

OCCASIONAL REPORT ON VENEZUELA'S POLITICAL ELECTORAL CONTEXT

THE
CARTER CENTER



CARTER CENTER VENEZUELA

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RENEWAL OF THE ELECTORAL AUTHORITY NOMINATION OF CANDIDATES TO SERVE AS DIRECTORS ON THE NATIONAL ELECTORAL COUNCIL

Executive Summary

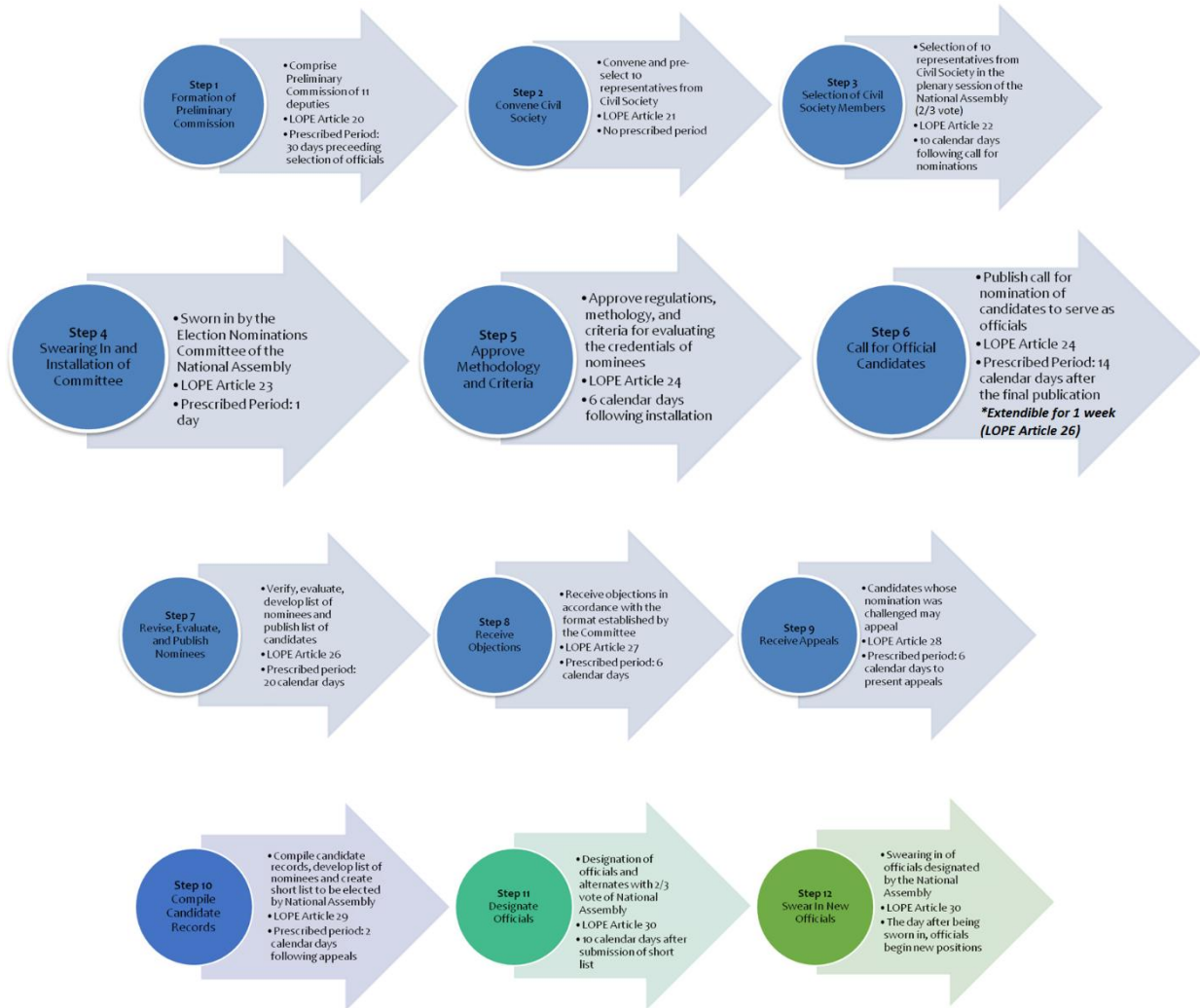
The Electoral Nominations Committee (CPE), the authority responsible for pre-selection of candidates nominated to replace the three directors on the National Electoral Council (CNE) whose terms have expired, began discharging its duties on October 22, 2014.¹ Its first task, according to Article 24 of the Electoral Power Organic Law (LOPE), was to formulate and adopt the regulations to govern the authority's inner workings, along with procedures for introducing a final list of eligible candidates into the plenary session of the National Assembly (*Asamblea Nacional*, hereinafter referred to as AN). Over the period covered in this report, the CPE also devised the methodology to be used by the committee to evaluate the credentials of candidates for positions as CNE directors (*rectores*) (See step 5 on the flowchart).

