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Research Report

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Elections in Latin America

The Problematic Use of a Democratic Institution

Claudia Zilla

In present-day Latin America “election activism” is widespread. Elections are held with growing frequency and increasingly serve differing aims. In many cases, however, they do not go along with a strengthening of democracy. A current example is Argentina, where early congressional elections were held on June 28 and the government and opposition fought in court over the legality of several candidacies. Argentina thus joined the ranks of countries like Bolivia and Venezuela, where elections not only serve as a source of democratic legitimation and a form of political oversight, but are also used by both ruling parties and opposition forces in certain situations as a means to extend their own power.

Latin America is today one of the most democratic regions of the former Third World. With Cuba as the sole exception, all of the countries of the region meet the criteria of at least a minimal definition of democracy. General, direct, free, and secret elections are held in these countries on a regular basis in a competitive context. These elections bring about changes in political office holders and governing parties. More recent developments, however, make elections appear not just as a method to determine majorities and thus to fill posts and control representative bodies, but rather as an instrument of government intervention, or as a means for oppositional forces to exert political pressure. Furthermore, electoral practice often diverges from the electoral law.

Argentina: “Testimonial candidates” as voter deceit

In mid-March of this year, Argentina’s President, Cristina Fernández de Kirchner, signed a draft law to move parliamentary elections forward by four months on the grounds that the repercussions of the global financial and economic crisis called for resolute government action in a stable and consensus-oriented climate. The government argued that if elections were to be held as planned in October of this year, an electoral campaign lasting months would paralyze the government’s decision-making abilities. Just a few days later, the parliament voted the draft put forward by the executive branch into law with a sizeable majority.

The fragmented opposition, which had voted against the early elections in Parliament, brought the peculiar case of the *candidaturas testimoniales* to court. These so-called “testimonial candidatures” are incumbent ministers, governors, and mayors who have placed themselves as candidates on the list of the ruling *Frente para la Victoria* (“Front for Victory”, FPV) for a parliamentary mandate. Some even put relatives on the lists who have so far not been engaged politically and bear the same last name and are therefore “associated” with the well-known politicians.

While the then-party leader Néstor Kirchner (husband and also predecessor in office of the current president) demanded that these office holders list themselves as “testimonial candidates” as proof of their support for the government, many members of the opposition criticized this form of candidacy:

- ▶ Since many “testimonial candidates” promised in advance that in the case of an election victory they would renounce their seat in parliament and keep their post in the executive branch, they are being accused of voter fraud.
- ▶ Since parliamentary representatives in Argentina are elected on the basis of closed and rigid party lists, “testimonial candidates” work as magnets for votes that ultimately end up counting towards other candidates who are placed much further down the lists—many of them altogether unknown. This ploy is criticized as a perversion of the principle of representation and electoral choice.

The electoral court (*Cámara Nacional Electoral*) confirmed the legality of “testimonial candidates” in the second instance with a two-thirds majority. In its judgment, the court cites the general difficulty of judging the future intentions of actors, as well as subsequent statements by some testimonial candidates that they might “possibly” take office after all. The opposition is determined to bring the case before the highest court (*Corte Suprema de Justicia*).

Aside from the fact that renowned constitutional experts have expressed serious doubts as to the constitutionality and electoral legality of testimonial candidates and early elections, the political effects of these maneuvers became clear very soon. In Argentina, an election campaigning has taken place in which the focus did not lie on substantive political questions but on questions of electoral law. Government representatives themselves were contributing to the political polarization by referring back to the crisis of 2001/02, suggesting that the electorate faces the alternative of expanding the governing majority or sinking the country into chaos. This has created an even more charged atmosphere, which is anything but conducive to finding an effective solution to the financial and economic crisis. The “testimonial candidates” gave new impetus to the personalism and nepotism of Argentinean politics; they are symptomatic of the lack of democratization within party structures and reveal the necessity of electoral system reform. The fact that some opposition parties have actually followed the FPV in its list policy demonstrates the low level of commitment to democratic practices in Argentina. Finally, the approval of early elections by the Chamber of Deputies and Senate and the “legal innovation” of “testimonial candidates” further undermine the legitimation and power of parliament—a process that is rapidly gaining momentum in many political systems in Latin America.

Bolivia: Election marathon

In Bolivia on December 6, 2009, elections will be held for the President and bicameral parliament, along with referenda on autonomy rights in the Departments of La Paz, Oruro, Potosí, Cochabamba, Chuquisaca and in the Province of Gran Chaco (Tarija). On April 4, 2010, departmental and local elections will take place. This was made possible by a provisional electoral law that was passed by parliament on April 14, pre-

ceded by intense disputes between pro-government and oppositional groups and a hunger strike by President Evo Morales.

