFE:2011).
4. 1978 was the year in which the third democratic wave started in Latin-America. It began in Dominican Republic and spread throughout the region in successive stages, where authoritarian regimes were replaced by democratic institutions (HUNTINGTON: 2007). An example of this trend is that within a three-year period (2013-2016) there were held 17 presidential elections in 18 countries of the region with the exception of Mexico (ZOVATTO: 2013).
5. An important part of the legislative activity of democratic governments in Latin-America has been the regulation of elections. Despite some complexities, such trend seems to have taken firm root in the region, where municipal, local and national governments are elected by plural elections characterized by essential attributes like transparency, fairness and reliability. Regulations relating to the organization and electoral competition are not immune. In fact, it is likely to be an aspect that defines and reflects the Latin-American electoral phenomenon.
6. This legislation has put special emphasis on the way parties nominate candidates. The nomination is one of the most important decisions of any political party, by what has been the cause of specific rules for access to such space of representation.
7. The winners of these procedures will be those that represent political parties to the electorate, and that often represent the electoral success or defeat, as well as, once the election, the exercise of government or the opposition (FREINDENBERG:2003).
8. This study covers the following topics: a) The rights of women and quotas; 2) minorities and vulnerable groups c) Constitutional or electoral law principles and their impact on the nomination of candidates.
9. This text was constructed from the information provided by the electoral authorities in Argentina, Bolivia, Chile, Costa Rica, Mexico, Paraguay, Peru, Uruguay and Venezuela. These countries have been able to make progress on the peaceful and democratic means for the election of the candidates. In its legislation can be found a constant momentum and progressive to improve the rules of nomination, which seeks to guarantee the right to be elected to any citizen.

1. Choosing Party Candidates

10. Political parties play a key role in the political life of any modern democratic society. The freedom to establish political parties and their fair and transparent regulation are vital to ensuring a level playing field for political competition and to prevent the abuse of state or public resources in campaign finance.

11. During elections, political parties often provide support, funding and resources for the campaign for their chosen candidates. However, the Organization for Security and Cooperation in Europe (OSCE) has pointed out that the participating states must present a large variety in the choice of electoral and party systems.¹

12. The Venice Commission has established that the parties must be able to select candidates free of government interference. The study of these laws shows that the selection of candidates and determination of the classification of the electoral lists is often dominated by closed entities and old networks of the political parties. That is why these laws have recognized the need to establish clear criteria (including women and minorities) for the nomination of who will represent them in the elections.²

13. Latin-America like others parts of the world has a great variety in the choice of electoral and party systems. Such choices often depend on the historical and cultural development of specific states. Although a country's choice of the electoral system should be respected as long as it upholds minimum standards for democratic elections. However, in every electoral systems candidacy is also an expression of an individual's rights to be elected.³

14. In spite the potential importance of political parties, it is only relatively recently that regulations regarding parties began to occur. In fact, it was only after World War II that some countries tried in their constitutions the existence of parties. The example in Latin-America was on Guatemala in 1946.

15. One of the consequences of the little time they have the political parties to be recognized in the legislation is that there is little literature on the subject. Concerned about the low level of production, the Venice Commission and the OSCE/ODIHR created a guide for the regulation of political parties. This document emphasizes that the establishment of the principles that must respect the regulation of political parties. They, of course, are based on freedom of association, as a central concept from which all other principles are drawn.

16. This study was structured under five questions on the nomination of candidates in the country referred to above. The questions are based on three most important aspects: in the principles that govern the nominations, the political participation of women and the intervention of minorities (indigenous).

¹ OSCE Ministerial Council, Decision No5/03, "Election", Maasricht, 1 and 2 December 2003, available at <http://www.osce.or/mc/40533>, in which OSCE participants states acknowledge that "democracies elections can be conducted under a variety of different electoral systems and laws.

² Guidelines on Political Party Regulation. Role of candidates and parties "electoral system" Venice Commission.

³ Guidelines on Political Party Regulation. Role of candidates and parties "Partisan candidates". Venice Commission.

2. Constitutional or electoral law principles and their impact on the nomination of candidates.

17. It is not possible to imagine the process of selecting the people representing the parties in the elections without solid foundation of the principles governing the electoral matters. Latin-America is an example of how it can be implement these principles in the laws.