During the period under consideration, the committee also called for the nomination of director candidates. This period began on October 31 and ended 21 days later (though scheduled to end November 13, the committee decided to extend the deadline for submissions an additional week, wrapping it up on November 20). Over this time period the committee accepted 245 nominations altogether.

At the time this report was published, the committee was still reviewing the credentials of nominees and conducting interviews with them.

¹ It should be pointed out that the Electoral Nominations Committee was comprised of eleven members (six from the PSUV and five from opposition parties) plus 10 civil society members. According to several estimates, the final ratio of political forces within the committee is twelve pro-ruling party members and nine non-ruling party members.

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Flowchart of the electoral authority renewal process

Approval of the rules of procedure

Committee members devised their rules of procedure based on those approved in 2009 by the commission responsible for selecting previous CNE director candidates. Ruling party committee members, however, promoted modifications to Articles 4 and 5 of these regulations, which had stipulated that the committee’s decisions were to be made by a qualified majority. According to the proposed amendment, if no consensus can be reached among committee members, decisions must be made by a simple majority vote.² Ruling

² The term used in the regulations is “absolute majority.”

party sectors also proposed the same procedure for so-called “validations,” whereby decisions made by the committee could be considered valid as long as there were a minimum of eleven members present.³ Since there was a ruling party majority (12 of the 21 members), the committee approved both proposals on October 27 despite the dissenting votes of non-ruling party members ([see note](#)).

Opposition and ruling party committee members alike fiercely criticized the change in the rules that had governed the committee's decision making until that time, characterizing the initiative's approval as “extremely serious.” AN Deputy and Electoral Nominations Committee member Bernardo Guerra asserted that the reason for the clause requiring a qualified majority was the need for CPE decisions to be made by consensus. This is why rules for appointing CPE members and CNE directors require a two thirds vote in the AN, he added. In a similar vein, four civil society CPE members led by José María Cadenas⁴ issued a statement on November 25 rejecting the amendment, stressing that when the constituent assembly established the qualified majority requirement on decisions it did so to yield the broadest level of consensus possible and thereby obviate the potential bias entailed in decisions made by simple majority vote.

NGOs following the nomination process for new CNE members, such as *Ciudadanía Activa* (Active Citizenship), *Comunidades* (Communities), *Grupo La Colina* (The “La Colina” Group), *Compromiso Ciudadano* (Citizen Commitment) and *Súmate* (Join Up), held a similar line of criticism, requesting that committee members make decisions by consensus or unanimous vote as a demonstration of democratic governance and an effort toward peace ([see note](#)).

Meanwhile, PSUV Deputy/CPE member Orlando Zambrano argued on behalf of ruling party sectors that casting doubt on decisions made by a committee majority was part of a strategy by the “extreme right” to obstruct the renewal of public authorities ([see note](#)). Other ruling party committee members pointed out that the decision was made to “expedite” the decision making process. PSUV Deputy Earle Herrera also reminded legislators that neither the constitution nor the law stipulate that CPE decisions be made by a two-thirds majority vote ([see note](#)).

