

I. EXECUTIVE SUMMARY

A. Introduction

This manual for holding free and fair elections was created in hopes of helping the Cuban people in the context of democratic transition. It is written from the perspective that information about democratic transitions and the important role that free and fair elections play in that process can be useful to a wide variety of people, both on the island and in exile, as well as friends of Cuba in the international community. This manual is based on the conviction that it will someday be useful, and needed, to support a democratic transition in Cuba.

The work draws upon the expertise of staff and consultants of the International Foundation for Election Systems (IFES), a non-governmental, non-profit and non-partisan organization based in Washington, D.C. For more than a decade, IFES has encouraged and strengthened democratic institutions, governance and practices worldwide. IFES has provided expert technical assistance in election administration in countries spanning the globe, particularly those countries holding competitive elections for the first time. IFES also works with newly elected parliaments and local governments, supports local non-governmental organizations engaged in civic education and broadening political participation, and conducts international and domestic election observations. IFES currently has field offices in 25 countries in Latin America and the Caribbean, Africa, the Middle East, Eastern Europe, the former Soviet Union and Asia.

What follows is a compendium of ideas and practices that might be useful for future Cuban officials and non-governmental leaders who are beginning a transition to democracy, or who are contemplating seeking reform of the current regime. Each section is written to be self-standing in order to facilitate its use by parties with specific interests in a particular topic. The document discusses the minimum international norms and standards for holding free and fair elections, as well as the legal, constitutional and administrative options that are available to transition authorities. It also offers ideas, based on examples from countries around the world, about what will be needed to establish and support an honest, efficient and transparent system of election administration, and what role the international community might be invited to play in that process.

IFES has taken care not to offer an invasive blueprint to be adopted or rejected, but rather a series of options based on history and experience that fair-minded people of various democratic political faiths might wish to consider. As an organization with experience in myriad cultures and systems, IFES seeks with its contribution not to foreordain a specific outcome, other than the return of rule by the people and for the people to Cuba. We have tried at all times to convey our view that, where practicable, Cuban models are preferable to those that might be emulated from even the most successful experiments abroad.

A summary of the report's observations, recommendations and findings follows. Subsequent chapters deal with specific topics of interest to policymakers and *aficionados* alike, both on the island and abroad.

B. Minimum International Standards for Free and Fair Elections

At a minimum, democracy provides the vehicle by which social conflict can be addressed non-violently and in a way that ensures the majority prevails while protecting the rights of the minority. As the most representative form of government known, it is diverse, *sui generis* and ever evolving. Once its institutions and practices have taken hold, it is also a hardy plant -- witness the examples of Costa Rica, Israel and, at least until recently, Botswana, all three nations amidst regions known for decades or even generations for their convulsive and often deadly politics. Free and fair elections in which genuine choices can be made serve as the cornerstone of democratic rule, no matter how distant, diverse or distinctive the culture in which it is nurtured. Cuba will be no exception.

It is imperative to understand what constitutes a truly authentic exercise of the right to vote and how elections must be conducted if they are to ensure continued support from society.

1. Commitment to Democracy

Because democracy is diverse and its forms and customs reflect the soil upon which it grows, no one can question the sovereign right of nations to choose freely and develop their own social, cultural, political and economic systems, in keeping with the will of their people. However, governments, organized political forces and voters all have a right and a duty to help establish and strengthen democratic processes, practices and institutions. Society can enforce the outcome of elections on all candidates and political parties by ensuring that elections are truly competitive.

2. Rights and Rule of Law

As part of a worldwide trend, popular preferences for democratic rule, expressed most vigorously in Latin America in the 1980s, and then around the globe with the end of the Cold War, have generated considerable literature on what constitutes regular and genuine elections. Reflected in international laws governing State practice, these rules and standards pay special attention to voting and election rights, and the rights and responsibilities of candidates, parties and their campaign organizations, as well as those of citizens and states.

3. One Person, One Vote

Procedures for registering citizens as voters should be effective, impartial and non-discriminatory. On Election Day, voting should be equally accessible for all those qualified by means of registration. Every person denied either registration or the right to vote has the right to appeal the decision to a competent authority that should promptly determine the merits of the case. The vote of each citizen should have equal value to that of any other citizen ("one person, one vote"). This right should be manifested, among other ways, in the demarcation of electoral constituencies, or districts, with relatively equal numbers of citizens.

4. Candidacy

The right to become a candidate for election should be open to all adult citizens, as should the right to form or join a political group in order to compete in an election. The rare exceptions, if any, should clearly be stated in the electoral law or national constitution (or where one does not exist, unchallenged common law).

5. Freedom of Speech and Information

Free speech is essential to political expression. So, too, are the rights to seek and receive information needed for making informed choices; to have freedom of movement throughout the campaign period; and to be able to campaign on an equal basis with other political parties, including the ruling party. There should be equal opportunity of access to the media. Where media are state-owned, the government should ensure the same opportunities for access to all parties and all candidates.

6. Security

Candidates should be recognized and protected. All candidates and parties should have equal protection of the law and equal access to remedies for violations of political or electoral rights. Express prohibitions on violence aided and abetted by candidates or political parties should be enforced. Individuals or political parties whose candidacy, party or campaign rights are violated should have recourse to an authority whose powers include the ability to correct errors promptly and effectively. Restrictions are permissible on candidate, party and campaign rights if these can be shown to have demonstrable impact on national security or public order, the protection of public health, morals and safety, or the protection of the rights and freedoms of others.

7. Responsibilities of the State

The State must, through legislation and other means, affirm its responsibilities to guarantee the institutional underpinnings and individual rights required for free and fair elections. These responsibilities include the protection of voting and election rights through the establishment of clear criteria on voter and candidate age, citizenship and residence. Political parties should be allowed the greatest possible freedom consistent with minimum standards of public safety and welfare. In addition, if the State decides to give financial support to parties or individual campaigns or to regulate their sources of financing, these decisions must be applied equitably to all, and conditions created whereby all candidates for public office enjoy a level electoral playing field.

In particular, steps must be taken to ensure that the ruling party does not usurp State electoral functions, or, through access to the national treasury, enjoy financial advantage. The right of candidates and parties to have reasonable opportunities to present ideas to the public is also a State responsibility. In addition, balloting conducted in secret is an internationally recognized right, as is an environment free of violence and intimidation on Election Day. The State is responsible for ensuring that all those involved in the political process are physically secure and that all measures necessary are employed to prevent violence. Human rights violations, as well as election-related complaints, should be heard by an independent and impartial authority--such as an electoral commission or the courts--before, during and after the election takes place.

8. Impartiality of the Electoral System

An unbiased and impartial mechanism for the management of elections must be created and its autonomy maintained through vigilant efforts by both citizens and State. Professionally trained election officials should ideally be skilled in various aspects of election management, including public education, voter registration, maintenance of electoral lists and balloting procedures, personnel training and pro-active measures against fraud and abuse. These officials should also seek to use their powers of moral persuasion to convince candidates

and party organizations to adopt, and abide by, a Code of Conduct to govern their actions, and those of the media, during the election campaign.

9. Human Rights

The protection of human rights is another important state responsibility. It should seek to ensure that the freedoms of movement, assembly, association and expression receive full protection, with an emphasis on their exercise during political rallies and meetings. Non-partisan coverage in state-controlled media should be guaranteed, and candidates and parties should be free to communicate their views to the electorate without interference.

C. Compliance with Minimum Standards

The following are some of the basic concepts that ensure that a genuine choice is offered at the ballot box:

A state must adopt a voting system that facilitates the will of the people through periodic and genuine elections carried out on the basis of equal access and secret ballot. Equal suffrage, however, may be effected through a variety of different systems, particularly in the election of legislative bodies.

Grouping voters into electoral districts and the ratio of population to representative are important considerations for ensuring that the will of the people is appropriately expressed through numeric representation. In the United States, the Supreme Court has invoked the Constitutional right of equal protection to strike down as unconstitutional congressional districts whose configuration did not provide for roughly equal numbers of voters. Other countries admit considerations such as geography, community history and minority representation as factors that may also be taken into account when determining electoral boundaries.

Independent and impartial election administration is vitally important to establishing the legitimacy of a government, even in the eyes of its opponents. Independent civic monitoring, a fair and probing media, and access to the courts all help to ensure administrative impartiality. Election administration is typically a branch of national and often local government, with disputes adjudicated by courts of general jurisdiction or, in many Latin American countries, by specialized electoral courts. Independent electoral commissions have also been established in many countries. In order to create confidence by all parties participating in the elections, in all cases it is imperative that those running them are not seen as having a commitment to any political party or leader. If impartial members who enjoy the confidence of all parties cannot be found, then the election machinery might include party representatives who, by their multiplicity and diversity, can constitute a check on each other and an assurance that no one party will be favored. International and/or domestic election observers can help to provide skeptical voters with an assurance that impartial observers will monitor both the fairness of those administering the election and the faithfulness with which the electoral laws are executed.

States can help to create an environment conducive to electoral participation by public recognition of the right, or even the obligation, to vote. States may limit the right to vote to certain people, such as prison inmates, as long as the restrictions are not arbitrary in nature or have the effect of distorting election outcomes. Citizenship, age and residency requirements are also considered reasonable restrictions in most cases. Restrictions should

be declared well in advance of the balloting to allow time for challenges by those upon whom the restrictions are imposed or their advocates.

Voter registration must be accurate because it a) can either foment or discourage citizen participation, b) is vital to providing a sense of popular empowerment through participation and c) is the essential building block upon which election-day tabulations can take place. Voter registration poses a host of serious issues. There is the question of ensuring a credible registration system through "self-registration," extensive civic education efforts, and by other means. The periodic purging of those who have moved out of the constituency or who have died is also very important. Eligibility criteria need to be clear, effectively communicated and consistently applied by election officials. Inconsistent registration of names and double entries can also pose challenges. Re-registration, sometimes demanded in the face of intractable problems, is costly and time-consuming. The security of voter registration against fraud and tampering is also important in order to create and sustain public confidence and thus help to ensure free and fair elections.

As Cuba moves into a period of democratic transition, there will be an immediate need for comprehensive and long-term citizen information and education programs to create an environment in which the population understands and acts upon democratic values. Civic education and voter information efforts are essential in societies that lack experience in voting in a democratic environment. Voter information campaigns offer citizens instruction on the mechanics of voting. They also promote participation in the electoral process, as well as democratic norms of tolerance and non-violent change. More broadly, non-partisan civic education programs for adults can promote democratic values and should be a critical element of the general educational curriculum of the schools.

Every citizen, no matter what his or her status or station, has the right to participate in the conduct of public affairs, to be elected, and to have equal access to public service in his or her country. Genuine electoral choice is predicated on a clear separation between the State and political parties, and a ruling party that is not synonymous with the government. Ideological obstacles to participation should also be discouraged, except those consistent with public safety and democratic principles.

There are limitations and requirements, however, which may be considered reasonable. Candidates might be required to declare their political party affiliation, or else to run labeled as independents. The right to candidacy may be conditioned on criteria such as age, place of residence, length of residence, and the absence of disqualification, such as penal detention. In presidential systems, a member of one branch of government may be prohibited from serving in another. Legislative representation may be predicated on parties obtaining a certain minimum number or percentage of votes. Parties may lose their right to a place on the ballot if they fall below a certain minimum number of votes. Registration of new parties may depend on gathering the support of a certain number of adherents in all the country's states or provinces, subject to tests of reasonableness. Prohibitions can, under some circumstances, extend to political parties that promote religious, ethnic or racial hatred, engage in war propaganda, or advocate the violent overthrow of the government.

Democratic transitions frequently occur in situations in which the ruling party has for many years possessed a monopoly on access to state resources. Even in countries where there is not the case, government funding of candidates or partisan organizations, private or foreign contributions to candidates and/or parties and limitations on campaign expenses are highly relevant issues for debate. Advocates of public campaign financing frequently justify it as a means of helping to "level the playing field," ensuring equal access to candidacy and popular

participation, and helping to eliminate the more perverse elements of public corruption. However, simply leveling the playing field through a fairer distribution of resources may not resolve all of the issues. The United States Supreme Court, for example, has ruled that limits on campaign expenditures violate constitutional guarantees of freedom of speech. (*Buckley vs. Valeo*, 424 U.S. 1, 1976) Moreover, if the opposition party is limited to spending no more than the ruling party, and the ruling party enjoys the natural advantages of incumbency, is the playing field actually level?

Carefully planned election procedures and practices, together with appropriate legal guarantees and protections, are fundamental to the conduct of free and fair elections. What occurs on Election Day is not the only critical factor in determining the fairness of an election--although an election marred by massive irregularities carried out only on that day cannot be validated either. The electoral context--what occurs in the months and weeks before voters go to the polls--is a major factor in determining whether citizens have had the right to participate fully and freely in the conduct of public affairs, to be elected, and to have equal access to public service.

The freedoms of movement, assembly, expression and association must be respected throughout the election period in order for any election to be considered free and fair. Political parties and associated groups must have regular access to the mass media, and be able to communicate their views generally to the people. Physical and material security are the right of all who participate in the process, just as it is the obligation of all to conduct activities lawfully. Ballot secrecy must not only be exercised but its benefits communicated to the population before the election. The citizens' franchise must be carried out without intimidation and fear. Fraud and manipulation must be prevented.

In transitional situations, such as that which Cuba would be facing, the presence of international observers provide significant benefits. For example, relevant aspects of the process, its organization and conduct can be examined by foreign experts in order to determine whether these have been carried out in accordance with the laws of the host country as well as with international norms and standards. In addition, foreign election observers should be seen by voters to be impartial supporters of the democratic process, and their presence as an assurance that the process will be respected. In rendering judgments on the process, observers seek to apply international standards to local conditions. They look for whether overall conditions were established that allowed for free and fair elections, rather than for technical violations of laws or regulations.

Agreements among the parties to limit incendiary rhetoric and to sanction violent conduct by their members will facilitate government responsibility to ensure peaceful campaigns and respect for human rights. Careful attention to situations that can receive undue amplification or magnification in the rarified atmosphere of campaigns and elections can help to improve campaign conditions over time, and limit the possibilities of spiraling violence. Nothing can bring into question a government's commitment to the democratic process faster than a failure to act quickly and effectively in response to violence or the threat of violence.

Access to the mass media is crucial. In the modern Information Age, and in a modern democracy, the dissemination of party platforms and programs, and the appeals of individual candidates, must not be limited to easily manipulated and controlled mass rallies and incendiary speeches in public squares. The right to make informed decisions at the ballot box requires a pro-active response by any Cuban transitional authority to ensure that many voices are heard. If government monopolies of broadcasting and print media exist and are

not required to implement policies of equal access, the entire transition process risks falling into discredit.

Codes of Conduct established by governments or by the competing parties themselves can promote peaceful campaigns and elections as well as serve as a model for how democracy can serve as a means for resolving social conflict. In doing so, they can benefit all parties, and over time strengthen the system's own ability to react to the advocates of violence and undemocratic conduct. A code can establish basic ground rules while offering a mechanism for periodic consultations between the parties and the professional elections system. Regular communication channels can help to avoid misunderstandings and incidents that might lead to deepening conflict.

Mechanisms for handling complaints and resolving disputes need to be in place before a campaign period begins in order to establish a broad understanding among the various participants of the methods for adjudicating disputes. Election cycles, where passions and interests clash on the national stage, often give rise to disputes. These occur even in situations where competent professionals seek to apply established rules. In transition situations such as that likely to be experienced in Cuba, disputes can arise more frequently, become rapidly malignant, and create an enormous strain on the process and public confidence in it. The key to complaint and dispute resolution is timeliness, coupled with the use of an independent and impartial authority.

D. History and Comparative Analysis of the Law and the Constitution

As IFES legal scholar Stephen Nix notes in a subsequent section, constitutions serve as fundamental charters for the organization, regulation and restriction of the basic branches of government--executive, legislative and judicial. Cuba's rich constitutional history is replete with numerous attempts to organize the country under the rule of law, democratic principles, the concept of separation of powers and free and fair elections.

Cuba's first two constitutional drafts, the Constitutions of 1812 and 1858, although never promulgated by the Spanish colonial authorities, reflected Spanish, French and North American liberal doctrine that self-rule should be guided by a fundamental written law. In his revolt against Spanish rule, Jose Martí gave voice to this inheritance in the "Montecristi Manifesto," which called for an independent Cuba with its own constitution.

The end of the War with Spain saw elections held in Cuba for delegates to a constitutional assembly, convened in 1900, which drafted a constitution adopted in August 1901. The document was similar to that of the United States constitution, setting forth a democratic government and the rights of free speech, assembly and religion. It included basic due process rights and the right of habeas corpus.