18. In order to understand the importance and hierarchy of legal rules to nominate candidates of political parties, asked the electoral authorities on the regulation of the standard containing the constitutional principles. The purpose was to know whether they were in the supreme law (Constitution) or had given a lower value and only was stipulated in the electoral laws.

19. Unlike Europe, seven of the nine countries⁴ surveyed answered that the Constitutions contain the principles for the nomination of candidates; nonetheless, in every country there are specific laws regulating appointment procedures.

20. The countries that did not include in the Constitution were Peru and Paraguay. In the first principles are contained in the Political Parties Law, while Paraguay is in other electoral laws. See table 1.

| Country | Constitution | Electoral law |
|----------------|---------------------|---|
| Argentina | Article 38 | <ul style="list-style-type: none"> • Law of Democratization Political Representation Transparency and Equity Electoral No. 26.571, Title II (Open Primary Elections, Simultaneous and Mandatory) |
| Bolivia | Article 8 | <ul style="list-style-type: none"> • Law No. 026 of the Electoral System • Law No. 1983 Political Parties Law • Law No. 2771 of Citizen Groups and Indigenous Peoples |
| Costa Rica | Article 95 and 98 | <ul style="list-style-type: none"> • Law No. ° 8765 Electoral Code • Rules for the registration of candidates and establishment of the position of the political parties on the ballot |
| Chile | Article 18 | <ul style="list-style-type: none"> • Law No. 18,700/88 Constitutional Act on Election and Vote Count • Law No. 18.603/87: Organic Constitutional Law of Political Parties • Law No. 19,884 / 03: Law on Transparency, Limit and Control of Electoral Expenditure |
| Mexico | Article 41 | <ul style="list-style-type: none"> • General Law of Institutions and Electoral Proceedings • General Law of Political Parties |

⁴ Argentina, Bolivia, Costa Rica, Chile, México, Uruguay and Venezuela.

CDL(2015)031

| | | |
|--|--|---|
| Paraguay | ---- | <ul style="list-style-type: none"> • Law No. 834/1996 Code Electoral • Law No. 625/1995 Regulation Electoral Justice • Law No. 3,966 / 10. municipal law |
| Peru | ---- | <ul style="list-style-type: none"> • Law No. 28094 Law on Political Parties |
| Uruguay | The transitory provisions of the Constitution, W and Z, incorporated after being approved by the plebiscite reform of 1996 contain norms about the nomination of candidates. | <ul style="list-style-type: none"> • Law 17.063 Law Internal Elections |
| Venezuela | Article 67 | <ul style="list-style-type: none"> • Electoral Organic Law • Organic Law of the municipal government |
| <i>Own elaboration with information from legal dispositions valid in the aforementioned countries.</i> | | |

21. An example of this is what happened in the laws of Chile. The Constitution (Article 18) provides that an electoral system will be public. A basic constitutional law will determine its organization and operation will regulate the way in which the electoral processes and the referendums carried out with regard to all matters not provided for in the Constitution, and must always ensure full equality between independents and members of political parties, in relation to the presentation of candidates.

22. However, the Act refers to the Constitution of Chile. Specifically, the paragraph which establishes a system of primary elections that can be used by the political parties for the presentation of candidates.

23. For that the procedure provides for some rules such as:

- a) The electoral administration must organize the primaries to nominate candidates to the President, members of Parliament and for mayors;
- b) The political parties can participate in the primary election to nominate candidates for the post of president of the republic and the mayor, alone or together with other political parties and independent candidates, forming an electoral alliance;
- c) Candidates must be submitted by each of the positions in the electoral territories;
- d) The procedure for the primary election must cover all electoral territories depending on the position that the candidates are nominated.

24. On the other hand, the Constitutions of the countries analyzed is responsible for establishing the requirements for candidates, which range from age, nationality, residences, experience, occupation, and so on. In the same text, it is a set of principles that the political parties must respect to the conduct of the elections, as the respect for minorities, equality, and access to information and the right of the national political parties to participate in the elections.

25. Costa Rica is an example of legislation of internal party democracy and the establishment of the monopoly of the nominations for the parties at the constitutional level

CDL(2015)031

(Articles 95 and 98). It also ensures that the appointment of officials and candidates of political parties must respect the principles of democracy without discrimination on grounds of sex (article 95, paragraph 8).