Electoral representative for the *Mesa de la Unidad Democrática* (Democratic Unity Table-MUD) coalition Vicente Bello adopted an intermediate stance, noting that while everything taking place within the committee was important (anything happening there could be interpreted as an indication of things to come in the Assembly), changing the rules did not necessarily determine committee work outcomes. What matters, he said, was for

³ The term “validation” has to do with the number of participants required to validate whatever is approved at each session. Article 4 of the rules of procedure states that meetings of the Electoral Nominations Committee shall be considered valid “with an absolute majority of its members present.”

⁴ The other members were Francisco Bello, Carlos Agostini and Frankie Isaac.

candidates to abide by regulation provisions, particularly with respect to requirements on their independence ([see note](#)).

Candidate nomination process

Once the rules of procedure were approved, the committee began the convocation process, calling on civil society organizations to nominate their candidates to form the CNE.⁵

Convocation began on October 30 and, though scheduled to end on November 13, it was extended one week by unanimous CPE decision, as stipulated in LOPE Article 26, to facilitate the participation of the greatest number of citizens ([see note](#)). This extension effectively facilitated a substantial boost in the number of candidates, though some NGOs considered this extension unwarranted ([see note](#)). From the 161 candidates registered by the initial closing date (November 13) ([see note](#)), the number of applicants jumped to 245 by the end of the extension period (November 20) ([see note](#)).

Candidates were put forward by a wide spectrum of civil society organizations.⁶ According to the statement released by the group spearheaded by Cadenas, 35.9 percent of these candidates were submitted by communal councils (88), the highest percentage among all nominating organizations (see note). In addition to candidates proposed by the communal councils, nominees were submitted by 67 civil associations or foundations (27.3 percent), 30 trade union organizations (12.2 percent), nine professional associations (3.7 percent), nine unions (3.7 per percent), six neighborhood associations (2.5 percent) and an educational institute (0.4 percent).⁷ The remainder (35 candidates) were distributed among other groups (14.3 percent).

The NGO known as *Súmate* sharply rejected the idea of communal councils participating in the candidate nomination process, pointing out that these government bodies cannot be considered part of civil society, strictly speaking, due to their direct ties with the Venezuelan state ([see note](#)). According to this group, engagement of communal councils in the process of electing CNE directors violates the civil society doctrine issued by the Supreme Court's Constitutional Chamber in the ruling it handed down on November 21, 2000,⁸ which stipulates that "organizations that are subsidized or financially dependent

⁵ Convocation notices were published on October 29 and 30.

⁶ According to LOPE Article 25, each organization may nominate up to three candidates.

⁷ Among the business associations participating in the process were the Chamber of Commerce and the Zulia section of FEDECÁMARAS.

According to the ruling, civil society "...is distinct from the State and the entities comprising it (states, municipalities, autonomous institutions, public foundations, companies with public capital, etc.)" therefore the State "cannot be directly or indirectly part of civil society in any way." Foundations, associations, companies or groups, fully funded by the state, since they are private in nature, cannot represent civil society, concludes the ruling, "unless they can prove that the state wields no influence whatsoever over their management and activities."

on state agencies, such as the communal and municipal councils, among others, cannot represent civil society by nominating candidates for the office of CNE director.”