In practice, however, many of the provisions of the constitution were not actually implemented by the various branches of government. President Grau abrogated the 1901 Constitution in 1933, decreeing provisional statutes to govern Cuba as a short-term measure. It was not until 1939 that elections were held for delegates to a Constitutional Convention meant to reconcile the clashing political interests within Cuba, which had led to the instability of the 1920 and 1930s. The delegates represented a broad spectrum of interests, and included representatives of the Communist Party. Thus, a short-lived experiment with political pluralism was begun in Cuba.

The Constitution of 1940 established some of the most advanced civil rights principles of its time. It radically changed the Cuban government into a semi-parliamentary system. The President remained the head of state, but was to be assisted by a Prime Minister, as well as a cabinet, the latter being accountable to the legislature, which could remove ministers at will by a vote of no confidence. The Constitution more clearly articulated property rights, prohibiting illegal takings. It also reaffirmed the powers of the judicial branch of government, as well as their separation from the executive and legislative branches. Local government was radically restructured, with power devolving away from a centralized government.

Some of the more notable differences between Cuba's first and second constitutions were in the areas related to family, culture and labor. The 1940 Constitution afforded far greater protections for these rights, although they remained only principles to which the Cuban government should aspire, having no clear means of enforcement.

In 1952, the Cuban Constitution was suspended by Fulgencio Batista following his coup d'etat of that year. Some of the guarantees of individual rights contained in the constitution were supposed to have been respected. However, throughout Batista's tenure, these constitutional guarantees were suspended, thus bringing to a halt Cuba's aspirations for a modern constitution reflective of democratic principles.

Although many of its far-reaching provisions were never implemented, the Constitution of 1940 is an extremely significant legal document in the history of Cuba. It served as a codification of Cuban aspirations for legal, economic and social development. When it was suspended, it became a unifying factor for many political parties and groups within Cuba. Its restoration was also the stated goal of the revolutionary movements in Cuba during the 1950s, including that of Fidel Castro. In 1953, Castro himself stated:

The [1940] Constitution is understood to be the basic and supreme law of the land, defining the country's political structure, regulating the function of government agencies and determining the boundaries of their activities. It must be *sui generis*, stable, enduring--and to a certain extent, inflexible.

The 1940 Constitution will undoubtedly be one of the primary legal references for any Cuban transitional authority in the future.

E. Non-Governmental Groups and Organizations: Their Role in Today's and Tomorrow's Cuba

Throughout the Americas, IFES development specialist Martin Edwin Andersen notes, a revolution has occurred within civil society. Isolated interest groups that once acted independently and without much communication and coordination have now joined together in cross-border networks and coalitions of non-governmental organizations (NGOs). These have changed the political, social and economic landscape of each country in which they operate. Working within the context of the Information Revolution, the ever-expanding volume of information now available makes it possible to challenge the dependence on traditional hierarchical organizations for information gathering, processing and response. In its place a more egalitarian structure is developing, with far greater diversity in both types and channels of information. The result has been more complex and more interconnected societies.

NGOs throughout the region help to fill the yawning gap between politicians and other policymakers at the pinnacle of state systems, and the communities and individuals that comprise them. These provide a great deal of information, options and feedback to decision-makers, while bringing their own membership into more effective contact within the system. NGOs have expanded greatly with the return of democratic rule to Latin America, and have experienced some of their greatest effervescence during periods of open elections.

If past is prologue, the history of Cuban civic organizations is a good indication of the potential for NGO activity waiting to be unleashed at the first sign of freedom. As Cuban political thinker Ernesto F. Betancourt has noted:

Cuba is not starting from scratch in building a civil society. There are institutional memories left and certainly historical records of the powerful labor unions, the associations of sugarcane planters and sugar producers, the university student associations and the professional *colegios* or associations, all of which were very actively involved in representation of their clientele in the political and economic life of the country. In fact, under the banner of the *Resistencia Cívica*, or civic resistance, many of these entities played a decisive role in bringing Castro to power; not to install Communism, as he did, but to restore the Constitution of 1940.¹

If the experience of Eastern Europe is any guide, it is likely that the organizations civic behemoths of yesteryear will play very little role in a transitional Cuba. Few groups, no matter how non-political their stated objectives, have obtained a status that even approaches that of true NGOs. A small, courageous group of human rights activists and dissident journalists, together with the Catholic Church, whose activities are still greatly restricted, provide the only glimmer of an independent civil society.

It is important then for a transitional government to recognize the value of authentic NGOs as vehicles for popular participation, without seeking to restrict their views or to limit their freedom of expression. The legitimacy of the transition process itself can be enhanced by transition leaders listening to NGOs and encouraging their work.

A free press is also an absolutely essential part of any transition. In Cuba, the handful of independent journalists has been subjected to endless repression. Detentions, beatings by state agents, forced exile, confiscation of work products and materials, and regime-sponsored "acts of repudiation" in which government supporters verbally and sometimes physically assault them are some of the tactics used to muzzle the working press.

During the transition, it will be of paramount importance to strip away regime restrictions on individual journalists while ensuring that all political viewpoints are heard on what will likely continue to be, during the short term, Cuba's state-owned press. This includes not only the daily *Granma*, but also its scores of weekly and monthly periodicals, its five national, 14 provincial and 31 municipal radio stations and networks, and its two national television networks. Private ownership of some means of mass communication and training of journalists in their rights and responsibilities in a free society can help to create immediate improvements in the diversity and quality of information received by the Cuban people.

F. Options for Democratic Systems

1. Constitutional Options

A nation's constitution provides the legal framework for the exercise of rights related to the conduct of elections, including the right to vote, to stand as a candidate, to assemble or associate in political parties and to have electoral disputes resolved pursuant to the rule of law. At some point in time, a transitional government in Cuba will have to consider making changes in the current legal and political system. These changes could include modifying the current (1976) Constitution of Cuba, looking for guidance to previous Cuban constitutions; derogating the 1976 Constitution entirely and reinstating an earlier Constitution; promulgating an entirely new constitution; or governing de facto without a Constitution until general elections are held.

As already noted, many of the freedoms and rights set forth in previous constitutions have, for a variety of reasons, never been fully implemented or enforced. Nevertheless, the Cuban people have expressed a continuous and unabated desire to be ruled by a constitution that reflects their sovereign right to govern themselves. Cuba has demonstrated the ability to draft and adopt modern constitutions reflecting the modern ideals of the separation of powers, human and civil rights, and limitations on the power of government.

The Constitution of 1901 enshrined the concept of a sovereign Cuba, independent of Spanish rule. However, it is not a modern document in any sense and does not reflect the political, electoral and economic realities that confront the Cuban people a century later. It is not an appropriate model for consideration for use by a transitional government.

Nor do the 1959 Fundamental Law and the 1976 Constitution appear to be appropriate foundations for a modern, democratic Cuba. Bringing them into compliance with normative international standards governing electoral and other democratic rights would require drastic overhauling, particularly of those provisions having to do with a free market economy and the rule of law. The Communist dogma that currently serves as the central guiding force of the 1976 Constitution would have to be removed and provisions added to allow for the existence of other parties and beliefs within Cuba. Finally, governmental structures would need to be altered to allow for the separation of powers and judicial review of the actions of the executive and legislative branches of government.

The restoration of the 1940 Constitution was a goal of many Cubans in the pre-Castro period and remains the goal of many Cubans who are dissidents on the island or who now reside in the United States. Of particular interest are those provisions that could appropriately serve as a guide for a transitional Cuba. The 1940 Constitution's affirmative protections and rights concerning the conduct of elections are certainly among its great strengths. The development of a multi-party electoral system in Cuba would greatly benefit from the rights and freedoms accorded political parties and other organizations. Having a Superior Electoral Court with specialized jurisdiction over the electoral process, an institution that has proved successful in other countries, could also be considered as a means of guaranteeing voting rights and the proper adjudication of disputes in a transition period.

There are, therefore, many positive aspects to the 1940 Constitution, not the least of which is that it was the product of an overwhelming consensus at the time of its adoption, and later was even a rallying point for many of those who supported Castro's revolution. If it received needed modifications, it might well be the constitutional option least likely to generate conflict during a transitional period. However, some contemporary observers hold that its

identification by many with the Batista period suggests the need for a judicious selection of best practices from the document, rather than its wholesale restoration.

One alternative for a transition government would be to utilize the 1940 Constitution for three early and very basic purposes that would help guarantee confidence in the entire transition process. These are: 1) the election of executive and legislative office-holders; 2) the reinstatement of elemental civil liberties, with particular attention to the creation of an environment in which transparent and open elections can be held, and 3) the creation of a new court system. This last should include some independent authority, such as the 1940 Constitution's Superior Election Tribunal, that could ensure proper implementation of the provisions of the Constitution and the law relating to elections, and adjudicate electoral-related disputes.

Another approach would be for the transitional government to issue what might be called an "interim" constitution. This constitution would create a government with a well-defined, near-term horizon and limited objectives. These objectives might include the following: keeping the peace; consolidating political power within the democratic community; calling for elections, and developing a framework for the creation of long-term institutions under a new or amended constitution.

An interim constitution would allow Cuban officials to carry out certain basic functions during the transition, with the goal of adopting a permanent constitution after elections are held for parliament and for president. The interim constitution would provide for free and fair elections, apply international standards for their conduct, and demonstrate Cuba's intent to form a democratic form of government with separate and independent branches of government. Importantly, the interim constitution would include guarantees of basic human rights until the adoption of a new constitution, and would outline the procedure and timeline for the adoption of a permanent constitution.

In order to ensure a complete transition to a permanent elected government, the transitional authority should impose strict time limitations on the performance of its duties, and might even consider disqualifying members of the provisional authority from holding office in the subsequent government.

Whether the government chooses constitutional reform or amendment as a short-term option or as a comprehensive and long-term objective, the basic goals of the transition would be quite similar. The options set forth above are strictly that, options. The transition government will itself make the ultimate decisions with regard to the laws under which a transitional Cuba will be governed.

When making decisions about the future, the Cuban people will face the task of choosing what kinds of democratic institutions and practices will best suit their needs. These choices will reflect the lessons of Cuba's past, as well as ideas about what constitute best practices in other countries. In making selections there is no "right" answer, except that which works best for Cubans today and in the 21st Century.

2. Other Political Options for Consideration by a Cuban Transitional Government

One of the choices the Cuban people will face is between presidential and parliamentary systems. A presidential system is one in which the head of state is also the directly elected head of government, rather than a member of the legislature. In parliamentary systems,

government is drawn from an elected legislature that can dismiss it. Advocates of both systems can find examples of successes and failures in each in order to make their case. As noted above, Cuba has had experience with both presidential and semi-parliamentary forms of government.

a. Presidents v. Parliaments

Some political scientists argue that parliamentary systems offer a better guarantee of stable democracy than do presidential systems. They claim that systems with a separation of powers that divides the legislature from the president, and whose fixed terms create a situation of inflexibility between elections, inherently have greater potential for conflict. The presidential office, one expert wrote recently, carries with it "winner-take-all" or zero-sum political calculations that are unsuited to societies that desperately need reconciliation. The fixed presidential term creates crises in government that can end in constitutional crises, as few lawful means exist for replacing a failed president in mid-term. Advocates of parliamentary systems say that, in contrast, these offer an array of policy outcomes, including multi-party cooperation and coalition governments. Crises may be resolved by merely changing leaders or calling for snap elections.

Other political experts dispute the idea that presidential governments are necessarily hampered by fixed terms, weak cabinets, and presidential abuse of power. One advocate of the presidential system noted that while presidents cannot be removed by a vote of no confidence, his or her fixed term is no more likely than the flexible terms of a parliamentary system to cause governmental crisis. In fact, this expert found that in fragmented societies shifting to a presidential system made sense, as its election regime actually fostered conciliation and consensus building.

A third view is offered by Seymour Martin Lipset, a dean of democratic theorists. The debate between parliamentary and presidential systems is complex and revolves around questions of political culture, he noted. When a Prime Minister has a clear majority in parliament behind him or her, the office has much more authority than that of an American president. Not to support the Prime Minister means that the government falls. Opposition parliamentarians, on the other hand, are free to try to shape and mold public opinion, but they rarely have much impact on executive branch policies, something that is not nearly as true in presidential systems.

In presidential systems, Lipset notes, the terms of the president and cabinet are not affected by legislative action. Party discipline, therefore, is much less. Crosscutting issues mean that rolling legislative coalitions are created that depend more on the matter under debate than on partisan orthodoxy. In presidential systems, he notes, representatives look to their constituencies for direction so that they may be reelected; local interests are therefore better represented in Congress. The Member of Parliament, on the other hand, realizes that his or her fate depends to a greater degree on the position of the party, and therefore must at times vote against the interest of his or her specific constituency.

b. Referenda

Offering specific issues of public interest to the mass electorate for its support or rejection via a national referendum or plebiscite is one of the means democracies have of crisis resolution. Referenda can either suggest a solution to a problem or justify a proposed solution. In recent years, for example, referenda in Chile and South Africa terminated authoritarian and minority rule, respectively, and paved the way for sweeping changes in the

political system. Advocates say that referenda help to ensure the rule of law as they represent one of the best ways to win and reflect the consent of the governed. In countries where judicial review is an important component of the system, the courts may overrule the majority opinion as expressed in referenda just as they can the actions of elected representatives.

Referenda may be advisory, meaning they serve as a definitive opinion poll that shapes and guides policies or legislation. Or they can be mandatory, as part of a statutory process. In the latter case, voter approval may be required for enabling a new law or constitutional reform. A petition by a requisite number of voters, called an "initiative," may be used to place a proposal on the ballot in a scheduled election or force the calling of a special election. Supporters see referenda as generating change, competition, majority rule and citizen participation in the democratic process.

Referenda are frequently called to deal with constitutional issues in order to lend legitimacy to new institutional arrangements and to rules that will govern public conduct. Because such votes express popular sovereignty, new regimes that win a referendum make large gains in democratic legitimacy. Referenda can also help political leaders to reduce risks they face in changing the rule of the game; by posing tough questions for voter consideration, they can receive guidance, shelter, or both, in making difficult choices.

Authoritarian regimes resort to referenda to legitimate actions already decided upon by the ruling elite (e.g., Chile in 1980) or to promote an image of popular support that does not objectively exist. Referenda whose positive vote totals reach 95 percent and beyond are usually a reliable indicator of the undemocratic character of the sponsoring government.

Nationwide referenda have never been held in five major democracies--India, Israel, Japan, the Netherlands and the United States. However, several of the United States use referenda with regularity and frequency, as does Switzerland.

Referenda have had an interesting history in the countries of Latin America. Of the nearly 50 held there, 10 have been in Uruguay, a country with a long democratic tradition. In 1980, a military regime responsible for overthrowing an elected government in 1973 called a plebiscite on a proposed authoritarian constitution. Despite a tightly controlled media and a palpable climate of terror, Uruguayans rejected the proposal by 57 to 43 percent. In 1988, 55 percent of Chileans, given an opportunity to say "yes" or "no" to another eight years of rule by General Pinochet, said "no."

c. Constituent Assemblies

Constituent assemblies, another form of popular consultation, begin with the election of representatives from constituencies throughout the polity, who then sit as a legislative group to determine the fundamental laws and regulations that will rule future governments.

The use of constituent assemblies has an unfortunate historical antecedent in Cuba. In 1927, the Cuban Congress approved a plan for the election of a Constituent Assembly to revise the 1901 Constitution, to accommodate President Gerardo Machado's desire that his presidential term be extended. Machado's supporters then packed the assembly and forced a situation in which Machado could stand for reelection. Such blatant manipulation strengthened perceptions of Machado as a dictator, and helped galvanize opposition to his rule.

In Latin America, one important example of a constituent assembly playing a pivotal role for change comes from Colombia. In the late 1980s, wracked with guerrilla and paramilitary violence and under sustained assault from international drug cartels, Colombia's democratic government was a study in failing legitimacy. Congress was unable to pass needed constitutional reforms. If massive repression were to be avoided, a means needed to be found to solve the crisis through democratic procedures.

A civic movement called for a plebiscite to convene a Constituent Assembly. Colombian legislation did not provide for referenda as a means of calling a Constituent Assembly, so *La Septima Papeleta* (the Seventh Ballot) initiative did not have legal standing. However, as the seventh item on the ballot in the March 1990 general elections, it became an informal test of popular support for constitutional reform. The resounding "Si" in the March elections encouraged the government to draft a referendum text that sought formal authority for the Assembly. Thus the initiative was formally placed on the ballot in the May 1990 presidential elections, and this measure was also approved.