26. In the legislation of Paraguay the Constitution contains requirements to run for office (president, vice president, senator, congressman, governor...), the electoral rules and the incompatibilities that are preventing the exercise of the function. Meanwhile, the Electoral Code establishes mandatory elections to elect candidates, internal termination date, the share of domestic gender, rules to be observed during the internal electoral process, deadlines for filing, paperwork nominations, challenging application procedures and replacement of candidates.

27. The second question that was conducted was on the impact of the general principles in the description of the candidates. Detect three types of principles:

- a) In countries such as Bolivia, Peru and Venezuela are the individual rights that are extracted from the general rules to accommodate specific approaches.

| Country | Electoral Principles observed for nomination processes: <u>are based on Individual Rights</u> |
|---|--|
| Bolivia | Equity, Equal opportunities, Social and Gender equity in political participation. |
| Peru | Right to vote and to be elected, Secret ballot, Universal suffrage, Equal suffrage, Respect of the popular will, Democracy in the Political parties. |
| Venezuela | Freedom of association under democratic organization processes, Right to participate in Public Affairs, Right to be elected. |
| <i>Own elaboration with information from legal dispositions valid in the aforementioned countries</i> | |

- b) In Paraguay and Uruguay, was rather strengthening the democratic electoral system that had focus, so that the plurality and equity of the contest are the specific rules governing.

| Country | Electoral Principles observed for nomination processes: <u>are based on Plurality and fairness of the contest</u> |
|---|---|
| Paraguay | Representative, Participatory and Pluralistic Democracy, Right to participate in Public Affairs, Right to be Elected. |
| Uruguay | Regulated nomination procedures, Legal resolution of the grievances based on the Constitutional and Legal principles for the interpretation and integration of Law. |
| <i>Own elaboration with information from legal dispositions valid in the aforementioned countries</i> | |

- c) In the third group Argentina, Costa Rica, Chile and Mexico appear in its rules for nominating recover both approaches: strengthening human rights and strengthening democratic pluralism.

| Country | Electoral Principles observed for nomination processes: <u>are based on the development of the Human Rights, and strengthening of the democracy</u> |
|---|--|
| Argentina | Compulsory vote, Internal Democracy of the parties, Respect of the minorities, Accountability, Free political speech. |
| Chile | Sovereignty, Democracy, Pluralism, Constitutional Supremacy and Legality. |
| Costa Rica | Right to participate in Public Affairs, Right and opportunity to be elected, Parity between men and women, and the respect of the rule of law. |
| Mexico | Freedom of association, Right to participate in Public Affairs, Right to vote and be elected, Parity between men and women, Respect of the Rule of Law, and the Right to an effective judicial review. |
| <i>Own elaboration with information from legal dispositions valid in the aforementioned countries</i> | |

28. A democratic state must take a series set of principles that allow not only the nomination of candidates, but also involves supervision of the elections for the assurance that in selecting candidates human rights must be respected.

29. In the laws of the countries in survey can be found four basic principles: equality, freedom, pluralism and tolerance. These principles are the basis of the nine countries to promote the political participation of women and minority participation.

3. Gender equality in the selection of candidates (Gender quota)

30. Gender theory has shown that it is not enough "formal equality" resulting from the protection that makes the law equally to people. Countries must pursue rather, schemes of "equality de fact," which involves changing the circumstances that prevent individuals and groups to fully exercise their rights and access to opportunities. In this context, it makes sense the notion of "substantive equality". It is necessary to eradicate not only bias obviously appearing on formal rules, but also those inhibitors that culturally recreate conditions for inequality.

31. In political matters it has to move from formal equality towards a material or substantive equality. For example, Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which requires States parties to ensure in equal conditions with men the right to vote, to participate in the formulation and implementation of politics and take part in the government bodies.

32. Similarly, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against the Woman, the Convention of Belém do Pará, requires the recognition of women's right to an equal access to public functions in their countries and to participate in public affairs.

33. In Latin-America, the gender equality is one of the main topics addressed when considering the nomination of candidates. Perhaps this is because the legislative decisions taken have generated good results. This is evidenced by the studies of the Inter-parliamentary Union. In them has been reflected to the American continent reaches 26, 6 % of women in the Congress. Figure that is only surpassed by the Nordic countries (42, 0 %).