Candidates and political reactions

Prominent among the candidates nominated to positions at the CNE are former Electoral Power Vice President Janeth Hernández, Alternate Director Levy Arron Alter Valero and current Director of the CNE's Office of Political Participation Luis Emilio Rondón González. Other distinguished candidates are Cristóbal Fernández, who recently served as temporary Secretary of the *Mesa de la Unidad Democrática* (Democratic Unity Table-MUD) coalition. The most controversial nominations, however, were of those to replace two ruling party officials whose terms have expired, i.e., current CNE President Tibusay Lucena, and Head Director Sandra Oblitas.⁹

According to Article 8 of the Electoral Power Organic Law (LOPE), directors whose terms have expired may be re-elected for a maximum of two additional terms ([see note](#)), “upon assessment of their administration by the National Assembly” ([see note](#)). Along these lines, the statement released by the civil society committee members led by Cadenas reiterated that according to the provisions of this article it is not within the powers of the committee to evaluate the “potential competence” of current directors. This power, they stressed, is wielded by the National Assembly, which must decide accordingly, taking into account the performance of their duties for over eight years, beginning in April 2006.” According to this interpretation, the two directors contending for reelection will not be required to undergo personal interviews with committee members, a mandatory requirement for the other 243 candidates. Committee members reiterated, however, that these two directors would indeed be answerable to any objections brought forward by Venezuelan citizens (see herein below).

Some major opposition sector spokespersons flatly rejected the possible reappointment of the two departing directors by the Assembly. The former candidate for President and current Governor of Miranda state, Henrique Capriles Radonski, characterized these nominations on his Twitter account as “shameless” and “unacceptable” ([see note](#)). On behalf of the ruling party, CPE President and PSUV Deputy Blanca Eekhout, however, defended the legal basis for registering the directors as candidates and underscored their merits as the organizers of prior elections ([see note](#)).

Some observers, meanwhile, expressed fears that the controversies surrounding the nomination of these two directors could adversely affect the climate of debate within the AN, and thereby hinder the possibility of reaching the agreements or the consensus needed to facilitate the two thirds vote. Consequently, the decision over who the next directors

⁹ Both nominations were presented on the last day of the period extension by *Circulo Femenino Populares* organizations and *Epa Parroquia*, respectively.

could fall into the hands of the Supreme Court, which is what a majority of civil society tried to prevent at the outset of the process with the formation of the CPE.

Methodology for shortlisting presidential candidates

During their first sessions, and in tandem with discussion over the rules of procedure, the committee approved the methodology it will use to assess director position nominees. According to the eligibility requirements set forth in LOPE Article 9, candidates must meet the following requirements:

- College degree (university degree issued no later than 2004);
- Ten years or more of professional practice and experience or graduate studies majoring in electoral law or other related subjects;
- No link to any grounds for dismissal as stipulated in Article 32 of the LOPE;
- No criminal convictions with a final judgment for having committed willful offences over the last twenty years;
- No relation to the president of Venezuela;
- No connections with political organizations.¹⁰

At the conclusion of nominations, the committee set November 26 as the starting date for interviews of the candidates meeting the aforementioned requirements. The purpose of the interviews is to explore the views of candidates on the importance of moral issues involved in the performance of public duties, their experience, and their perceptions of institutions and democracy, especially those associated with the Electoral Power. According to the methodology approved, candidates must also demonstrate political independence and have no partisan commitments. The aim of these interviews, as noted in the press release issued by the group spearheaded by Cadenas, is to form “an overall opinion regarding experience acquired, performance potential, personal suitability and, in particular, the proven political independence of director candidate nominees, as clearly required by the Constitution and the LOPE.”

To conduct the interviews the committee stipulated the forming of six, three member work teams that are to work in parallel fashion. Interviews are to be 20 minutes long and the president, the vice president and the secretary of the committee were forbidden from participating on the work teams.¹¹

While the methodology was unanimously approved, some CPE opposition members initially submitted a proposal to use quantitative assessment (known as a “scale” or

¹⁰ Source: *Metodología para la evaluación de los postulados y postuladas a rectores del Consejo Nacional Electoral* (Methodology for assessment of nominees for the position of director on the National Electoral Council).