Some Colombians argued that it was unwise to place the future of the Constitution in the hands of an assembly comprised of just 70 people. Because of opposition in the Congress and from several former presidents, it was agreed to restrict the items the Assembly could reform. In addition, a number of caveats designed to reassure the political class were agreed to, including a prohibition of the dissolution of the National Congress, and a prohibition on assembly members from running for the legislative body for eight years. The new Constitution, approved in 1991, produced radical changes in Colombian political life and is considered by many to be one of the most modern and democratic documents of our time.

G. Electoral and Registry Systems

1. Cuban Election Practices

In the aftermath of independence from Spain, and during the deliberations of Cuba's first constitutional assembly, an electoral law was adopted which established a limited franchise for male citizens of Cuba. While the law provided a basic framework for democratic elections, the law was not always enforced. The lack of a strong independent judiciary to oversee elections meant that the resolution of disputes in the new nation-state was problematic. As a result, the elections conducted from 1901 to 1933 were characterized by numerous electoral disputes and charges of fraud; this was particularly so in the presidential elections, in which the most was at stake. Presidential candidates often disputed the results of the elections and at times refused to recognize the victory of an opponent.

The presidential and legislative elections in the 1940s were less problematic -- the result, perhaps, of the creation of the Supreme Electoral Court in the Constitution of 1940. The intention of the drafters of the constitution to have proper judicial enforcement of the election law and process is clearly reflected in the wide jurisdiction given to the Court. However, the electoral process in Cuba was suspended as a result of the 1952 coup by Batista. In 1958, a Batista-sponsored candidate was named the victor in presidential elections.

With the advent of the Castro regime and the adoption of the Fundamental Law in 1959, the electoral system came to recognize a single party, and most of the electoral provisions in the law were never implemented. After the adoption of the constitution of 1976, elections were held every five years for deputies of the National Assembly and for all of the delegates to the provincial and municipal assemblies. Voting was not required by law, but was strongly encouraged by government officials as a demonstration of loyalty to the state.

Elections at the municipal level were direct. Municipalities were divided into electoral districts, each of which sent one delegate to the municipal assembly. Biographies and photographs of the nominees were circulated throughout the election district by the government for a period of one month prior to the election. No other form of campaigning was permitted. Elections took place using paper ballots. In the event no candidate received a simple majority, runoff elections were conducted. Participation in elections during this period was high. The elections, however, did not permit discussion of policy alternatives, and certainly did not allow for participation of parties other than the ruling party. The prohibition on campaigning and the effective control of the nominating process for higher office by the Communist Party and other government-controlled organizations ensured that only those thought to be politically reliable were elected.

2. Possible Technical Electoral Practices to be Retained or Restored in the Transitional Period

A number of ideas, systems and regulations drawn from prior Cuban experience might be maintained or reinstated in a transition period.

a. Elections Commissions

From a technical point of view, the two options for a transition period would be either to establish a completely new electoral system, or to use the existing staff and the same system of electoral commissions on the national, provincial, municipal and district levels. Funding levels and time frame are two of the key factors that will have to be analyzed by the transitional authorities. In the event that the current system is maintained, the Area Commissions and Special Commissions could continue to function under the current law, or any amended or new law adopted by a transitional authority. The hierarchy of the commissions corresponds with the types of elections conducted throughout Cuba's history (national, provincial and municipal) and broadly reflects (in theory if not in fact) modern notions in terms of the duties, obligations and rights of election commission members. Current commission staff is experienced in some of the basic duties required of election officials and has reached a significant level of administrative competence.

On one hand, maintaining the current system and staffing would eliminate the need to retrain commission members in basic election administration. In the event a transitional authority would wish to conduct elections under a new or amended law, existing commissioners could be trained to adapt to new or amended law(s) quickly and efficiently, without the added expense of identifying, organizing and training entirely new election commission members.

On the other hand, maintaining the current system and its administrators could generate strong opposition from internal opposition figures and from overseas Cubans. Transition leaders will have to decide whether the process they chose for administering elections is likely to be so controversial as to damage the credibility of the elections as a whole.

b. Voter Registry System

Also from a technical standpoint, the current system of voter registration could also be maintained in a transitional situation. Registration is universal and closely linked with the official records of municipalities. Voters are automatically registered upon reaching voting age by the Area and Municipal Electoral Commissions. Consequently, it can be stated with some certainty that voter registries enjoy a high level of accuracy, and are updated to reflect

changes in the population. While computerized updates of the various lists might be a long-term objective of a future Cuban Government, it will be much faster and less expensive to use existing voter registries for the first round of elections in a transition setting. However, as mentioned above, the other option of implementing a completely new registration system may support the credibility of the transition. The costs and available time for both options will have to be carefully analyzed by the transition authorities.

c. Restoration of Political Parties

Participation of a broad spectrum of political parties in both the political and electoral processes can be achieved using the rights articulated in the 1940 constitution. The 1940 provisions allow parties to serve as the primary means of organizing policy discussion and formulation in Cuba and to be the primary vehicle for the nomination of candidates. This would broaden public participation in the process and remove the need for the current candidacy commissions at the national, provincial and municipal levels.

d. Restoration of the Role of the Electoral Court

Another aspect of Cuba's electoral legacy that might be restored is the Superior Electoral Court. Vesting the power to supervise the electoral process and enforce the election law in an independent court may help to restore trust in the process. By recreating the judicial body, legislative and executive branches are removed from direct decision-making in a process in which they have a vested political interest. The judiciary is also confirmed as the final arbiter of all disputes in the electoral process. The extraordinary powers granted to the court -- assuming it is composed of truly independent and impartial persons -- would serve to guarantee the efficient administration of the elections and, most importantly, ensure the peaceful transfer of power after election results are announced.

If the transitional authority is reluctant to restore the electoral court, courts of general jurisdiction, as in the United States, might be granted the power to oversee the electoral process in Cuba and to preside over the resolution of electoral-related disputes. Voters, political parties and candidates could file complaints regarding the elections directly with the courts.

H. Standards for Rights of Suffrage under the Laws and Constitutions of Cuba

When a transitional government calls for elections, one of the first questions it must decide, either by constitutional provision or by law, is who has the right to vote. Cuban authorities may find themselves in a situation analogous to legislative and electoral officials in the countries of the former Soviet Union. These had significant "diaspora" populations, who expressed a desire to return to the county of their birth or heritage in order to participate in the country's newly meaningful electoral process.

The historical and legal precedent for citizenship, and by extension, voting rights, which existed in Cuba in the 20th century, will be an important point of reference for transition officials. The Constitution of 1901 granted the right of citizenship to: native-born Cubans, defined as those born within the territory of the Republic of Cuba or outside it of Cuban parents; those born within the Republic of foreign parents who claimed the right upon becoming of age; and those born in foreign countries of Cuban parents who had forfeited their Cuban nationality, but who claimed citizenship upon reaching the age of majority. It also contained provisions allowing foreigners who met certain requirements to acquire Cuban citizenship by naturalization. Requirements included having established residency for at

least five years and having declared an intent, after two years, to claim citizenship Cuban citizenship and voting rights were forfeited if a citizen acquired foreign citizenship.

The Constitution of 1940 set forth similar standards. Like the Constitution of 1901, citizenship was deemed forfeited by the acquisition of foreign citizenship or by the "acceptance of dual citizenship."

The Fundamental Law of 1959 in general reiterates the citizenship standards in Cuba's first two constitutions, but adds provisions for those foreigners who had served in the revolutionary army and wished to claim Cuban citizenship. In addition, foreigners married to Cuban citizens, who had resided in Cuba for a period of two years and who forfeited their foreign citizenship, were allowed to become citizens of Cuba. Finally, foreigners residing in Cuba for five years and declaring their intention to acquire Cuban citizenship within their first year of residency were allowed to become citizens. Cuban citizenship was forfeited by those who acquired foreign citizenship or who entered the military service of another nation; and by those naturalized citizens who subsequently resided for a period of three years or more in their country of birth, unless they reaffirmed every three years their intention to maintain Cuban citizenship.

Voting rights and citizenship currently in force in Cuba are defined in the 1992 amendments to the Cuban Constitution and the current electoral law of Cuba. The Constitution reiterates the 1901 and 1940 provisions stating that Cuban citizenship is lost as a result of the acquisition of foreign citizenship and/or the acquisition of double citizenship. The Electoral Law states that in order to vote, a Cuban must "be a permanent resident in the country for a period of no less than two (2) years before the election and be entered in the Register of Voters of the Municipality where he resides."

There is a widespread expectation among members of the internal opposition and overseas Cubans alike that the latter will enjoy some role in future Cuban elections. Modifications of the current system could provide for the possibility of participation by some or all members of the Cuban diaspora. Reasonable restrictions could be applied. For example, native-born Cubans living outside Cuba, or their children born abroad, who renounce any non-Cuban citizenship they may have acquired and who register as a Cuban at a Cuban consulate, might be granted the right to vote. Those who maintain another citizenship would lose their Cuban citizenship. A reasonable waiting period might be agreed upon for them to make that decision. There would remain, however, the difficult decision as to whether to create an expensive and complex system of voting abroad, or whether voting by the diaspora could take place only in Cuba.

I. Logistics of Election Administration and Security

1. Transitional Framework

Transitional elections in Cuba will require that a number of steps be taken to ensure that the framework is created for a free and fair vote. Even though there may well be good reasons and substantial internal and international pressure for elections to take place quickly, time and resources are needed to assure that the proper building blocks are set in place in a well-thought-out sequence.

As IFES elections specialist Juan Manuel Herrero explains, these steps include:

- Determining a time line for the election cycle, setting out the requirements of each phase;

- Creating an autonomous elections administration entity, with personnel capable of carrying out a variety of tasks during the campaign period and through balloting and vote counting;
- Planning and implementing a public information campaign about the electoral process, and establishing a framework for media coverage;
- Creating an appeals process for political parties and citizens to lodge complaints about presumed irregularities in the electoral process;
- Building a mechanism for allocating voters among election districts;
- Preparing, printing and distributing "registration books" and electoral lists to the polling places;
- Opening the voter registration process and implementing strategies for correction of the voters list based on new registrations and the verification process;
- Preparing and displaying new lists of voters, making these available for challenges;
- Instituting a process for the registration of candidates and their inclusion on the ballot;
- Establishing the rules for campaign financing;
- Determining where voting stations should be located, and what are the minimum requirements for their construction;
- Selecting and training poll workers at the local level, and establishing guidelines to regulate the conduct of partisan officials participating as poll watchers;
- Creating a system for elections security, including the safeguarding of ballot boxes; and
- Designing a system by which election results will be promptly and accurately made public, both the preliminary totals and the final count.

The mechanics of voting, when they result in well-run operations on Election Day, can look deceptively easy; in fact, they require enormous attention to detail and precision in planning. Because there are no second chances in elections, best practices should be identified to assure that knowledge and experience prevail at each step of the process. Some of these steps are outlined more fully below.

2. Election Commissions

The creation of a mechanism for the administration of the elections is the first step in the process, from which all other steps must logically flow. As noted earlier, the independent electoral commission has a prior history in Cuban constitutional law. Now very much a trend in Latin America, independent elections authorities are autonomous, in the sense that a) they operate without being controlled or influenced by the Executive or by either the ruling or the opposition parties, b) can appoint and dismiss their own personnel, and c) can make their own decisions concerning the development of the electoral process. Election commissions or tribunals do not "legislate" per se, but can avoid the problems often produced by loopholes in the electoral law by hammering out agreements and issuing decrees. In these instances, it is important that Constitutional requirements, election laws and the procedural determinations made by the commission are all consonant with each other.

The election commissioners are charged with monitoring the application of the electoral law and enforcing the regulations--hammered out by the commission's senior professional staff--necessary to make the election work.

The independence of electoral commissions should, as much as practicable, be reflected in their budgets. Commissions that must seek new funding from the central government at every stage of the electoral process may have great difficulty maintaining their independence from the government and the ruling party. In some countries, commissions are non-partisan

in administration but political parties have a voice, and sometimes even a vote, in their deliberations concerning the most important decisions. In other countries, commissions are composed, formally or informally, of representatives of the political parties, with no one party having control, and the opposing interests of the various parties are relied upon to bring about decisions that are fair to all.

In Cuba, the transitional authorities might decide to leave the existing structures of commissions and departments in place for the first transitional election. It is possible that the commissioners appointed through the current process, if supported by the knowledge and expertise of outside specialists and staff personnel on a full time basis, could successfully carry out their new responsibility of administering a truly competitive and free election. In any event, professional criteria, as well as their acceptability to broad ranges of public opinion, should prevail in the selection of all new operational and administrative personnel. Whether retaining existing personnel or hiring new ones, it is important that all those involved in the process be accepted by the public as honest, capable people who are determined to apply the law equitably and wisely.

3. Creating an Appeals and Dispute Resolution Process

In order for elections to be judged free and fair, a process must be in place that provides for a fair and expeditious outcome to appeals lodged by both individual citizens and political groups. Among the types of challenges that may be heard are complaints about exclusion from electoral lists, threats to physical security, the presence of "phantom" voters on the official rolls, and the irregular handling of ballot boxes. Because the current elections system in Cuba does not allow for real challenges by citizens of the actions of the institution responsible for conducting elections, such a procedure will need to be created. The process should guarantee the right of complaint and a hearing before an official body. In some Latin American countries, such as Paraguay, the Electoral Tribunal both administers elections and rules on complaints. In others, such as Peru, separate agencies handle administration and dispute resolution. In either case, the appeals process should not be excessively complicated, and cases should be promptly resolved.

4. Voter Registration

The creation of a reliable electoral list takes time and resources. The electoral registration office should be responsible for voter mapping, a geographic profile of how many people are registered and where, in order to determine the optimum distribution of polling places and the shape and size of electoral districts, providing each with a local election administration office. Registration activities require the recruitment of technical personnel trained in organizing large operations and preparing detailed budgets and knowledgeable of systems management and organizational design. Registry data should be open to periodic review by outside organizations, to ensure that systematic omissions in the data do not occur.

Voter registry is a science, not an art, and requires appropriate standardized tools for successful implementation. The Electoral List should be a single national registry based on uniform procedures. Homogeneous forms must be designed to assure that duplicate registrations do not exist and to add or delete names or change addresses. Validation and comparison criteria must be established to maintain quality controls on information reliability and accessibility. Manuals need to be prepared for election officials with regular contact with the public, guiding them in how to respond to citizen inquiries and complaints. Agreements must be reached with the entity responsible for registering births, marriages and deaths, in

order to share data, and with magistrates from the electoral courts, who should be invested with the authority to make additions or deletions from the lists.

In the short term, it is recommended that existing Cuban registry files be used, rather than to undergo the mammoth expense and effort of creating new ones. Otherwise, extensive efforts will be needed to create new and accessible registry offices, conduct an informational campaign to inform citizens about the need to register, and create public awareness of the time limits for doing so. Because preparation of the electoral list requires a huge amount of data, it should be computerized.

The period for the updating of addresses of existing voters and registration of new ones should not be less than 90 days, with a subsequent 30-day period in which the electoral lists are displayed for public inspection, a widespread custom in Latin America. This will allow citizens, civic organizations and political groups to report any anomalies contained in the lists, either through improper exclusion or inclusion, or errors. An information campaign should accompany this stage to make people aware of the importance of reviewing the accuracy of the lists. An additional 30-day period will be needed for the registration office to analyze citizen comments, and to respond to them in a way that generates correct information in the lists displayed. The 20 days required to print the lists by region, district and electoral area means that a total of 170 days will be needed, at a minimum, from initiation of the updating process to the publication of the final electoral lists. Once the geographic distribution of voters is obtained, districts and electoral areas should be reviewed in order to carry out those adjustments in districting needed to assure population parity among the jurisdictions.

5. Creating a System of Election Security

Security concerns are intrinsic to any free and fair election. These include the physical security of voters, candidates and political groups, as well as the safeguarding of the elements of the process--the secret ballot, measures to prevent multiple voting, and the chain of custody of ballot boxes.

No election is likely to be judged free and fair if there is a pattern of intimidation or violence against individuals or political groups. As stated more fully elsewhere in this report, failure by the State to curb such acts calls into question its commitment to democratic government. In this regard, it is important to bring the country's security forces into the process, underlining their duty to safeguard the lives and property of all citizens, and to give them the information needed for them to carry out their duties throughout the process. It is particularly important that they understand their role concerning ballot security and the impartial intervention of on-site disputes. On Election Day, in particular, security force vigilance is required to create a setting where full participation is not only possible, but also likely.