CDL(2015)031

34. The congresses are the main spaces for women's participation, though of course not the only one way, to claim the justified demands for gender equity that have risen in relation to political participation and representation of women. The Venice Commission and the OSCE/ODIHR recommendations on different aspects of the electoral system remain unaddressed. They recommended the introduction of measures to increase the participation of women in elections.⁵

3.1 Gender Quota.⁶

35. The implementation of gender quotas and the result that have generated are the product of years of intense struggle to build a better political participation of women. The rise in the number of women in the congresses is largely due to this decision to establish a number or percentage of women candidates.

36. In fact, of the nine countries analyzed seven already contemplate legislation with a minimum of women candidates.

37. The Venice Commission, through its Code of Good Practice in Electoral Matters, considered that gender quotas are a prerequisite for ensuring equality and the gender parity element. This code has indicated that the legal rules that impose a minimum percentage of persons of each sex among the candidates, if you have a constitutional basis should not be considered contrary to the principle of equal suffrage.⁷

38. Argentina, Bolivia, Costa Rica, Mexico, Paraguay, Peru and Uruguay currently have gender quota for their legislative elections. Meanwhile Chile and Venezuela expressed that to date did not have this kind of affirmative action.

39. In particular, Bolivia, Costa Rica and Mexico are the most advanced in its legislation, since established parity (50-50). Nicaragua was not studied, but it is worth mentioning is the fifth country in the region that has adopted a parity rule. Mexico established that 50% of the candidate's formulas (candidate and alternate) for the federal Congress must be of each gender. The formulas have to be integrated by persons of the same sex. Also it is required; that the party electoral list respects the alternation of genders in the subsequent.⁸ Meanwhile both Bolivia and Costa Rica have legislated that the candidates must be of each gender and two persons of the same sex cannot be subsequently included on parties' lists.

40. Argentina and Peru have a gender quota of 30 percent for women. The first established that the party electoral lists are required to have a minimum of 30% women among their candidates for all national elections with real chances to be elected (Electoral Code, Article 37). Peru established that the electoral lists must include at least 30% of men

⁵ See Joint Opinion on the Draft Amendments to the Laws on Election of People's Deputies and on the Central Election Commission and on the Draft Law on Repeat Elections of Ukraine, CDL-AD(2013)016, pages 15-19; Joint Opinion on the Draft Law on Election of the People's Deputies of Ukraine, CDL-AD(2011)037, pages 6-7, para. 19

⁶For the Venice Commission gender quotas specify the minimum percentages of female candidates for elections, usually on party lists. Additionally, there might be provisions for the ranking order on the list. Definition obtained the CDL-EL(2009)004rev* Or. Engl .Impact of electoral systems on women's representation in politics.

⁷ Code of Good Practice in Electoral Matters (CDL-AD (2002)023rev).

⁸ General Law of Institutions and Electoral Proceedings , Articles 232, 234.

CDL(2015)031

or women for candidates (Electoral Law, Article 116 and Law No. 28094 regulating Political Parties, Article 26).

41. Paraguay and Uruguay reserved a need for women in their lists of candidate's quota. The former requires parties to ensure that 1 in every 5 candidates in primary elections for parties and movements are a woman. This represents a quota of 20 percent (Electoral Code, Article 32). Meanwhile, the latter stipulates that candidates of both sexes must be represented in every 3 places on electoral lists, either throughout the entire list or in the first 15 places. Where only 2 seats are contested, 1 of the 2 candidates must be a woman (Article 2 of Law no. 18.476).

42. Argentina was the first country to legislate a gender quota in their electoral laws (1991). Paraguay, Peru and Bolivia did the same in the 90's. Mexico adopted a quota of 2002. Later, 6 years ago, Uruguay and Costa Rica decided to be part of this phenomenon. See table 2.

43. The Venice Commission establishes that Introducing electoral gender quotas can be considered an appropriate and legitimate measure to increase women's parliamentary representation (CDL-AD(2002)023rev, I.25; CDLAD(2006)020). In recent years, an impressive number of countries have introduced quota regulations worldwide. There are almost 50 states with legal gender quotas or reserved women seats for national parliament.⁹

⁹ CDL-EL(2009)004rev* Or. Engl. Impact of electoral systems on women's representation in politics.