With the *Ley del Régimen Electoral Transitorio*, Bolivia entered the home stretch of an election marathon that started at the end of 2005:

- ▶ December 2005: Election of the prefects (executive branch of the departments), together with parliamentary and presidential elections (Winner: Evo Morales).
- ▶ July 2006: Binding referendum on the question of establishing an regional autonomy regime within the unitary state with the election of the constituent assembly.
- ▶ May/June 2008: Autonomy referenda in four departments (Santa Cruz, Beni, Pando, and Tarija).
- ▶ August 2008: Recall referendum on the question of whether the President, Vice President, and eight of a total of nine Prefects would be forced to step down.
- ▶ January 2009: Referendum on adopting the new draft of the constitution.

This dynamic electoral cycle reflects the problematic situation currently facing Bolivia. The expanded use of referenda reflects a specific understanding of democracy, which considers instruments of direct participation more meaningful than representative channels, and thus ultimately accords the former greater legitimacy. The government and the opposition often attribute elections and referenda in the context of Bolivia's "blocked democracy" an arbitration function: the two sides are stuck in a stalemate, which they find it almost impossible to break by means of negotiation and compromise due to the extreme political and social polarization in the country. For this reason, the antagonistic camps try to use elections to test their strength. Election results, however, tend only to re-establish the same balance of power as before and reaffirm traditional strongholds, since political affiliations with parties and movements are strongly based on culturally identity references (indigenous/non-indigenous) and are regional in

character. Electoral volatility is therefore low. Given the deficiencies of the political system with regard to the decision-making process and the system's performance, legitimation through elections is used to an increasing degree as a stabilization mechanism.

The new Bolivian constitution, passed by almost 61.5 percent of the vote, has also strengthened the direct participation components of the political system. Now, judges are elected directly by the people. Referenda are included as a means to recall elected representatives, to draft laws, to ratify certain international treaties and agreements, and to introduce and adopt constitutional reforms. The hurdles for constitutional reform have been lowered. The entire constitution is based on the idea of a very active citizenry.

Venezuela: Encroachments on freedoms

In a February 2009 referendum, the reform of five constitutional articles was approved by almost 55 percent of the vote. One of these articles opens up the possibility for unlimited reelection of current President Hugo Chávez.

The Venezuelan citizens have been called to the polls repeatedly since Chávez took office in 1999. Two developments have been observed in this context, which deserve critical assessment.

Internal political developments. Election results are not seriously disputed in Venezuela. Election observation missions of the Organization of American States and the European Union have regularly declared the voting to be largely free and fair. Nevertheless, it remains undeniable that a political system whose authoritarian tendencies are becoming ever more manifest and in which the government and the state are rapidly merging together distorts the competition between parties and candidates in elections. This applies above all to the rights that are considered a

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precondition for an entirely free election and choice among political options.

Non-governmental organizations—*Human Rights Watch* in particular—have accused *Chavismo* of such policies as following:

- ▶ of keeping blacklists of political opponents in institutions and companies of the public sector,
- ▶ of obstructing efforts by citizens critical of the government to organize themselves politically and as civil society,
- ▶ of affecting freedom of the press by putting pressure on journalists, by introducing restrictive laws with regard to the expression of public opinion, and through massive government media policies,
- ▶ as well as of using targeted patronage to engage in de facto vote-buying.

Foreign policy development. While Chávez will not tolerate any external interference into Venezuelan affairs, he involves himself to an increasing degree in the electoral processes of neighboring countries. He makes explicit public statements supporting certain candidates and discrediting others. There are also signs that in many cases, his government is providing direct but clandestine financial support to electoral campaigns within the region.

Perspectives for assessment

Elections are part of everyday political life in Latin America today. They are not only held to fill offices but also to recall office-holders and to make policy decisions. Elections have thus been ascribed additional functions, and representative democracy has been expanded to incorporate elements of direct participation. Elections are also used in political crises as a kind of emergency measure—whether using early elections to determine the successor after a president's resignation, or whether using referenda for parties to leave the decision over contentious policy issues up to the voters. Some countries like Chile, Mexico, and Uruguay have resisted the temptation to forgo the electoral oversight of govern-

ment power by, for example, eliminating prohibitions on immediate reelection of the president. All these democratic achievements, however, are being partly counteracted by a recent trend that is worthy of criticism:

The conduct of elections. The Argentine “elastic” interpretation of electoral norms lends a bitter new meaning to the definition of politics as the “art of the possible.” As long as no factual restraints are imposed, the liberal-democratic content of electoral regulations is being undermined. Parliament and judiciary thus become accomplices of a laissez-faire approach to the electoral process.

The function of elections. In Bolivia, the role of elections is being widely stretched. Here, elections substitute for compromise and negotiation in representative political bodies, they act as an instrument of government power or are used to serve the veto powers of the opposition. The frequent elections create a permanent election-campaign atmosphere in an already over-mobilized and polarized society. This is detrimental to governability and the implementation of policy.

The context of elections. In the case of Venezuela, there is an ongoing erosion of civil and political rights that are of crucial importance in the run-up to elections. The use of correct procedures for casting and counting votes, as well as the acceptance of election results are just two individual aspects of a wider democratic electoral process that starts at a much earlier stage.

These examples show to what extent a stronger, independent judiciary is needed in Latin America; one that monitors adherence to democratic standards—electoral law included. However, they also point to a problem of political culture that must be addressed less by legal than by political means.