In some countries, the police have the primary mission of maintaining order on Election Day; in other countries the armed forces play a role, particularly in assuring the chain of custody of the ballot boxes before, during and after Election Day. In Nicaragua, public distrust of both police and military was such that the electoral commission created and deployed a temporary civilian electoral police, responsible only to the commission. In Cuba, the type of transition that occurs will likely have a large impact on the wisdom and public acceptability of security force involvement in the process. Transitional authorities may find that it is appropriate for the electoral commission to appoint its own election security personnel, as in Nicaragua. In any case, the eventual incorporation of the security forces as stakeholders in the democratic process, as has occurred in most of Latin America, is essential for all concerned.

Security controls must be devised for the centralized design and printing of materials, forms and ballots. Specific care must be taken to prevent the acquisition of voting materials by unauthorized persons, as well as the uncontrolled production of election materials and undocumented transfers and deliveries. Auditing procedures should be implemented for the processes of production and distribution of materials. Each step of the documentation process should be signed off as it is completed, which helps to reduce confusion and finger pointing if something goes awry.

Electoral stain (formerly called indelible ink) is used widely in Latin America and elsewhere in the world to identify those who have already voted, although it is no longer considered a foolproof device. It helps to reduce the possibility of multiple voting by individuals and, perhaps more importantly, to instill public confidence in the process. The stain should be acquired in sufficient quantities well before Election Day, and distributed according to the volume of need suggested by registry information. Screens or panels should be constructed and distributed with sufficient time to assure that every voter's right to a secret ballot is respected. The chain of custody of ballot boxes, including their inspection prior to the opening of the polls, needs to be coordinated with local poll workers, security officials, and party representatives.

Security considerations also extend to election results. Special communications, telephone lines, fax machines, coded forms and transport vehicles may be necessary to safeguard the results and assure that any falsified forms and data are detected.

J. Voter and Civic Education

A political transition in Cuba will create an immediate need for both short-term and comprehensive long-term citizen information and education programs. Voter information programs are short-term efforts that use electronic and print media. Generally voter information programs provide information about times, dates and places of voter registration; the posting of voter registration lists, the location of voting precincts, and voting procedures. They also include information about how and where the votes are counted, and about measures that have been implemented to insure the integrity of the election process.

Civic education programs are longer term and are designed to provide more detailed information and to impact on attitudes. These programs will be especially important for Cubans 40 years of age and under as they begin the process of choosing from competing political views and ideologies. Essential elements of the voter and civic education process include information about the inter-play of democratic structures, the role of free-market economies, necessary changes in laws and in the administration of justice, and the need for open and transparent elections. As IFES civic education specialist Gwenn Hofmann points out, Cuba's voting-age public will be forced to confront critical choices in the transition from a paternalistic and passive society to an active and open one.

The dynamic change accompanying a shift from authoritarian to democratic rule can create apprehension and uncertainty. In order to overcome the fear of change, it will be important to ensure the Cuban people as a whole are informed about the nature of the changes taking place, what they mean, and how they can benefit them personally.

Some of the most visible and immediate changes will be those concerning election laws, requirements and procedures. By ensuring that all Cubans understand what these mean for them, and how they will help create a modern, democratic society, the transition authorities

can help to create a new and positive perception of the transition process, even during its most difficult moments. Such efforts can also increase support for new government institutions, including a new election system, which is likely to be a focal point of people's knowledge and perception of the new government structure.

Successful transition processes require an informed electorate that feels itself empowered to make independent choices in open and transparent elections. The primary objective of elections-related communications is to convey transparency, a sense of openness and candor, from those administering the process. The greater the frequency and effectiveness of these communications, the greater the confidence in the system will be, and, consequently, the more people will be willing to participate fully. Well-informed citizens feel empowered and know why and how to participate in government and in the election process. When Cuban election officials begin to implement programs and procedures that demonstrate democratic values, people will begin to trust that the changes taking place will ultimately benefit them.

It is important, therefore, that the new Cuban officials' willingness to adhere to democratic principles be fully explained to the public. Creating a positive environment for peaceful change does not happen accidentally. Rather it is the result of actions and pro-active programs developed through non-partisan civic education programs and continuing voter education efforts. Political parties, civic organizations and the mass media all have important roles to play in this effort. By involving non-governmental organizations in information and education, the transition government will signal its own intention of being a partner in, rather than the owner of, the process.

An essential first step for new election officials is to develop a lexicon of democracy and civil society. The Castro government misuses and abuses the meanings of words used to describe democratic institutions. The transition government will have to define what they mean by democratic institutions, then help the people to understand the words used and how elements of democracy and civil society fit together.

Election administrators face the challenge of providing most of the initial information and education to the public. They need to be able to articulate a vision about what constitutes civil society, how it is structured and how a new elections system will work within a dynamic environment. The development of a civil society within a democratic context should be explained in a way that demonstrates the correlation between the two. In general terms, an active civil society is an essential component of democratic government, incorporating as it does aspects of state accountability and citizen participation. The involvement of non-governmental organizations in civic action, education, public policy, advocacy, government oversight, state accountability and citizen participation further these goals.

K. Potential Role of the International Community

1. The Role of International Observers

For more than a decade, international electoral observation has been seen as critical to transition processes, helping to promote citizen confidence and participation, while also providing election officials with needed insight and impartial advice. The role of international observers can also be crucial in highly polarized situations, particularly in those in which transitions are beginning with significant numbers of officials from the old regime still in place.

Observation of an election by independent and impartial foreigners -- who may represent foreign governments, international organizations, non-governmental organizations, or some combination of these -- can help to provide objective information about the process. The observers' primary mission is to report significant incidents or patterns of fraud and other manipulation. They can also help to ensure the integrity of the election by examining how the overall human rights situation in a country affects the election process, with special emphasis on the role of the state in protecting individual rights and freedoms. In the best of situations, the very knowledge that foreign observers will be present on the days immediately preceding and following the election can serve to prevent violations of law and human rights that might otherwise have occurred. The frequent criticism of observers' reports as "bland" may therefore not tell the full story.

In any transitional situation in Cuba, there will almost certainly be significant demands on the new regime to allow observers sponsored by both local and international organizations to participate in election monitoring. Many of these organizations will likely have been involved for some time in monitoring Cuban political and human rights. Their expertise can be invaluable. As Cuba moves away from non-democratic government, they can help transitional authorities infuse the process with legitimacy.

All foreign observers coming to Cuba should have an understanding of both international standards for the conduct of elections, and specific knowledge of the electoral laws and procedures adopted by transitional authorities. Practical experience in politics can be a plus, if it does not cloud independent judgment; and expertise in electoral administration is invaluable. Knowledge about international standards and practices governing human rights is also important. Persons with skills in systems analysis and those with investigative talents (used appropriately) can round out a delegation.

Observation missions can vary in size and in the length of time they participate in the process. Cuba's geography, population density and political situation suggest that small missions will not be useful. Each additional delegation member can help increase the mission's breadth of expertise, the number of people interviewed about the process, and the number of polling sites covered. While the length of stay can vary widely, depending on the mission's objectives and history of involvement with Cuba, delegations should arrive at least 4-5 days before Election Day and leave at least a technical team in country until the results of the balloting have been announced.

IFES has pioneered the concept of long-term election observers, who help officials at each stage of the electoral process during the months before the election and then provide objective feedback about the success of their efforts on Election Day. In the run-up to voting, observation missions can perform a number of highly useful and necessary tasks. International experts may also help train election officials and can serve as consultants on voter and civic education projects designed to increase public awareness and acceptance of the changes taking place. They can also provide insight into issues such as voter registry, campaign and ballot security, and media relations.

Both prior to Election Day and during the actual balloting, observers should be deployed as widely as possible in order to obtain information about the process first-hand, and to investigate, where appropriate, complaints that indicate patterns and practices of manipulation. Deployment of observers should be based on a detailed plan in which, typically, each mission member is paired with another, and each pair is assigned to a specific, predetermined area. Within their assigned area, IFES does not tell observers which polling sites to visit, nor in what order, nor is the decision left up to the host government or

election commission. The observer team chooses polling places at random within its assigned area, in an effort to counter any "Potemkin village" syndrome. All observers should be briefed about what specific procedures they are to follow on-site, and how to handle citizen complaints or problems discovered in the field. Observers should be present at both the opening and closing of the polls as well as during the vote count.

Election monitoring can help create public confidence through a number of actions. These include:

- *Checking* to make sure voting stations open on time and close as stipulated by previously agreed-to rules;
- *Looking* for any instances of improper voting, such as multiple voting, or impersonation of other registered voters;
- *Ensuring* that ballot boxes are sealed and empty before voting begins;
- *Checking* that voting is carried out in secret;
- *Checking* that all those people qualified to vote who show up at the appropriate voting stations are allowed to do so;
- *Documenting* problems as they occur;
- *Monitoring* agreed-upon changes in rules, such as the opening up of additional voting stations, or a decision to extend the hours of voting due to climatic or other conditions;
- *Looking* for unauthorized partisan activity in and around the voting stations;
- *Monitoring* acts of intimidation and violence;
- *Observing* the counting of the votes, and receiving a copy of the final tabulations as a means to verify the accuracy of regional or national counting procedures; and
- *Documenting* procedures used to settle challenges on issues such as damaged or voided ballots.

The primary mission of international observers is to determine whether the electoral process actually results in a genuine expression of popular will. Flawed processes, in which random imperfections occur, can be successful nonetheless if that standard is met. Observers must take care not to interfere with the polling and with the work of elections authorities, unless these specifically request assistance. On the other hand, once the election is over, observer missions must be free to "call it as they see it," to state publicly their findings concerning the process.

Although their work is sustained by a fast-growing body of international experience and literature, those participating in international observation missions have special responsibilities. For example, sponsoring organizations should notify relevant government officials and agencies of their plans to send an observation mission; indeed, the normal procedure is for organizations to await a formal invitation from the election commission. Foreign missions in any country are, by their nature, guests in that country.

International observation missions should be impartial in word and deed. Their composition must be limited strictly to impartial observers. In practice, however, many delegations seek to ensure their own legitimacy by constructing a careful balance of interests and ideas from which it is hoped an independent consensus will be formed.

International observers have the obligation of being familiar with the terms of those international human rights instruments governing popular participation in elections and their free and genuine conduct. Sensitivity to issues of historical development and special problems associated with the transition situation is important.

Transitional elections are times of great national and international moments -- moments of great popular expectation and confusion. It is therefore important that observation missions be coordinated among themselves and with the appropriate election authorities. International delegations should seek, where possible, to create proper and cooperative relationships with host country election authorities. As noted earlier, international missions can play the role of informal troubleshooters, alerting officials to potential problems and difficulties before they become major roadblocks to truly free and fair elections. Despite the hostility of Chilean dictator Augusto Pinochet to the presence of international observers during the 1988 plebiscite in Chile, delegations were able to create cooperative working relationships with senior election officials in that country. As should always be the case, relations with the ordinary Chilean citizens who were chosen by lot as poll workers were excellent.

International interest in Cuba ensures that any transition scenario will be crowded with real or would-be observers, and coordination, to the extent possible, will be highly desirable. Foreign organizations should consider creating an organization similar to the "donors' committee" used by foreign aid agencies, in which regular consultations between the groups and national election officials could help in determining needs and relative responsibilities and preventing duplication of effort. All coordination efforts should seek to bring the greatest amount of resources into play in well-thought out sequences, and to identify strategies to promote cooperation and exchange between international organizations and local non-governmental groups (NGOs). Host country NGOs may be able to field their own domestic observers on Election Day, and, if so, they are likely to be far more numerous and able to cover many polling places than the international observers.

Particular attention should be paid to opportunities for each observer group to share information and insight with other observer groups. Joint announcements by observer delegations of findings, both before Election Day and after the votes are tabulated, can reduce confusion and multiply the effectiveness of their findings. Efforts should be made to plan and coordinate the observation activities to ensure that they do not inconvenience already over-burdened local elections officials any more than absolutely necessary.

2. The Role of the United States

The current policy of the United States Government toward a transition in Cuba is governed by the Cuban Liberty and Democratic Solidarity Act (the "Libertad Act").² The Act sets forth, as one of its stated purposes, to "encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers."³

The Act further states that the United States is prepared to provide assistance to a transitional government in Cuba in the event that such a government has, inter alia, done the following:

made public commitments to organizing free and fair elections for a new government, to be held in a timely manner, with the participation of multiple independent political parties, to be conducted under the supervision of internationally recognized observers.⁴

The Libertad Act also requires, as a condition precedent to providing U.S. Government assistance to Cuba, for a transition government to demonstrate that it "...has made public

commitments to, and is making demonstrable progress in: Establishing an independent judiciary; allowing the establishment of independent social and political organizations.”⁵

L. Conclusion

When the hour of decision approaches for the Cuban people, it will likely be a time filled with anxiety and many questions about what the future holds. It will be a time in which all Cubans, at home on the island or in the diaspora, must take stock of their history and its lessons, and their hopes for future generations.

If there is a single lesson to unite the peoples of our Hemisphere, it is the importance of making governments, and the people who lead them, responsible for their actions. This accountability can only be truly achieved through a system in which leaders at all levels of state power must periodically face popular judgment in electoral contests in which they may be turned from office if they do not live up to the expectations they themselves helped to create. The notion that political leaders are above the law is rapidly becoming as antiquated as the divine right of kings.

Accountability depends upon electoral system that is capable of allowing citizens to express their views about their government through free, fair and genuine choices at the ballot box. An appropriate balance must be struck between the executive, legislative and judicial branches of government so that a system of checks and balances on state power is created that enhances individual liberty, while enforcing citizens' responsibility. Finally, conditions must be created to forge a strong civil society, so in keeping with Cuba's own best traditions, that will promote participation and initiative.

In their moment of greatest uncertainty, Cuba and its people will not be alone, but supported by millions of friends around the globe, who will be generous with their support and their assistance. In the end, however, it must be the people of Cuba, at the moment of transition, who make the critical decisions to create new democratic institutions or to retain flawed structures and flawed principles, inherited from Castro or Batista.

II LEGAL AND CONSTITUTIONAL OVERVIEW AND ANALYSIS

A. Constitutional Law In Cuba: Historical Background and Comparative Analysis

A constitution may be defined as the fundamental law of a nation, deriving its basic authority from those to be governed by it, and laying the basic foundations around which life is to be conformed. Among other things, the main objective of a constitution is the organization, regulation, and restriction of the basic branches or departments of government.⁶

Cuba has a longstanding and rich history of embracing the will to be governed under a fundamental law, or constitution. Its leaders and visionaries have made numerous attempts throughout history to organize Cuba under the standards of rule of law, democratic principles and the concept of separation of powers. In addition, the people of Cuba have demonstrated a longstanding interest in being governed by constitutional standards, embodying, among other things free and fair elections in a multiparty system.

Cuba's constitutional movement began with the constitution of 1812, known as the "Constitution of Joaquin Infante", and the Constitution of 1858, generally referred to as "El Ave Maria."⁷ Cuba's first two constitutional documents, although never formally adopted by the Spanish colonial authorities of the time, reflect Spanish, French and North American liberal doctrine as it existed in the late 19th century. As such they are indicative of the Cuban desire for self-rule under a fundamental written law. When he led the Cuban Revolution against Spanish rule, Jose Martí gave voice to this inheritance when he called for an independent Cuba with its own constitution in what was known as the "Montecristi Manifesto."⁸

1. The Constitution of 1901

After the conclusion of the War with Spain and the subsequent signing of the Treaty of Paris of 1898, elections were held in Cuba for delegates to a constitutional assembly held in 1900. The delegates elected at the assembly completed a draft constitution in February 1901 and the constitution was officially adopted in August of that same year. Thus, the sovereign Republic of Cuba was born under the sign of, and governed by, a constitution that reflected the will of the Cuban people.