| Table 2 | | | | | |
|---|--------------------------|--------------------|---------------------------|---|---------------------------------|
| Country | Does have a quota? | Since | Quota type | How it is regulated? | Applies for internal processes? |
| Argentina | <input type="checkbox"/> | 1991 ¹⁰ | Legislate candidate quota | Party Electoral lists are required to have a minimum of 30% women among their candidates for all national elections with real chances to be elected (Electoral Code, Article 37) | <input type="checkbox"/> |
| Bolivia | <input type="checkbox"/> | 1997 | Legislate candidate quota | 50% of the candidates must be of each gender and two persons of the same sex cannot be subsequently included on the list of candidates (Law No. 026) | <input type="checkbox"/> |
| Chile | <input type="checkbox"/> | - | - | The Electoral Law does not establish a gender quota | <input type="checkbox"/> |
| Costa Rica | <input type="checkbox"/> | 2009 | Legislate candidate quota | 50% of the candidates must be of each gender and two persons of the same sex cannot be subsequently included on the list of candidates (Electoral Law, Articles 2, 148) | <input type="checkbox"/> |
| Mexico | <input type="checkbox"/> | 2002 | Legislate candidate quota | 50% of the formulas (candidate and alternate) of candidates for the Congress must be of each gender. The formulas have to be integrated by persons of the same sex. Also it is required, that the party electoral list respect the alternation of genders in the subsequent places (General Law of Institutions and Electoral Proceedings, Articles 232, 234) | <input type="checkbox"/> |
| Paraguay | <input type="checkbox"/> | 1996 | Legislate candidate quota | Parties are requires to have internal party mechanisms to ensure that 1 in every 5 candidates in primary elections for parties and movements should be a woman (Electoral Code, Article 32) | <input type="checkbox"/> |
| Peru | <input type="checkbox"/> | 1997 | Legislate candidate quota | Established that the electoral lists must include at least 30% of men or women for candidates (Electoral Law, Article 116 and Law No. 28094 regulating Political Parties, Article 26) | <input type="checkbox"/> |
| Uruguay | <input type="checkbox"/> | 2009 | Legislate candidate quota | Stipulates that candidates of both sexes must be represented in every 3 places on electoral lists, either throughout the entire list or in the first 15 places. Where only 2 seats are contested, 1 of the 2 candidates must be a woman (Article 2 of Law no. 18.476,) | <input type="checkbox"/> |
| Venezuela | <input type="checkbox"/> | - | - | The Electoral Law does not establish a gender quota | <input type="checkbox"/> |
| <i>Own elaboration with information from legal dispositions valid in the aforementioned countries</i> | | | | | |

¹⁰ In that year, a New Electoral Law was approved, named 'Ley de Cupo Femenino', it required to party electoral lists to have a minimum of 30% women among their candidates for all national elections.

CDL(2015)031

44. Table 3 shows the impact of gender quotas in the integration of the congresses. The implementation of these standards has increased female presence in legislative bodies.

45. As it was hoped the countries that have implemented the parity in the nominations have increased presence of women in their congresses. Although still not reach the expected levels.

46. An interesting example of the joint quota is Bolivia. In 2014 legislative elections took place with parity. The result is encouraging because in the Lower House obtained 51% of women and in the Upper House the result was 44 %. In contrast, in Costa Rica the same gender quota did not produce such a result, since it only came to obtain a 33% of women. The case of Mexico is not applicable, since the Congress elected in 2012, and the parity in the nominations came until 2014.

47. The countries that have established a quota of 30% obtained different results. For example, Argentina won a performance of the share higher than expected, because in the legislative elections of 2013 were obtained in the Lower House 37% and in the Camera High 40 %. Meanwhile, Peru won only 22% of women in the 2011 elections.

48. Meanwhile, Uruguay with the booking of 1 of every 3 spaces in the lists for women, obtained in the Lower House and 16% in the Upper Chamber 30 %. While in Paraguay, the reservation of a space of five for women, won 15% in the Lower House and 20% in the Upper House.

| Country | Minimum percentage of woman required | Date of last elections | Percentage of women in Legislative bodies | |
|---|--------------------------------------|------------------------|---|------------------------------|
| | | | Lower House | Upper House |
| Argentina | 30% | 2013 | 95 women (37%) | 25 women (40%) ¹¹ |
| Bolivia | 50% | 2014 | 66 women (51%) | 16 women (44%) ¹² |
| Chile | - | 2013 | 18 women (15%) | 6 women (16%) ¹³ |
| Costa Rica | 50% | 2014 | Unicameral: 19 women (33%) ¹⁴ | |
| Mexico | 50% | 2012 | 183 women (37%) | 42 women (33%) ¹⁵ |
| Paraguay | 20% | 2013 | 12 women (15%) | 9 women (20%) ¹⁶ |
| Peru | 30% | 2011 | Unicameral: 29 women (22%) ¹⁷ | |
| Uruguay | 33% | 2014 | 16 women (16%) | 9 women (30%) ¹⁸ |
| Venezuela | - | 2010 | Unicameral: 25 women (15%) ¹⁹ | |
| <i>Own elaboration with information from legal dispositions valid in the aforementioned countries</i> | | | | |