¹¹ Though they are expected to be available as an alternate to stand in for team on an extraordinary basis for members of other teams that are unavailable to participate in interviews.

calculation table) to appraise the merits of each candidate ([see note](#)). Nevertheless, this was abandoned from the outset due to the complexity of the calculations involved and the sheer volume of nominees.¹²

Subsequent steps

As provided in LOPE Article 26 (Step 7 in the flowchart), within the 20 days following the nomination period, the committee must verify compliance with legal requirements, evaluate nominees submitted based on the approved professional profile by means of an interview, and select eligible individuals. The committee must also draw up its list of at least 27 eligible individuals, confirming that at least one more than half of them are Venezuelan by birth, since nominees for CNE President and Vice President are also being selected. The list must include at least 27 candidates because the committee is required to submit at least three names for each position being renewed.¹³

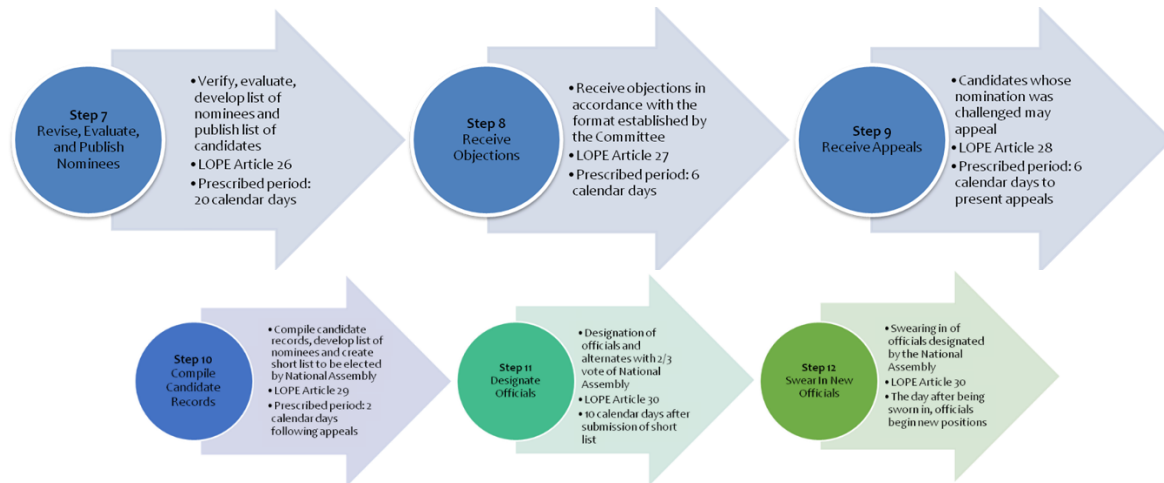
This time period may be shortened, however, depending on the progress made by the work teams. Once assessment and verification of the nominees has been carried out, the CPE must publish the list of eligible candidates in two national newspapers and then consider any objections from civil society for six consecutive days (Step 8 in the flowchart). The committee secretary must then inform candidates about objections raised against them and candidates will have six consecutive days to present defending arguments (Step 9 in the flowchart).

For two consecutive days the CPE shall prepare a dossier on each of the nominees and send a list with at least 27 candidates to the AN (Step 10 in the flowchart). After this, the AN shall have ten days to choose the three principal directors and six alternates (Step 11 in the flowchart). If ruling party and opposition legislators reach the respective agreements, and they pass with a two-thirds vote, the new directors shall be sworn in at a session of the AN the following day (Step 12 in the flowchart). If they fail to reach these agreements, the decision will become the Supreme Court's responsibility.

¹² Interview with CPE members.

¹³ The positions up for renewal are those of three directors and their respective alternates. The minimum figure of 27 is therefore the result of multiplying the nine positions by three.

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Steps pending on the timetable

If the timetable is adhered to as planned and the respective agreements are reached in the AN, swearing in of new electoral authorities should take place within the first ten days of January 2015, since the legislature will be in recess between December 15 and January 5. The interview period could be shortened, however, which might move the process forward overall, culminating in the appointment of directors before the new year.

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