The Constitution of 1901, or Cuba's "individualist constitution", as it became known, was similar to the United States constitution in a number of fundamental ways. It established a democratic form of government. It also guaranteed several important human rights, including the right to free speech, the right to assembly and the free exercise of religion. It also included basic due process rights and the right of Habeas Corpus.⁹

The Constitution of 1901 divided the government into three branches: contained in the U.S. Constitution. The President was elected to serve a four-year term. However, unlike the American constitution at the time, Article 66 of the Cuban constitution limited the President to two consecutive terms. The legislature consisted of two chambers-- a Senate and House of Representatives. The judicial branch was accorded the right of judicial review.¹⁰ That is, it was granted the right to interpret the constitutionality of the laws of Cuba. Cuban citizens were granted the right to vote and standards for citizenship were also outlined. The constitution set forth the obligations of-- and limits of--local governments on both the provincial and municipal levels.¹¹ Finally, the constitution could be amended only by a Constitutional Convention, authorized by a two-thirds vote in both chambers of the

legislature.¹² Cuba's modern, liberal constitution thus embodied both, human (or "positive") rights and limitations upon the government's ability to interfere with the exercise of individual rights, (commonly known as "negative" rights). The Constitution reflected the popular will for a sovereign Cuba, independent of Spain and the United States, and embodied the struggle of Jose Martí and others for a democratic form of government and respect for the rule of law.

Despite Cuba's success in drafting and adopting a modern constitution, in practice there were a number of problems. Political unrest unfolded within Cuba, fueled by problematic elections and public disagreement over the restrictions placed upon certain provisions of the Constitution by the U.S.-mandated Platt Amendment.¹³ As a result, many of the provisions of the Constitution, so carefully articulated by the delegates of the Constitutional Convention, were not actually implemented by the various branches of government. In an effort to address political unrest and to resolve these constitutional questions, President Grau abrogated the 1901 Constitution in 1933. He promulgated provisional statutes to govern Cuba in the short term and called for another constitutional convention to be held in 1934. However, it was not until 1939 that elections were held for delegates to the convention. The objective of the convention was to reconcile the clashing political interests within Cuba, which had led to the instability of the 1920 and 1930s.¹⁴ In order to accomplish this daunting challenge, the constitutional delegates represented a broad spectrum of interests, and included representatives of nine different political parties (including the Communist party).¹⁵ Thus, a short-lived experiment with political pluralism was begun in Cuba.

2. The Constitution of 1940

The Constitution of 1940 is considered by many legal scholars to be a profoundly progressive body of law, establishing some of the most advanced civil rights principles of its time.¹⁶ It retained most of the human rights provisions set forth in the Constitution of 1902, but changed the government to a semi-parliamentary system. The President remained the head of state, but was to be assisted by a Prime Minister, who would head the cabinet. The cabinet was accountable to the legislature, which could remove ministers at will by a vote of no confidence.¹⁷

The Constitution reaffirmed the rights of free speech,¹⁸ worship¹⁹, and assembly²⁰ and due process rights²¹. In addition, the Constitution more clearly articulated property rights, prohibiting illegal takings²² and firmly establishing "the legitimacy of private property in its broadest concept..."²³ Private ownership and development of small farms were encouraged by the exemption from taxation of a farmer's first \$2,000 worth of land, expressly declaring such rights to be "unattachable and inalienable."²⁴

The Constitution reaffirmed the powers of the judicial branch of government, as well as their separation from the executive and legislative branches. Like the previous constitution, the judicial branch was vested with the power to nominate judges. A Supreme Court was created as the highest Court of the land,²⁵ while lower courts of general jurisdiction were also created, from which appeals could be made to the Supreme Court. As in the United States, Supreme Court justices were to be appointed by the president, and confirmed by the Senate. In addition, the Constitution instituted what was known as the Court of Constitutional and Social Guarantees, which was a section of the Supreme Court. The Court of Constitutional and Social Guarantees was empowered to hear appeals on the constitutionality of laws, decrees and other acts of government bodies. It was also allowed to hear constitutional questions raised in lawsuits in the courts of general jurisdiction. It also provided a direct right of appeal to the Court from the President, Prime Minister, the

legislature, judges and individuals in cases where issues of constitutional and social guarantees were raised.²⁶

In drafting the Constitution of 1940, the Constitutional delegates set forth in Title 19 strict guidelines for the amendment of the Constitution. Amendments could be initiated either by popular petition or by the Congress. Three kinds of revisions or amendments were authorized under Article 286: specific, partial or complete. When specific or partial amendment was sought, the approval process for the proposed revision was contingent upon whether it was brought forward by popular or congressional initiative.²⁷ In the latter case, a petition to amend the Constitution had to be signed by at least one-fourth of the members of the "Co-Legislative Body," that is, the jointly assembled House and Senate. The petition then had to be approved by two-thirds of the members of the House and the Senate, jointly assembled, in two consecutive regular sessions of Congress. In the event of an initiative by the people, the revision was required to be submitted to a referendum at the time of the next election.²⁸

Certain provisions of the Constitution were considered to be of such great importance²⁹ that in the event they were proposed for revision, the Constitution required the selection of delegates to a "plebiscitary assembly." This body was to be chosen in elections to be held within six months on the provincial level.

Some of the more notable differences between Cuba's first and second constitutions were in the areas related to family, culture and labor. The 1940 Constitution afforded far greater protections for these rights than those set forth in that of 1901. Among its more "social-oriented" components, was a provision that required the nation to "employ resources within its reach " in order to provide employment to its citizens, and to assure workers the "economic conditions necessary for a fitting existence." These provisions were hortatory in nature, rather than mandatory, and offered no clear means of enforcement. Nonetheless, they reflected concern on the part of the constitutional delegates for the conditions and rights of working people. Perhaps most significant in this regard was the fact that an entire labor code--including minimum wage rules, maximum weekly working hours, maternity leave for women, and workmen's accident insurance--was incorporated into the Constitution.

Under the 1940 Constitution, local government was radically restructured, with power devolving away from a centralized government. Provincial councils were created that were comprised of mayors of municipalities within the various provinces. Municipalities gained the right to levy taxes,³⁰ further shifting power from Havana to local governmental entities.

The constitutional delegates placed considerable emphasis on setting forth a comprehensive framework of constitutional guidelines with respect to the conduct of elections for president and congress. This is reflected by the fact that they devoted an entire title within the Constitution to the issues of elections and voting rights. As a result, the 1940 Constitution can be said to be remarkable for its clear delineation of electoral rights and its creation--in theory--of an independent electoral administrative process.

a. Voting Rights

The 1940 Constitution enshrined the right of Cuban citizens to universal voting and secret balloting, and the legal age of voting was lowered from 21 to 20 years of age.³¹ Pursuant to Article 120, Senators were to be elected by direct vote to a four-year term, while members of the House of Representatives were elected in staggered terms (one-half stood for election every two years) and were selected by voters on the provincial level.³² Like elections for the

Senate and the House, the presidential election was organized on the provincial level. In a provision that borrowed an aspect of the U.S. Electoral College, the candidate who obtained the greatest number of votes in each of the provinces was to be credited with the number of provincial votes equal to the total of Senators and Representatives to be elected by the respective province. The candidate with the greatest number of provincial votes was considered elected.³³

The Constitution stated that participation in voting was mandatory. It imposed fines on those who failed to vote, and prohibited offenders from serving as magistrates or holding any public office for a two-year period.³⁴ Provisions for security were rather advanced, with a requirement that the election law provide for a system of voter ID cards. These were to include the voter's photograph, signature and fingerprints.³⁵ Limitations on voting rights included a prohibition of voting by those serving in the armed forces or the police.

b. Political Parties

The Constitution greatly encouraged the formation and participation in the political process of multiple political parties. Political parties were formed by submitting an application signed by a number of adult citizens equal to two percent of the population as recorded by the most recent national census. Parties could be formed on the national, provincial or municipal levels, respectively. The Superior Electoral Court, described below, was empowered to oversee the registration as well as dissolution of political parties. The Court was designed to protect political parties from government interference and to allow for objectivity in the regulation of political party activity.

c. The Superior Electoral Court

The judicial branch was given the power to supervise Cuban elections pursuant to Article 184, which called for the formation of a Superior Electoral Court. The Court was to be comprised of three Justices from the Supreme Court and two from the Havana Court of Appeals, selected by the plenum of their respective courts. The Court was responsible for guaranteeing the purity of the ballot and for supervising all electoral activities and political events throughout the election campaign period. These included the voter registry, the formation of political parties, the nomination of candidates and "the proclamation of those elected." In addition, the Court was empowered to decide electoral-related claims and disputes; to resolve on appeal the validity or voiding of the results of an election, and to issue the necessary orders and instructions required to maintain order and freedom during the entire electoral process. The Court's power to supervise the electoral process was extensive, although decisions of the Court were reviewable under certain circumstances by the Court of Constitutional and Social Guarantees. The Court's powers were exemplified in the explicit power granted the Court to suspend or to void any electoral acts or procedures. In addition to the Superior Electoral Court, the Constitution also authorized the formation of electoral courts on the local level, presided over by judges currently serving in the judiciary.³⁶ The Court was viewed as a means of ensuring that neither the executive or legislative branches-- both seen as having a stake in the political process-- controlled the administration of elections.

As an additional safeguard against political pressure on the electoral process, the Constitution provided that employees serving under the Court and employees serving on electoral boards created by the election law could not be removed from their positions.³⁷ Any dispute raised with regard to the actions or inaction of the members of electoral boards was to be decided by the electoral courts.

In 1952, the Cuban Constitution was suspended by Fulgencio Batista during the coup d'etat of that year. Batista issued a decree repealing the Constitution, allowing him to rule by fiat. Some of the guarantees contained in the Constitution were supposed to have been respected. However, throughout Batista's tenure, these constitutional guarantees were suspended, thus bringing to a halt Cuba's aspirations for a modern constitution reflective of democratic principles.

Although many of its far-reaching provisions were never implemented, most observers agree that the Constitution of 1940 is the most significant legal document in the history of Cuba. This can be argued for a number of reasons. First, from a conceptual standpoint, it served as a codification of Cuban aspirations for legal, economic and social development. Secondly, the suspension of the 1940 Constitution became a unifying factor among various opposition political parties and groups within Cuba during the dictatorship of Batista.³⁸ Third, its restoration was also the stated goal of the revolutionary movements in Cuba during the 1950s, including that of Fidel Castro. In 1953, Castro stated:

The [1940] Constitution is understood to be the basic and supreme law of the land, to define the country's political structure, regulate the function of government agencies and determine the boundaries of their activities. It must be sui generis, stable, enduring-and to a certain extent, inflexible.

In his work "History Will Absolve Me," Castro singled out for denunciation Batista's usurpation of the constitutional power to amend the constitution.³⁹

Finally, restoration of the Constitution of 1940 has been the declared goal of many Cuban exiles for the past 38 years. It continues to serve as one of the primary legal foundations for any transitional Cuban government in the future.⁴⁰

As a result of its historical, social and political impact on the emergence of democracy in pre-Castro Cuba, the Constitution of 1940 remains an integral and inseparable part of longstanding Cuban aspirations for democracy, civil society and rule of law. Consequently, elements of it should be given serious consideration as guideposts for the development of a modern and democratic Cuba. Arguments for such consideration of the 1940 constitution, on a section-by-section basis, are set forth later in this document.

3. The Fundamental Law of 1959

Following Batista's abdication, and the ascendancy of the revolutionary movement headed by Fidel Castro, Judge Manuel Urrutia was appointed as President of Cuba. Urrutia publicly expressed his desire to "provide for the exercise of the legislative power properly belonging to the Congress of the Republic, in accordance with the 1940 constitution."⁴¹ Many observers at the time interpreted this to mean that the Constitution had once again become the supreme law of the land in Cuba. However, Castro immediately set out to amend the Constitution by placing the legislative power in the hands of the Council of Ministers (cabinet), which gave the Council the right to amend the Constitution at will. As the Council began to rescind the fundamental property rights contained in the Constitution, they also suspended human and civil rights.

In February of 1959, the revolution promulgated the Fundamental Law. This document was claimed by the new authorities to be merely a revision of the Constitution of 1940. While it

did retain many provisions relating to social and economic matters, it drastically altered the structure of government. Legislative, executive and constitutional powers were concentrated in the Council of Ministers. The president of the republic became a largely ceremonial position. The Senate and House of Representatives were eliminated, and their legislative roles were transferred to the Council of Ministers. The Supreme Court was also made accountable to the Council.⁴²

The Council of Ministers enjoyed unchallenged power under the Fundamental Law. Although the laws it issued were nominally submitted to review by the courts, because it retained the power to amend the constitution, it merely proceeded to do so whenever the judiciary invalidated its actions.⁴³ Members of the Council served at the pleasure of the president, and in practice, the president followed the wishes of the Prime Minister. This made the Prime Minister the central authority of the government. Castro served as Prime Minister until that office was abolished on February 24, 1976.⁴⁴

The period of revolutionary consolidation was accompanied by constant pressure to amend those provisions of the Constitution of 1940 which had been retained in the Fundamental Law. Consequently, Castro authorized the establishment of a special commission within the Central Committee of the Communist Party of Cuba (the "PCC") in 1974. The Commission was charged with drafting a new constitution, and consisted of 20 lawyers and government representatives, as well as representatives of the PCC as well as a number of civic organizations. It submitted a draft constitution in 1975. In a referendum conducted in December of that year, the draft was reportedly ratified by over 97 percent of the voters.

a. The Current Constitution Of Cuba

The 1976 Constitution was based largely on the Constitution of the Soviet Union. It declares Cuba to be a socialist republic in which power belongs to the working people. Two central doctrines are the "unity of Power" and "democratic centralism". Its key principles purport to be, among other things, the free election of all bodies of state power, accountability of elected officials to their voters, strict control by superior state organs over subordinate bodies, and increased participation of local units in the administration of local affairs. The current constitution provides for several important guarantees, although in name only. For example, freedom of speech is recognized, but its exercise is limited to that which "is in keeping with the goals of a socialist society."⁴⁵ In addition, the electronic and print media may not be owned privately, and are controlled by the state. The right to free assembly, demonstration and association area are also guaranteed. However, that right does not extend to criticism of the current government or its policies.⁴⁶

The Constitution of 1976 is most remarkable for its concentration of power in one individual. Pursuant to the constitution, the President of the Council of State is the head of the executive branch of government.⁴⁷ Fidel Castro is the President of the Council.

While the National Assembly is vested with the right of legislative power in Cuba⁴⁸, the Council of State represents the Assembly "when it is not in session." Thus, the legislative branch is in effect controlled by the Council, as the Assembly only meets on one or two occasions each year. The Council of State has the power to "interpret laws" and issues instructions to the Supreme Court of Cuba,⁴⁹ and the constitution mandates that while courts are independent of other governmental organs, they are subordinate to the Council of State. These provisions combine to ensure that the Council serves as the de facto judiciary, controlling both the courts and the judicial process.

The Council of State consists of 31 members elected by the National Assembly. It is the major decision making body of the state. The Council's members are members of the Political Bureau of the Central Committee of the PCC, and although it is not required under the constitution, many of them serve in the National Assembly.

In practice, the power of all three branches of government-- the legislative, executive and judicial-- are concentrated in the Council of State, headed by Fidel Castro. In Addition, Castro serves as the commander in chief of the Revolutionary Armed Forces (the "FAR"). Pursuant to the constitution, Castro is empowered to assume leadership of any ministry or central agency of the administration. He is the only living individual to be specifically mentioned in the constitution, the others being the deceased Marx, Engels, Lenin and Martí.⁵⁰

The centralization of power in Cuba reached its climax in July 1992, when the National Assembly amended two-thirds of the articles of the 1976 Constitution. Significantly, the amendment process took place without the holding of a national referendum, which is required by the Cuban Constitution. Among other things, the modifications added powers to those already vested in Fidel Castro: he was granted the power to declare a state of emergency and suspend the constitution in case of war, imminent attack natural disaster or events capable of affecting internal order and state security.⁵¹

At the same time, Cuba adopted several other amendments to its constitution, primarily in the areas of property rights and the conduct of elections. Perhaps the most significant of these changes was the decision to provide for the direct election of the National and Provincial Assemblies. This was a major departure from the previous practice of directly electing only the members of the municipal assemblies, who in turn chose delegates to the provincial and national assemblies.

Finally, in order to adjust to the economic reality posed by the post-Soviet era, Cuba recognized the constitutional right to ownership of private property and added provisions allowing foreign investment in Cuba, including joint ventures with foreign persons and/or legal entities.

b. Options For Construction of a Constitutional Framework

As the fundamental law of the land, a nation's constitution provides the legal framework for the exercise of rights related to the conduct of elections. These include the right to vote, to stand as a candidate, to assemble or associate in political parties and other organizations, and to have electoral disputes resolved pursuant to the rule of law. An assumption of this document is that a transition government in Cuba will consider at some point in time making changes in the current legal and political system. These changes would include steps toward one or more of the following:

- modifying the current constitution of Cuba;
- reverting to, in whole or in part, one of the previous constitutions(s) of Cuba; or adopting, by referendum, constituent assembly, or decree, an entirely new temporary or permanent constitution.