¹¹ Argentina Data extracted from: <http://www.directoriolegislativo.org/destacados/cuantas-mujeres-tiene-el-nuevo-congreso/>

¹² Bolivia Facts published by "50 y 50 Parity is now" available at: <http://www.semanarioaqui.com/index.php/opinion/3588-mas-mujeres-seran-diputadas-y-senadoras-en-la-nueva-asamblea-legislativa>

¹³ Facts Chile , own calculations, from the data accessed in:

- Cámara de Senadores: http://www.senado.cl/prontus_senado/site/edic/base/port/senadores.html
- Cámara de Diputados: <http://www.camara.cl/camara/diputados.aspx#tab>

¹⁴ Facts Costa Rica, own calculations, based on data published in:

http://www.asamblea.go.cr/Diputadas_Diputados/Lists/Diputados/Diputadas%20y%20diputados%20por%20Fraccin.aspx

¹⁵ Facts Mexico, consulted:

- Cámara de Senadores: http://genero.ife.org.mx/legislativo_dip.html
- Cámara de Diputados: http://genero.ife.org.mx/legislativo_sen.html

¹⁶ Facts Paraguay, own calculations, based on data published in:

- Cámara de Senadores: <http://www.senado.gov.py/index.php/senado/nomina/nomina-por-partido>
- Cámara de Diputados: <http://www.diputados.gov.py/ww2/?pagina=dip-listado>

¹⁷ Facts Peru, consulted:

http://www4.congreso.gob.pe/l_organos/Mesa_Mujeres_parlamentarias/integrantes.html

¹⁸ Facts Uruguay, consulted: <http://www.cimacnoticias.com.mx/node/68016>

¹⁹ Facts Venezuela, own calculations, based on data published in:

<http://www.asambleanacional.gob.ve/diputado>

CDL(2015)031

3.2 Sanctions.

49. One of the aspects that have hampered the performance of the shares is the lack of commitment of politicians to comply with them. However, have been generated actions that will improve the efficiency of their work, and one of them is the imposition of sanctions.

50. Sanctions are the means by which the authorities were searching for safeguarding the rights of women to participate in the electoral process, and if necessary, to integrate the representative bodies.

51. A gender quota without sanction for his negligence is a very effective instrument. As it happened in Mexico a share without penalty contributes to a low performance. Five of the countries surveyed were established as punishment the refusal of the registration of the party's candidates. This sanction was exclusively for the candidates to the congress.

52. In the implementation of sanctions Argentina, Bolivia and Mexico stand out for the implementation of a procedure to correct violations of the quotas. Bolivia gives the political parties a time of 72 hours to comply with the percentage of women (50 %). If they do not comply with the observation of the electoral management body rejects the registration of candidates.

53. Argentina and Mexico established 48 hours to make the necessary changes. The first stated that if the political parties do not change the way they allocate their candidates to meet who are two candidates of different sex in the first three places in the list, the electoral authority itself will make the appointment. The second country gives other 24 hours to comply with the requirement. If the party continues without complying with the number of women required the authority rejects the electoral register.

54. Meanwhile, Costa Rica, Paraguay, Peru and Uruguay, law does not establish a correction procedure of registration of candidates. Provides that, if the lists of the candidates do not comply with the percentages of women will be rejected. Venezuela and Chile have no fee or penalty, because they don't have a gender quota. See table 4.