In outlining the options available to a transitional government in Cuba, it is instructive to look first at the historical context of Cuba's experience in constitutional law and the enumeration of rights therein. First, the Cuban people have expressed a continuous and unabated desire to be ruled by a constitution that confirms the sovereignty of the Cuban nation and the right

of the Cuban people to self-government. Second, Cuba has demonstrated the ability to draft and adopt modern constitutions reflecting the modern ideals of the separation of powers, human and civil rights, and limitations on the power of the government. Third, many of the freedoms and rights set forth in previous constitutions have-- for a variety of reasons-- never been fully implemented or enforced.

The Constitution of 1901 was instrumental in developing the concept of a sovereign Cuba, independent of Spanish rule. However, it is not a modern document in any sense, and does not reflect the political, electoral and economic realities that confront the Cuban people at the close of the 20th century. As a consequence, other than some its broader conceptual framework dealing with human and civil rights, the 1901 Constitution is not an appropriate model for consideration for use by a transitional government.

Neither the 1959 Fundamental Law nor the 1976 Constitution is an appropriate foundation for a modern, democratic Cuba. In order to bring them into compliance with normative international standards governing electoral and other democratic rights, they would have to be drastically overhauled. Significant changes would be required in order to provide a legal framework for a free market economy and the rule of law. Transition officials will need to consider the ramifications of retaining the numerous "positive" rights contained in the current constitution. They may also wish to consider the distinctions between positive rights and what are known as "negative" rights. Negative rights are those rights which protect the individual from government interference, and serve to establish basic individual rights and personal freedoms.⁵² Examples of negative rights are freedom of speech, press, religion and assembly. Since negative rights are typically stated in terms of what the government is prohibited from doing, enforcement of those rights in a judicial system based upon rule of law is relatively easy; the court need only declare a governmental act or policy to be improper, illegal, or unconstitutional.

In sharp contrast, positive rights are difficult to enforce. In essence, they guarantee that the government take some action for the benefit of an individual.⁵³ The positive rights contained in the current constitution of Cuba include, but are not limited to, the right of employment, housing and satisfactory living standards. Because these positive rights require action on the part of the government, enforcement and protection of such rights by either a transitional or permanent judiciary would require the courts, if they are to take these provisions and their responsibilities seriously, to order the government to spend a certain amount of money or to provide a particular service. Consequently, retaining such provisions might well require a transitional government to take steps for which it had little or no funding. In short, the "positive" rights contained in the current Cuban Constitution are simply unenforceable by the courts. They should either be eliminated or rephrased in order to be viewed as "declarations of purpose", aspirational in nature, which the nation would strive to achieve.⁵⁴ One solution to the dilemma posed by positive rights for consideration by transition authorities would be to place them in the preamble or purposes clause of a new constitution. In this way, they would be viewed as goals to which the nation is to strive to achieve. Another possible solution would be to rephrase the positive rights in such a way as to "guarantee the right to have the possibility to earn a living" rather than guaranteeing the "right to work." Another alternative would be to the effect that the state will "establish conditions under which each citizen could obtain housing," rather than providing an absolute guarantee of housing. In these situations, the courts would not be expected to require the government to provide a particular job or house to a particular person or class of persons.

The constitution would also have to be changed to remove the communist dogma that currently serves as the central guiding force on the constitution. It would have to provide for

the existence of other parties or forces within Cuba. Finally, the organization of the governmental structures under the constitution must be necessarily altered to allow for the separation of powers and judicial review of the actions of the executive and legislative branches of government.

Many legal and constitutional scholars who have written on a possible transitional Cuba have advocated a return to the 1940 constitution.⁵⁵ As noted above, the restoration of the 1940 constitution was a goal of many Cubans in the pre-Revolutionary years and remains the goal of many of those Cubans who now live in exile. The Agreement for Democracy among a number of Cuban exile groups and organizations also suggests support for the 1940 Constitution. The 1940 Constitution's expansive approach with regard to the conduct of elections is certainly one of its great strengths. The rights and freedoms accorded political parties and other organizations would provide a valuable foundation for the development of a multi-party electoral system in Cuba. Finally, the concept of having a Superior Electoral Court with specialized jurisdiction over the electoral process, now successfully applied in other countries in the region⁵⁶, should also be considered as a means of guaranteeing voting rights and the proper adjudication of disputes in a transition period.

While there are many positive aspects to the concept of restoration, there are some provisions of the 1940 Constitution that are viewed by legal scholars as inappropriate for a modern Cuba. The provisions of the Constitution regarding citizenship (addressed in Section V of this document) as well as certain labor rights and other economic-related areas, are controversial and may need to be amended. Its identification by many as the Magna Carta of the Batista period also suggests the need for a judicious selection of best practices emerging from the document.

1. Option 1: Using Basic Principles from the 1940 Constitution

One alternative for a transition government would be to utilize the 1940 Constitution for three very basic and fundamental purposes. Taking place early in the transition process, these would--by definition--serve as transitory goals that could guarantee confidence in the entire process.

- The election of the Executive and Legislative branches of government. (The election of these offices would achieve one of the first objectives of any transitional government.)
- Securing elemental civil liberties such as free speech, due process and Habeas Corpus. (This step would help create a transparent and open electoral process for the initial elections.)
- The establishment of a preliminary structure for the judiciary. (This action would allow for the establishment of independent courts, including a Superior Election Tribunal to supervise the electoral process, ensure proper implementation of the electoral-related provisions of the constitution and election law, and adjudicate electoral-related disputes.)

2. Option 2: Adopting an Interim or “Small” Constitution

Another approach, which could be taken by a transitional power in Cuba, involves an entirely different methodology. Rather than relying on the current and/or previous constitutions during the transition, the transitional government could consider issuing what might be called an interim, or "small" constitution.⁵⁷ Under this theory, the transitional government would have a well-defined near-term horizon, with only limited objectives during the transition period. These objectives might include, among others:

- keeping the peace;
- consolidating political power amongst its members during the transition;
- releasing all political prisoners and guaranteeing basic human rights until the adoption of a new constitution;
- demonstrating the intent to establish a democratic form of government, with separate and independent branches;
- holding free, fair, and internationally-monitored elections; and
- developing the procedure and timeline for the adoption of a permanent constitution.

The interim constitution would be designed to carry out certain basic functions during the transition, with the goal of adopting a permanent constitution once elections have been held for parliament and for president.

3. Option 3: Adopting a New Permanent Constitution via Referendum or Constituent Assembly

The transitional authorities could also, of course, simply rule by decree for an interim period – achieving by that means the limited objectives listed above – and either draft a new permanent constitution themselves, or call for election of a Constituent Assembly to do so. Certainly in the former case and optionally in the latter, the new constitution could be submitted for popular approval in a national referendum. The use of constituent assemblies and referenda to draft and approve constitutions is, as we have seen, a feature of past Cuban constitutional practice, as it is in most other Latin American nations. It is evident that a transitional government would have at its disposal several means by which to articulate a constitutional vision for a transitional Cuba. Whether the government chooses constitutional reform or amendment as a short-term option or as a comprehensive and long term objective, the basic goals of the transitions would be quite similar. The scenarios set forth above are, of course, simply options. The transitional government will itself make the ultimate decisions with regard to the laws under which a transitional Cuba will be governed.

In constructing a constitutional framework, a transitional government must be able to make decisions as to its own powers and time-frame. In order to ensure a complete transition to a permanent and elected government, the authority may wish to consider strict time limitations on the performance of its duties, and may even take the step of disqualifying members of the provisional authority from holding office in the subsequent government.

D. Methodologies For Adopting a New or Amended Constitution

1. Option 1: Constitutional Convention

Regardless of the timing of a new or amended constitution, the transition government will need to make decisions about the method used to adopt the supreme law of the land. Again, precedent from Cuba's constitutional history provides possible guidance in selecting the method of adoption. Both the 1901 and 1940 constitutions were drafted and adopted by delegates convened in constitutional conventions. This approach could certainly serve as appropriate historical underpinning for proposed changes in the current constitution, as well as the adoption of an entirely new constitution.

On both occasions in which it was employed, constitutional conventions conducted the public's business in an orderly fashion. Its for the purposes of a new or amended constitution has several other advantages of possible benefit to a transition government. By virtue of the relative compact size of a convention, Cuba would be able to debate, draft and finalize a constitution or amendments in a relatively short amount of time. The timing would be extremely important in the event that a transitional government would wish forego the "small constitution" scenario described above and proceed to establish a longstanding supreme law of the land relatively early in the transition process. This assumes that the constitutional delegates could reach an agreement without undue discussion and debate. It may be advisable to issue some type of directory or mandatory timelines for the completion of the draft, if timing is considered to be of primary importance to the transitional government. Again, if timing is of the essence, the transition government might consider allowing the draft to be adopted by virtue of its approval by the drafters, by the transitional government, or a combination thereof.

2. Option 2: 1940 Constitution

The transitional government may wish to look to the Constitution of 1940 for guidance in deciding on the appropriate process for adopting or amending a constitution. As set forth above, the 1940 Constitution outlined in detail an entirely new standard for changes in, or adoption of, a new constitution. Articles 285 and 286 describe the steps to be taken in order to initiate constitutional amendment or revision by congress or by the people. The Constitution recognizes three types of revision or amendment: specific, partial and complete. The method under which the people or parliament could initiate partial amendment was explained earlier. A complete revision, according to the 1940 Constitution, required that an election of delegates take place.⁵⁸ The delegates were to be elected by province, with one delegate elected for each 50,000 people. The constitution addressed the timeliness issue by requiring that the delegates undertake their deliberations within 30 days of the assembly being called to order. In certain instances, the revision was required to be ratified by the votes of two-thirds of the total number of voters in each province.

3. Option 3: Constitutional Referendum

The Constitution of 1940 and the constitutional referendum conducted in 1976, provide a legal and historical precedent for adoption of a new constitution by means of a national referendum. Should the transition government wish to do so, several factors must be considered. There is a strong public policy argument to be made in favor of using referenda because of the expanded role offered the public. That is, greater citizen participation is reflective of democratic notions and an underlying assumption that public confirmation of a constitution will increase general confidence in the document itself. On the other hand, referenda result in the expenditure of state funds, which may be in short supply for a transitional government. Ballot materials, pollworker salaries, transport, fuel and other supplies will be expensive, and funds may be in particularly short supply during a transition.

As a consequence, the transitional authority will have to consider the cost of a constitutional referendum as a factor in its decision. Finally, the transitional authority may feel that the election of most urgency will be national elections for the executive and legislative branches. Once elected, these could make the decision on whether to conduct a constitutional referendum, or some other method--such as those noted above--for amending or adopting a new constitution.

E. Elections in Cuba: Background and Analysis

In the aftermath of independence from Spain, and during the deliberations of Cuba's first constitutional assembly, an electoral law was adopted which established a limited franchise for male citizens of Cuba.⁵⁹ The law set forth a system for the election of the President, the Senate and House of Representatives, and governors of provinces and provincial councils. Electors selected by voters on the provincial level chose the president and members of the senate. The number of electors selected from each province was equal to its number of Senators and Representatives. Voters directly elected members of the House of Representatives, as well as provincial officials.

While the law provided a basic framework for democratic elections, the provisions regarding enforcement of the law were vaguely written, and not always enforced. For example, the law required "public officials" to take actions to enforce the law and vested them with authority to issue fines. While serious violations of the law were to be punished pursuant to Cuba's criminal laws, the statute did not explicitly grant election officials the authority or responsibility to enforce its provisions.

The lack of a strong judiciary to oversee the elections meant that the resolution of disputes in the new nation-state was problematic. As a result, the elections conducted from 1901 to 1933 were characterized by numerous electoral disputes and charges of fraud, particularly in presidential elections.⁶⁰ Presidential candidates often disputed the results of the elections and at times refused to recognize the victory of an opponent. Since the law did not offer ready alternatives to resolve disputes, the United States government at times would offer the services of an arbiter in an attempt to resolve them. For example, Secretary of War William Taft found the presidential elections conducted in 1905 to be fraudulent, and he proclaimed a provisional government. The presidential and legislative elections in the 1940s were less problematic. This may have been the result of the creation of the Supreme Electoral Court in the Constitution of 1940. The intention of the drafters of the constitution to have proper judicial enforcement of the election law and process is clearly reflected in the provision setting forth the vast jurisdiction given to the Court.

Despite these efforts to bring order into the system, the electoral process in Cuba took an undemocratic turn when the 1952 elections were suspended as a result of the coup by Batista. In 1958, a Batista-sponsored candidate was named the victor in the presidential elections. The United States government determined that the elections were fraudulent, and did not support the results.⁶¹

With the advent of the Castro regime and the ensuing adoption of the Fundamental Law in 1959, it was assumed by many that the electoral process envisioned in the 1940 constitution was to be restored, at least in part. This is due to the fact that several of the provisions of the Fundamental Law regarding the conduct of elections were similar to those contained in the constitution. These included the right to freely associate in political parties and the reinstatement of the Superior Electoral Court. However, the electoral system came to

recognize a single party, and most of the electoral provisions in the law were not implemented.

After the adoption of the Constitution of 1976, elections were held every five years for deputies of the National Assembly and all of the delegates to the provincial and municipal assemblies. In addition, "partial " elections were held every two and one-half years to renew the mandate of the delegates. Citizens over 16 years of age, including military personnel, are eligible to vote, except for those who suffered from mental illness, had committed a serious crime or have asked for permission to emigrate. Voting is not required by law, but is strongly encouraged by government officials as a demonstration of loyalty to the State.

Elections at the municipal level are direct. Municipios are divided into electoral districts, each of which sends one delegate to the local municipal assemblies. Electoral districts are further subdivided into neighborhoods, in which one candidate is offered the delegate seat of that electoral district. Mass meetings of all voters, chaired by a local resident selected at a previous neighborhood meeting, are held in each jurisdiction for the purpose of nominating that neighborhood's candidate. Nominations are made from the floor. Any number of people may be nominated as long as there are at least two candidates. Nominees do not have to be residents of the neighborhood or even of the electoral district. Self-nomination is prohibited. Voting is by show of hands and the nominee receiving a simple majority becomes the neighborhood's candidate for delegate to the Municipal Assembly for that electoral district.

Biographies and photographs of the nominees are circulated throughout the election district by the government for a period of one month prior to the election. No other form of campaigning is permitted. The elections use paper ballots. In the event no candidate receives a simple majority, runoff elections are conducted.

Participation in elections is high. In the general election of 1976, for example, over 30,000 candidates contended for 10,725 municipal assembly seats. Voter turnout was reported to have been 95.2 percent. In the 1979 election, over 24,00 candidates contested 10,000 seats, with turnout reported 95 percent. In 1981, the turnout figure was reported to be 97 percent.

Many analysts concluded that the elections do not serve as a means of initiating or discussing policy alternatives, and certainly do not allow for participation of parties other than the ruling party. The prohibition on campaigning and the effective control of the nominating process for higher office by the Communist party and government-controlled organizations ensures that only those thought to be politically reliable are elected. On the other hand, citizens do enjoy broad rights of participation in the selection of their local representatives.

F. Political Party Rights and Regulations

As noted in the section on constitutional development in Cuba, the development of the right to form political parties can be traced to the Constitution of 1901. Article 28 of the Constitution provides for the right "to assemble" and "to associate." By virtue of these constitutional rights, political parties developed early in Cuba's history as an independent state. Delegates from all nine national political parties existing at the time had assisted in drafting of the Constitution of 1940. The rights of political parties were made more explicit in their handiwork--in particular, the constitution sets forth a system for the formation of political parties on the national, provincial and municipal levels.⁶²

The Superior Electoral Court was granted jurisdiction over the registration and removal of political groups from the official Register of political parties. The significant role envisioned for political parties by the drafters of the constitution is reflected in their exclusive right to nominate candidates, pursuant to Article 102 of the Constitution. This Article expressly stated that political parties "shall be the sole bodies charged with making nominations," the right of which "may not be delegated in any case."

The rights of political parties were further clarified in the Election Law of 1943.⁶³ The law envisioned both small and large political parties, authorizing the formation of parties on the local or national levels with a minimum membership of 95 citizens. Parties were registered with the Superior Electoral Court in the local (barrio) municipal, provincial and national levels. They could appeal to the Court to decide questions regarding their rights pursuant to the Constitution and laws of Cuba.

Political parties were banned during the Batista regime, and they played a reduced role in the electoral process during the time leading up to the revolution. The unrestricted right for political parties to exist was restored in the Fundamental Law of 1959. However, like many other provisions in the Law --which drew its inspiration from the 1940 Constitution-- Article 102, setting forth party rights, was never enforced.

The current election law does not recognize the right of any political party to function, while the Constitution mentions only the Communist Party. Neither body of law explicitly prohibits either the formation of opposition parties or the nomination of candidates. Article 53 of the Constitution expressly recognizes freedom of speech, but only "in keeping with the objective of socialist society." Article 54 sets forth similar rights to "assembly, demonstration and association." However, freedom of association, (participation in political parties) is severely limited in law and practice. In 1985, Cuba adopted the Law of Associations, which set forth the procedures for the establishment and organization of associations. Pursuant to the Law, they must submit their applications to the Ministry of Justice, which has the sole authority to decide whether an application is to be granted, without review by the courts. The Law further requires that a proposed association have at least 20 members. Applications have been turned down for procedural reasons, such as the provision of insufficient information. In addition, applications can be rejected in the event the Ministry deems that its proposed activities could damage the "social interest."⁶⁴ Since the adoption of the Law on associations, a number of interest groups, including environmental, legal and journalist associations, have seen their attempts to register rejected by the Ministry. It is reported that a great number of applicants never even receive a response from the Ministry of Justice.⁶⁵ Consequently, as a result of the way the law is interpreted and applied, the creation of associations is extremely limited.

G. Political Parties and the Transitional Authorities

In considering what role to permit political parties to play in elections managed by a transitional authority, officials can look to a number of arguments for guidance and support. First, Cuba has a fairly strong tradition of party participation throughout its history. With some exceptions, Cuba maintained a multi-party system at various levels from its independence until the 1950s. Second, multiple political parties are characteristic of every country in the world with any claim to being a democracy. Theoretically, it maybe possible to govern democratically with a single political party or none at all. But there is no evidence in practice. Participation in political parties increases the role of the citizenry in the political process. They are valuable channels for the formulation of local and national issues and their presentation to the public. Political parties have demonstrated their ability to create

party discipline in elected officials which, on the legislative level, can often consolidate positions on issues and avoid legislative deadlock. Finally, the right to freely associate in political parties is considered a fundamental human right by the international community.⁶⁶

The transitional authorities can expect that the post-Castro era will likely see a proliferation of competing groups, with competing issues and activities. Those seeking to influence the transition, and the nature of the permanent government to follow, are likely to include not only political parties, but also existing or newly established labor and professional groups and non-governmental organizations of all kinds, based both in Cuba and in exile.

III. ROLE OF NON-GOVERNMENTAL ORGANIZATIONS, DISSIDENT ROUPS AND REMNANTS OF POLITICAL PARTIES

Everywhere, as the world poises at the antechamber of the 21st Century, the process of public policymaking by governments and international development institutions is strengthened by the work of an informal coalition of organizations that are particularly responsive to people's needs. Non-governmental organizations--units organized by their own membership to seek satisfaction for their collective wants and needs—are a critical element in this participatory process. They strengthen civil society by giving its members the experience of promoting their own interests through organizing themselves and sharing the responsibility for decisions that affect their lives.

A. Importance of Popular Participation

In a democracy, experts agree, popular participation is essential to the health of the system. It empowers and mobilizes people as actors and instruments of their own development. It promotes good governance. It can also help poor and marginalized peoples acquire the skills and develop the attitudes needed to facilitate their integration into the larger society. Non-governmental organizations (NGOs) engage in activities that range from advocacy of religious freedom and expressions of popular culture, to protection of the environment and consumer rights, as well as economic and social development.

In all democracies non-governmental organizations play a critical role in shaping, informing and implementing popular participation in public life. Either as formal or informal organizations, national in character or local, NGOs comprise an important voice within civil society. As such they can offer constructive and responsible analyses and solutions independent of government or partisan bias. Because independence is their hallmark, it is essential that NGOs be allowed to act without undo interference from government in their efforts to promote genuine participation.

Throughout the world, non-governmental organizations and their self-organized networks, and particularly non-profit organizations, play a critical role in vastly differing arenas of political, economic and social development. Their record of accomplishment and the diversity of their experiences make them key voices in the helping to forge a sense of common purpose on behalf of all sectors of society. By promoting social partnerships, NGOs facilitate dialogue among contending social groups, highlighting common ground as well as the special roles and responsibilities of each.

Non-governmental organizations often form part of global networks, and where that is the case as such they -like governments-are in a unique position to foster communication and cooperation among their peers in order to fulfill their potential as effective actors in political the implementation of development objectives. Because NGOs offer a great deal to the enrichment of policy formulation and implementation, it is important that both society and government develop those mechanisms which allow them to play a partnership role in the most responsible and effective manner possible. Throughout the world, governments and international bodies--particularly international lending institutions such as the World Bank and the Inter-American Development Bank--are making significant efforts to promote the participation of non-governmental organizations in the political conception, establishment and evaluation of those official mechanisms and formal procedures intrinsic to the development process.

B. Government Treatment of NGOs

An effective network of non-governmental organizations can develop rapidly, if the political and security environments encourage their growth. A necessary, although not always sufficient, set of rights needs to exist in order for these nascent organizations to take root and help civil society to flower. These rights include:

- the right of peaceful assembly and demonstration, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, with any restrictions on these rights limited to those prescribed by law and consistent with international standards;
- the right of association, including the right to form and freely join trade unions and the freedom to strike, subject only to those limitations prescribed by law and consistent with international standards;
- the right to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, in their promotion and protection;
- the right to study and discuss the observance of human rights and fundamental freedoms and to develop and discuss ideas for improving their protection and more effective means for ensuring compliance with international standards; and
- the right of civic groups and other organizations to have unhindered access to and communication with similar bodies inside and outside of their countries and with international organizations, to engage in exchanges, contacts and cooperation with such groups and organizations, and to solicit and utilize--within the strictures of law--voluntary financial contributions from national and international sources for the purpose of promoting and protecting human rights and fundamental freedoms.⁶⁷

The State should recognize as NGOs those groups that declare themselves as such, according to existing national procedures, and facilitate the ability of such organizations to conduct their activities freely on its territory. Governments should also promulgate or strengthen those legislative measures needed for NGOs to establish consultative groups, as well as to ensure their right to protect the public interest through legal action. Other areas of support which the State should provide include:

- seeking ways to further strengthen mechanisms for contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions;
- facilitating visits to the country by NGOs from other countries with which it maintains diplomatic relations;
- welcoming NGO activities, including the solicitation of their specific contributions to the policy process such as reports, findings and written recommendations, where appropriate;

- providing NGOs with the information needed to insure their participation in public policymaking through openness and awareness of access procedures, and
- providing, as required, common space at public meeting sites or their immediate vicinity for NGO use as well as reasonable access, at their own expense, to technical facilities, including photocopying machines, telephones and fax machines.⁶⁸

The provision by government officials of useful information and briefings to the public; the designation of NGO-liaison officers in State offices; the facilitation of the flow of information to and contacts with the media; and the guarantee of the least restrictive access possible by the public to official deliberations by the public, can also fortify and consolidate NGO participation in the making of public policy.

C. NGOs in Latin America and the Caribbean

In Latin America and the Caribbean, the role of NGOs in development processes has grown exponentially in the past two decades. In fact, however, civil society participation grew out of community development efforts undertaken in the preceding 20 years. By bringing people and their communities into the decisions that affect their lives, they are empowered both individually and as groups. The State's interest in NGO participation can clearly be viewed from the point of self-interest: better, more effective consultation invariably results in better and more cost-effective policies, and from these cost effectiveness. Throughout the region, efforts are being made to include NGOs in the identification, design, implementation and evaluation of programs meant to improve the lives of citizens. Without this emphasis on participation, the sustainability of efforts--both public and private--is jeopardized.

Throughout Latin America, participation in NGOs has given their members a sense of greater ability to negotiate more effectively with government agencies. Community awareness and entrepreneurship have increased. New tasks are confronted with greater efficacy, as the capacity of the organizations to take on increasingly difficult assignments is strengthened. In situations where public frustration with government runs high, but where individual NGOs have been able to ensure their own participation in the policy process, they often find increasing support and demands from the general public.

It is important that participation mechanisms are created that give NGO creativity and energy full reign. These include empowering mechanisms such as strengthening their financial and legal status, and capacity building. They include:

- shared decision making, through participatory planning techniques;
- meetings to resolve conflict and to create consensus; public review and revision of planned policies;
- the creation of joint assessment mechanisms, such as participatory assessments and evaluations;
- information sharing mechanisms, such as translation and dissemination of material; and
- information seminars, presentations and public meetings.

The growing presence of NGOs throughout the Hemisphere has been responsible for some of the most important changes taking place in politics and public life. In Colombia, NGO participation helped to create a new Constitution that promotes participatory democracy and the transfer of power to citizens, giving them a direct voice in those fundamental decisions in which they have an interest. In a country in which corruption has been a major concern, popularly demanded revisions in the separation of powers has helped to create a consensus for more responsible government. In the Amazon region, Brazilian and international NGOs have gathered together to create a powerful coalition to support environmental protection and Indian rights. In Bolivia, a law on popular participation has sought to devolve power, and economic resources, from a highly centralized government back to the local level. In Argentina, Costa Rica, and Mexico, among other countries, NGOs have been in the forefront of efforts to promote human rights and necessary reforms in the administration of justice.

D. NGOs in Cuba

There was a vibrant civil society in pre-Castro Cuba. Today, the presence of a growing number of apparent non-governmental organizations has fuelled a debate on whether these are legitimate autonomous citizens groups or merely mechanisms for channeling funds to a cash-strapped Cuban government. According to one observer, who carried out field research in Cuba in 1994, the record is mixed:

Cuba's NGOs grew because the government deemed them useful financial intermediaries and because citizens desired self-help organizations capable of resolving local problems the state was unwilling or unable to address. While many NGOs were originally intended to channel funds to the state sector, some developed institutional interests independent from, though not necessarily in conflict with, those of the state. Access to foreign exchange free of central state control is a necessary, if insufficient, condition for independent-minded NGOs to pursue their own path.⁶⁹

The existence of this debate reveals a notable change in the way NGOs and the interests of the "civil society" they are supposed to represent are viewed by Cuban officialdom. Marxist dogma denied that independent organizations were needed, as the State itself reflected the will and wisdom of the people. Those challenging this view had recourse to Lenin's own admission that some independent organizations were needed to "defend workers against deformations of the state." Increasingly, some Cuban authorities have seen limited membership in NGOs as a way of attracting resources as financial subsidies from the former Soviet Union ground to a halt.

Before Castro's most recent crackdown on dissent, particularly during 1996-1997, more than 2,000 NGOs were officially registered with the Ministry of Justice (MOJ). According to Gillian Gunn, those registered included groups established by various government ministries, as well as existing mass organizations and think tanks that previously formed part of the ruling Cuban Communist Party. Thus, such mass organizations as the Federation of Cuban Women (FMC), the National Association of Small Cultivators (ANAP), and the Union of Cuban Writers and Artists (UNEAC), all mainstays of the Cuban regime, were transmogrified into pillars of a new civil society. Human rights organizations are denied registration because of continuing regime insistence that they are in fact covert political parties.

The registry process itself is highly revealing of the degree to which the State exercises control. In keeping with Law No. 54, decreed in 1985, "Associations and their Regulation,"

as well as Articles 39, 396 and 397 of the Civil Code of that same year, an organization in order to register must fulfill the following requirements:

- The names of 30 members, including their addresses and telephone numbers and ages of their leaders, must be provided;
- The organization must prove it is self-financing;
- A written statement of goals must be presented, as well as an organization chart or description;
- A "negative certificate" must be obtained from the MOJ stating that there exists no other NGO established for a similar purpose. In the affirmative, the applying group must affiliate with the existing group;
- The patronage of a "state reference institution" must be obtained, and that institution must affirm that the creation of the NGO serves its interests. The institution has the right to attend board meetings of the NGO and inspect its accounts to assure compliance with its declared goals.

Gunn found Cuban officials ambivalent about the NGO phenomenon. On the positive side, they saw them both as a magnet for resources that were otherwise unavailable and as a mechanism for relieving social tensions through resolution of, for the State, intractable problems. "A foreign donation to a semi-independent Cuban NGO," Gunn concluded, "can paradoxically both aid the state by permitting the NGO's state allies to take partial credit for a problem solved, and strengthen civil society by demonstrating the power of organized citizens." She said that a broad coalition of NGOs, both of the state-induced and grass roots variety, had made inroads against Cuban bureaucratic procedures that have served to distort aid flows from overseas.

Responding to this new phenomenon, the Clinton Administration in 1995 began to encourage private U.S. groups to develop people-to-people contacts on the island. The 1995 initiatives included licensing of U.S. non-governmental organizations to assist Cuban NGOs and allowing sales and donations of communications equipment to them. These measures were rescinded following Castro's stepping up of repression in 1996-1998.

IV. OPTIONS FOR DEMOCRATIC SYSTEMS

“Todo noble teson al cabo alcanza a fijar las justas leyes del destino.” (Noble tenacity finally restores the justice of the laws of fate.)

-- Enrique Hernandez Miyares

A. Introduction

Transitions are fundamentally about choices, and democratic transitions are characterized by choices made in an open, fair and informed manner. One of the choices the Cuban people will face during the coming transition concerns the framework--the institutions and practices--under which they wish democratic governance to take place.

Most modern democracies have chosen one or the other of two major frameworks--presidential and parliamentary systems. A presidential system is one in which the head of state is also the directly elected head of government, rather than a member of the legislature. In parliamentary systems, government is drawn from an elected legislature that can also dismiss it. Advocates of both systems can find examples of successes and failures in each in order to make their case. Cuba has had experience with both.

Another choice confronting Cubans during the transition will be the means of enlisting mass support for change, to resolve crises or to give legitimacy to fledgling institutional structures and the rules that will govern public conduct. These mechanisms include referenda and constituent assemblies.

Most importantly, the choices made must be based on Cuban reality and Cuban experience. The pre-Castro experience in democratic politics offers important lessons both to those who claim citizenship of the island republic by birthright, and to those from abroad who wish to help Cuba face the challenges a transition will present. The tragedy of Cuba is not only Castro's ascension to absolute power, but the conditions that allowed his rise to occur.

The following chapter seeks to provide information about the choices and options that will face Cuba at the moment real change becomes possible.

B. Principal Types of Representation and Decision-Making Mechanisms Used in Democracies

1. Presidential v. Parliamentary Systems

When a country decides upon a new democratic system, there are certain aspects common to all types of institutional frameworks that may be considered. All liberal democracies have, as their principal characteristics, the existence of more than one political party; relatively open processes of government and political debate; and a separation of powers. But there are still many choices to be made. Once a consensus is reached in favor of liberal democracy, the Cuban people must, among other issues, choose between presidential and parliamentary systems.

A *presidential* system is one in which the head of state is also the directly elected head of government, rather than a member of the legislature, and in which the head of government serves for a fixed term. In *parliamentary* systems, government is drawn from an elected

legislature that can dismiss it at any time. In making their decision, Cubans will be able to choose from time-honored systems, each of which have their successes and failures. What follows is a description discussion of the strengths and weaknesses of both systems.

a. Parliamentary Systems

The legislatures of Great Britain, Canada, Australia and most other Commonwealth nations are called parliaments. Other countries also have parliamentary-type legislatures but call them by other names: in Japan, the Diet, in Sweden, the Riksdag. Iceland's Althing, which dates to about 930, is the world's oldest parliament. The Isle of Man's Tynwald, which dates to the Scandinavian occupation in the early Middle Ages, is the oldest still functioning parliament. Nothing, however, compares to the unbroken development of the British system.

In the United Kingdom, whose legislative body has served as a model for much of the democratic world, parliament began in the 13th century, but its powers were not fixed in anything like their present form until the late 17th century. The revolutions of 1640 and 1688 abolished all royal authority to tax or legislate without parliamentary consent, and parliamentary control was established over both the executive branch and the judiciary. After the "Glorious Revolution" of 1688 it became customary for the sovereign to select ministers from the party that retained control over the lower house (Commons). (An excellent discussion of the development of the British system of government is contained in Alfred H. Knight's *The Life of the Law*, New York: Crown Publishers, 1996.)