55. In this topic, the Venice Commission establishes that the possibility to sanction the non-compliance with legal quotas is considered to be important, too. Legal sanctions for non-compliance may result in reducing public funding limiting the numbers of candidates or simply not approving the lists.²⁰

²⁰ CDL-EL(2009)004rev* Or. Engl .Impact of electoral systems on women's representation in politics.

| Table 4 | | |
|---|---|--|
| Country | Gender Quota | Sanctions |
| Argentina | 30% of the candidacies. Placement rules: 2 candidates of a different sex in 3-seat constituencies | If the gender quota is not met, the list has to amend within 48 hours. If the party does not comply the requirement, the court shall place in the appropriate places the women candidacies who are next on the party list |
| Bolivia | 50% of the candidatures. It has to be an alternation between male and female candidacies. | Notice, with a 72 hours period provided for revising the list. If found no complaint again, the party's registration will be rejected. |
| Chile | The Electoral Law does not establish a gender quota. | |
| Costa Rica | 50% of candidatures. It has to be an alternation between male and female candidates. | The electoral authority will reject lists that do not comply with the quota rules. |
| Mexico | 50% of the formulas (Candidate and alternate) for Congress. It has to be an alternation between male and female candidacies. | If the gender quota is not met, the Electoral Authority requires the party to amend the list within 48 hours period. If the requirement does not accomplish, the party is admonished, and it has 24 hours to fulfill the requisite. If the quota has not met, the list will be rejected. |
| Paraguay | 20% of the candidatures (1 of 5 seats in the list) | Party lists do not met the quota requirement will not be approved by the Electoral Commission. |
| Peru | 30 of the candidatures. | Lists not complying with the gender quota will be rejected. |
| Uruguay | 33% of the candidatures (if only 2 seats are contested, the quota rises to 50%). Placement rules, in every 3 places of the candidate lists must be filled by women. | Lists not complying with gender quota requirements will be rejected. |
| Venezuela | The Electoral Law does not establish a gender quota. | |
| <i>Own elaboration with information from legal dispositions valid in the aforementioned countries</i> | | |

CDL(2015)031

4. Indigenous Quota.

56. This study addresses one of the topics that, although reference has been made in the Americas, are one of the least legislative in the continent, as it reveals the answers of the authorities who responded to the question about the existence of an indigenous quot.²¹

57. It should be noted that further to a request by the Parliamentary Assembly of the Council of Europe, the Venice Commission drafted a Report on Electoral Rules and Affirmative Action for National Minorities Participation in Decision-Making Process in European Countries, which was adopted by the Council for Democratic Elections.²²

58. In spite of the fact that there are 522 indigenous peoples representing more than 28 million people²³ in Latin-America, it is alarming to see that in the countries analyzed the standards for the presentation of candidates have done little to ensure that these groups of people can aspire to the nominations.

59. The Study on "Electoral Law and National Minorities" establishes, principally, two topics that have to be considered by a legislative body:

- a) When lists are not closed, a voter's choice may take account of whether or not the candidates belong to national minorities. Whether or not such freedom of choice is favorable or unfavorable to minorities depends on many factors, including the numerical size of the minorities.
- b) When in a territory the indigenous population is majority it should recognize him right to be represented by someone on the same population group.²⁴

60. As established by the Venice Commission is important to note that any legislation must consider the need to provide a measure to help provide minority representation.

61. The legislative models that have been set up have provided include such practices as reserve a certain number of parliamentary seats in specific, or waiver to the threshold of the number of votes received for obtaining representation in the parliament in the case of the parties representatives of national minorities.

62. With these guidelines is that Peru established 15% of the nominations are reserved for representatives of native communities and indigenous peoples, for their provinces and regions. This is the only case of the nine countries analyzed; we found a legislation of this wording.

²¹ CDL-AD(2005)009, Report on Electoral Rules and Affirmative Action for National Minorities Participation in Decision-making Process in European Countries, adopted on 11-12 March 2005, at <[http://venice.coe.int/docs/2005/CDL-AD\(2005\)009-e.asp](http://venice.coe.int/docs/2005/CDL-AD(2005)009-e.asp)> (hereinafter "Report on Electoral Rules and Affirmative Action")

²² The Council for Democratic Elections is a tripartite body including member of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe, specialized in electoral matters; it includes observers from, *inter alia*, the OSCE/ODIHR.

²³ UNICEF, "Indigenous peoples in Latin-America", 2012.

²⁴ CDL-INF(2000)004, Study on Electoral Law and National Minorities, adopted on 25 January 2000, at <[http://venice.coe.int/docs/2000/CDL-INF\(2000\)004-e.asp](http://venice.coe.int/docs/2000/CDL-INF(2000)004-e.asp)> (hereinafter "Study on Electoral Law and National Minorities").

CDL(2015)031

63. Venezuela has established that in the National Assembly, are reserved 3 seats for Indigenous Congressmen (Organic Law of Electoral Processes, Article 180). Bolivia decided to make special electoral boundaries for organizations of nations and native indigenous peoples representing ethnic minorities in the country. They are allowed to nominate candidates according to their own ethnic traditions (Law No. 026).

64. Mexico offers an example of such legislation. The electoral law does not establish an indigenous quota, but as result of a Constitutional amendment, the State has to promote the political participation of the indigenous groups, and in order to do so, it is allowed to make special electoral boundaries where the indigenous people exceed 40% of the population (Constitution Amendment Decree August 14th 2001, Article third). See table 5.

65. The Venice Commission, through its Guidelines on Political Party Regulation has established that the ability for Minorities to be elected is, likewise, an important area for possible regulation. Measures should be taken within the electoral process, therefore, to ensure that national minorities have an equal opportunity to be elected and represented in parliament.²⁵

²⁵ Guidelines on Political Party Regulation. Role of candidates and parties “Minority Candidates”.

| Country | There is an indigenous quota? | How it is regulated? | Number of indigenous among population ²⁶ |
|------------|-------------------------------|---|---|
| Argentina | <input type="checkbox"/> | The Electoral Law does not establish an indigenous quota. | 955,032 (2.4%) |
| Bolivia | <input type="checkbox"/> | The State it is entitled to make special electoral boundaries for organizations of nations and native indigenous peoples representing ethnic minorities in the country. They are allowed to nominate candidates according to their own ethnic traditions (Law No. 026). | 6,216,026 (62.2%) |
| Chile | <input type="checkbox"/> | The Electoral Law does not establish an indigenous quota. | 1,805,243 (11%) |
| Costa Rica | <input type="checkbox"/> | The Electoral Law does not establish an indigenous quota. | 104,143 (2.4%) |
| Mexico | <input type="checkbox"/> | The Electoral Law does not establish an indigenous quota, but as result of a Constitutional amendment, the State has to promote the political participation of the indigenous groups, in order to do so, it is allowed to make special electoral boundaries where the indigenous people exceed 40% of the population (Constitution Amendment Decree August 14 th 2001, Article third). | 16,933,283 (15.1%) |
| Paraguay | <input type="checkbox"/> | The Electoral Law does not establish an indigenous quota. | 112,848 (1.8%) |
| Peru | <input type="checkbox"/> | 15% of candidate's party lists are reserved for representatives of native communities and indigenous peoples for elections in provinces and regions. | 7,021,271 (24%) |

²⁶ Data from ECLAC (2014), 'Indigenous peoples in Latin-America. Advances in the last decade and earnings for the guarantee of their rights' challenges. Available in: <http://www.cepal.org/es/publicaciones/los-pueblos-indigenas-en-america-latina-avances-en-el-ultimo-decenio-y-retos>

CDL(2015)031

| | | | |
|------------------|--------------------------|---|----------------|
| Uruguay | <input type="checkbox"/> | The Electoral Law does not establish an indigenous quota. | 76,452 (2.4%) |
| Venezuela | <input type="checkbox"/> | It is established that in the National Assembly, are reserved 3 seats for Indigenous Congressmen (Organic Law of Electoral Processes, Article 180). | 724,592 (2.7%) |

5. Conclusions.

66. Latin-America has become a leading region in terms of legislation for the nomination of candidates of political parties. While Europe began to take steps to ensure the participation of women and minorities (indigenous) after 2000, such rules existed in Latin-America a decade earlier.

67. Despite legislative designs and measures taken to enforce the participation of these populations' great challenges for Latin democracies persist. Participation in the electoral processes shows that the legislative regulation is not sufficient to achieve a greater inclusion, despite the fact that there are still measures and legislative tools to improve the legislative performances.

68. Gender quotas have shown us that male lags persist and do not allow fair access to positions for women. Hence it has had to lay down penalties for those who fail to comply with the design of gender quotas.

69. Moreover, the instruments built to ensure minority representation populations (indigenous) still leave things to be desired in the laws of the countries analyzed. The indigenous quota is still far from taking the force that gender quotas have acquired. The numbers of people within these communities have not yet convinced the Congress of the need for the representation of this.

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CDL(2015)031

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CDL(2015)031

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