Over time parliament has evolved into the United Kingdom's sovereign power, with the monarchy reduced to a ceremonial role. Although technically parliament consists of the monarch, the House of Commons and the House of Lords, the term normally refers to the democratically elected Commons, with 651 members. The House of Commons is presided over by a speaker elected on a non-partisan basis. The prime minister, the executive head of government, must be a member of Commons and is elected by his or her fellow legislators. The cabinet, currently made up of some 20 members, is selected from either chamber and, therefore, the executive branch is in essence a committee of the legislature. The government, headed by the prime minister and made up of his or her cabinet, has responsibility for administering all national affairs, setting policy, and introducing legislation for consideration by the Commons.

Parliaments not only make laws. They also spend much time overseeing fiscal matters, such as the appropriation of funds for defense, public works and the salaries of government employees. Because they exercise oversight through so-called money bills, parliaments play an important role in shaping government policy, even though responsibility for it rests with the prime minister and the cabinet.

In the United Kingdom, under a law passed in 1911, elections must be held every five years, although a prime minister can call elections earlier, but never more than once a year. Opposition parties can force dissolution of the parliament and new elections at any time. Failure by the ruling party to obtain a parliamentary majority on an important issue means that it must call a general election.

Unlike in presidential systems, where no member of one branch of government can simultaneously serve in another, in parliamentary systems there is not always a clear-cut separation of powers. Thus, in Britain, not only do the prime minister and other members of the cabinet belong to the parliament; the House of Lords is the highest court in the land, and in some respects carries out functions similar to the Supreme Court of the United States.

If, following a general election no party has a majority in the Commons, then the one with the largest number must reach an agreement with one or more of the other parties in order to form a coalition government. Perhaps the most famous British government built on a coalition was that of Prime Minister Winston Churchill during the struggle against the Axis powers.

A new parliament opens shortly after elections are held. The leader of the largest minority party is the officially recognized opposition leader. Each legislative initiative receives a public reading, in which the bill is ordered printed. Debate begins at the second reading. It is then referred to the proper committee for a clause-by-clause analysis. In some cases, the Commons as a whole acts as a committee.

After review by committee, the legislation is reported to the Commons for final reading, debate and voting. Voting is referred to as a division of the house, as members divide, usually along party lines, in favor or against the legislation. Unlike the United States, where judicial review is a cornerstone of democratic procedure, no challenge is allowed to bills passed by parliament. This is because the constitutionality of the measure has already been agreed to, as parliament has within its power to determine what the constitution is at any point in time.

b. Presidential Systems

The United States provides the best known, most imitated, and perhaps most successful example of a presidential system. Its strengths, however, are not always easily transportable to other societies with different traditions. The U.S. federal government has three distinct branches—the presidency, the Congress and the federal judiciary. In the U.S. the term of office a president serves is not affected by Congressional election results, as the president is not and cannot be a member of Congress. Bills passed by Congress and signed into law by the President can still face one more hurdle, as the Supreme Court decides on the constitutionality of legislation. The Congress is divided into two houses, the House of Representatives, in which each state has a number of representatives according to its population, and the Senate, with each state, large or small, having two Senators. The Senate--whose members are elected to six-year terms, rather than the two years of the House--is regarded as being the more deliberative chamber. Its function is likened to the saucer used to cool the tea before drinking.

According to Article II of the U.S. Constitution, the presidency is held by a single individual who retains office for four years and may be indefinitely re-elected. In 1951, the 22nd Amendment to the Constitution, limiting the President to two four-year terms, was ratified. Because the delegates to the Constitutional Convention did not trust the people to elect their leader directly, they chose an indirect method in which electors chosen by state legislatures (and later by direct popular vote) vote for presidential candidates through an Electoral College. The number of electors chosen in each state is equal to the number of Senators and Representatives elected from that state.

The president has many specific powers as spelled out by the Constitution. Laws passed by Congress, interpretations of laws by the courts, and the president's own position as a political party leader have conferred others. The president is charged with enforcing all federal laws and with supervising all federal agencies. In the U.S. all those officials--administrative or judicial--who are not civil service employees are appointed by the president. The president also exercises far-reaching powers in the conduct of foreign policy. The executive branch is

responsible for negotiating treaties and for recognizing or withholding recognition from foreign governments. The president also appoints ambassadors, ministers, and consuls to represent the U.S. overseas and is the commander-in-chief of the armed forces. All commissioned officers of the Army, Navy, Air Force and Marines (and of the diplomatic service) are appointed by the president, subject to confirmation by the U. S. Senate.

The president also submits legislation to Congress on both foreign and domestic policy. He must prepare an annual budget covering all government expenditures. Depending on the issue, Congress can pass laws that establish policy but leave the details to be worked out by the executive branch. When this occurs, the president can publish executive orders that have the force of law.

On the question of whether most draft legislation (bills) originate with the executive or with the legislature, in the United States the role of the Congress is fundamental, while in most European countries the executive branch has the more active hand in drafting legislation. In the United States only a member of Congress can initiate a bill, and any “money bills”—having to do with the budget or with appropriations—*must begin* in the House of Representatives. Bills coming from the executive branch, either the president or one of his cabinet secretaries, still have to be offered by a member of Congress.

In the United States the strict separation of powers has created a system in which the Congress holds the dominant legislative role. The United States, of course, does not have a parliamentary majority system, from which the executive is selected. In fact, since 1968 there have only been six years in which the president’s party commanded a majority in both houses of Congress—during the four years of the Jimmy Carter presidency (1977-1981) and the first two years of the Clinton presidency (1993-1995). Because the White House and Congress have been controlled mostly by different parties, each executive branch budget proposal has required coalition-building to ensure legislative approval. This is of no small consequence. The budget process becomes the forum in which many policy and program differences are mediated. In presidential systems, legislative oversight is a time-honored practice that forms part of the checks and balances that emanate from the separation of powers. In part due to relatively weak party identification and party discipline in the United States, a certain oversight occurs even when both the executive and the legislative majority come from the same party. .

c. Presidents v. Parliaments

The debate over which system is better has provided opportunities to evaluate the strengths and weaknesses of both. In a recent article, “The Perils of Presidentialism,” political scholar Juan Linz claimed that parliamentary systems are “more conducive to stable democracy.” The potential for conflict, he wrote, was greater in systems with a separation of powers that divides the legislature from the president, whose fixed term creates a situation of inflexibility between elections. The presidential office, he wrote, carries with it “winner-take-all” or zero-sum political calculations that are not well adapted to societies that desperately need voices and measures of reconciliation. In a fixed presidential term, crises in government become constitutional crises, as there are few lawful means to replace a failed president in mid-term. In contrast, according to Linz, in parliamentary systems an array of policy outcomes are possible, including multi-party cooperation and coalition governments. Parliamentary systems are also able to resolve crises by merely changing leaders or calling for snap elections.⁷⁰

In response, political scientist Donald Horowitz said that several of Linz's complaints about presidential forms of government—the rigidity of the fixed term, weak cabinets, and the possibility of presidential abuse of power—hold true more in theory than in practice.

It is true, of course, that presidents serve during a fixed term of years and cannot be removed on a vote of no confidence. Nevertheless, the fixed term of a directly elected president is not more likely than the more flexible term of a parliamentary government to cause governmental crisis. ...

In theory, it is easier to remove a parliamentary government in the middle of its term than it is to remove a president. In practice, however, the need seldom arises unless the government consists of an unstable coalition because the society is fragmented. In that event, there is a good case for shifting to a presidential system, supported by a mode of election that fosters conciliation and consensus building. That, in fact, would be a sound interpretation of what the French did when they created the presidency of the Fifth Republic in 1958. ... Linz's thesis boils down to an argument not against the presidency, but against plurality election, not in favor of parliamentary systems but in favor of parliamentary coalitions.⁷¹

A third view in the debate is offered by Seymour Martin Lipset, one of the most respected political theorists in the Western world. According to Lipset, the reality of the debate between parliamentarism and presidentialism revolves around questions of political culture. He wrote:

Given the division of authority between presidents and legislatures, prime ministers and their cabinets are more powerful and may pay less attention to the importunings of specific groups. A prime minister with a majority of parliament behind him has much more authority than an American president. Basically, such parliaments vote to support the budgets, bills and policies that the government presents. Government ministers must vote this way, or the cabinet falls and an election is called. Unlike members of a legislative branch, opposition parliamentarians, though free to debate, criticize, or vote against the policies set by the executive, rarely can affect them.

The situation is quite different in a presidential system. The terms of the president and cabinet are not affected by votes in the legislature. As a result, party discipline is much weaker in, say, the U.S. Congress than it is in the British parliament. In the United States and other presidential systems, the representation of diverse interests and value groups in different parties leads to cross-party alliances on various issues. Local interests are better represented in Congress since a representative will look for constituency support to get reelected and can vote against his president or party. An MP, however, must go along with his prime minister and his party, even if doing so means alienating constituency support.⁷²

The arguments made in this debate can provide Cuban leaders insight into the experiences of other countries. Economic, social, cultural and historical factors all played a role in the development of democratic institutions and practices in each instance, be they successful or

a failure. These factors are the same ones Cubans will need to weigh as they search for a system to assure what the late Martin Luther King once called “the riches of freedom and the security of justice.”

2. Referenda and Constituent Assemblies

Only direct political participation—activity that is explicitly public—is a completely successful form of civic education for democracy.

--- Benjamin Barber,

*Strong Democracy: Participatory Politics for a New Age*⁷³

a. Referenda

Referendum is the term applied to voting by a mass electorate on an issue of public interest. Often referenda, frequently referred to as plebiscites, are held to solve crises, focusing on the resolution of a problem or the justification of a proposed solution. In recent years, referenda in Chile and South Africa paved the way for sweeping changes in the political system. In Italy and New Zealand they were an opportunity for significant changes in those countries' electoral systems. Advocates say that referenda help to ensure the rule of law as they represent one of the best ways to obtain the consent of the governed. Of course, in countries where judicial review is an important component of the system, the courts may overrule the majority opinion as expressed in referenda just as they may the actions of elected representatives.

Referenda may be advisory—serving as a definitive opinion poll that shapes and guides policies or legislation—or mandatory, as part of a statutory process. In the latter case, voter approval may be required for enabling a new law or constitutional reform. Referenda can also result from a petition by a requisite number of voters. These cases, called “initiatives,” are usually used to strike down a law or policy. Supporters of referenda generally place a high value on change, competition, majority rule and citizen participation.

Referenda can be placed in four general categories. Those called to deal with constitutional issues lend legitimacy to new institutional arrangements and to rules that will govern public conduct in the future. Because such votes express popular sovereignty in its most pristine form, they may serve to infuse new regimes, including those that came to power by some means other than election, with democratic legitimacy. They may also help political leaders to diffuse the risks inherent in changing the rules of the game; by throwing tough questions to the voters, they seek either guidance or shelter, or both, in making difficult choices.

Referenda also are called to decide territorial and moral issues. Finally, they serve to place before the people public policy choices ranging from taxes and food subsidies, to issues of public safety and traffic regulations.

In the United States, referenda came into vogue in the early 20th Century as progressives cast about for means of ending endemic corruption in state and local politics. “By 1940,” wrote historian Herbert Agar, “twenty states had adopted the initiative and twenty-two the referendum. South Dakota led the way by adopting both in 1898.”⁷⁴ Between 1900 and 1912, President Theodore Roosevelt was deeply transformed by the reform movement, endorsing

not only the initiative and the referendum, but the recall of elective officers by popular vote and even—as a last resort against

obstruction—the recall of state judicial decisions on constitutional questions, and if necessary of state judges.... ‘We advocate...’ said Roosevelt, ‘all governmental devices which will make the representatives of the people more easily and certainly responsible to the people’s will.’⁷⁵

Unfortunately, authoritarian regimes also frequently resort to referenda in an attempt to legitimize actions already decided upon by the ruling elite, or to promote an image of popular support that does not, in fact, exist. Referenda whose positive vote totals reach 95 percent and beyond are usually a reliable indicator of such legerdemain.

There are a number of arguments used both for and against the holding of referenda, pitting participationist or direct-democracy advocates against the representationist or accountable elites school of democratic thought.

Participationists say people themselves believe that the decisions they make through direct voting are more legitimate—more authoritative—than those made by professional politicians. As political scientists David Butler and Austin Ranney point out, “when a representative democracy wishes a particular decision to be made with maximum legitimacy, it would do well to make that decision by referendum.” (Much of the information for this section, unless otherwise noted, comes from Butler and Ranney (eds.), *Referenda around the World, The Growing Use of Direct Democracy*.⁷⁶)

Participationists also claim that because issues are singled out for specific attention rather than confused with a welter of other issues, party loyalties and extraneous political factors, referenda can produce more unambiguous mandates for action than do candidate elections. Bribery, intimidation and other pressures, they say, are less likely to work against voters than they are with career politicians.

Participationists claim that indirect participation—such as occurs when public decisions are made by democratically elected representatives of the voters—is not fully democratic. Ideas and preferences, filtered through the uncertain prism of representation, become distorted, in part due to the lobbying efforts of special interests. Because democracy is a means to an end, its product should be the realization of the individual’s full potential; in this case, through his or her direct participation in the process, not by delegating rights and obligations to others. There is some evidence that people support referenda because they believe that voting on issues, rather than supporting candidates, produces policies more in keeping with popular wishes.⁷⁷

Rejection of representational democracy becomes particularly acute in situations in which the political class is seen as elitist, corrupt or out-of-touch with everyday realities. Popular sympathy with this view is expressed in the old saw: “There are two things people shouldn’t see being made—laws and sausages.”

Participationists also claim that citizen participation is the single most important indicator of the civic health of a democracy. If participation is high, they say, the system is healthy; if it is low, the system is at risk.

In the main, representationists argue that direct democracy can work only in polities sufficiently small that all citizens are able to meet and interact with each other in one place at one time, and where citizens can afford to dedicate great quantities of time to political questions. If full participation by every citizen on every issue were a prerequisite for

democracy, the process would be irrelevant in the modern world, particularly in countries larger than a city-state-sized republic. Indeed, some public opinion surveys show that legislatures tend to produce better laws than those created by ballot initiatives.⁷⁸ According to Butler and Ranney:

The main arguments against holding referenda in representative democracies include: 1) ordinary citizens have neither the analytical skills nor the information to make wise decisions; 2) decisions by elected officials involve weighing the intensity of preferences and melding the legitimate interests of many groups into policies that will give all groups something of what they want; 3) decisions made by representatives are more likely to protect the rights of minorities, and 4) by allowing elected officials to be bypassed and by encouraging officials to evade divisive issues by passing them on to the voters, referenda weaken the prestige and authority of representatives and representative government.⁷⁹

In the United States, Butler and Ranney show, referendum voters tend to be older, wealthier, and more educated and politically active than candidate election voters. Worries about “majority tyranny” can only be addressed when types of referenda are parsed into two categories: those held at the request of citizen petitioners (an example limited to Switzerland and a majority of the 50 United States) and those whose wording is decided by elected representatives. The difference is important, as the wording chosen by elected representatives is subject to the same processes of consensus building that are characteristic of the legislative enterprise as a whole. In these cases, stability, moderation, compromise and access to all sectors of society, no matter how small, play an important role. While some modern instances of referenda, such as California’s 1996 initiative banning bilingual education, can be seen as anti-minority, these are relatively rare.

With regard to the argument that referenda subvert representative democracy, by allowing citizens to bypass elected officials and even allowing them to shirk their responsibilities for constructive leadership, the record is mixed. Where both government-sponsored initiatives and popular referenda are allowed, measures proposed by governments tend to fare better than popular initiatives. However, it is true that referenda do, at times, provide opportunities for groups to work across partisan lines, creating cross-cutting alliances that can work against rigid party discipline.

In many countries participation in referenda tends to be less than turnout in general elections. Butler and Ranney note: “while the evidence is far from dispositive, little in recent experience supports the proposition that referenda increase voting turnout.”⁸⁰ To the argument that participation is the fundamental measure of the health of any democracy, it is sometimes pointed out that low levels of participation can reflect a broad consensus on the direction a country or state is headed.

As a practical matter, most advocates of referenda admit representative government is needed in modern nation-states, many of which are densely populated, and support plebiscites only as necessary supplements to the process. The unfiltered voice of the voter, expressed through referenda, they say, enhances the process by allowing citizens to support, oppose or even make laws.

Butler and Ranney have convincingly debunked four commonly held ideas about referenda and plebiscites.

The first concerns the notion that “referenda are habit forming.” In an analysis of the more than 800 such events in world history, Butler and Ranney show that in most Western democracies there has been little evidence of such an addiction, although in the United States the use of referenda and initiatives has increased significantly since the 1970s.

The other notions similarly do not hold up against the evidence. They are:

- *Referenda are normally decided by close votes.*
- *Referenda are instruments for radical change.*
- *The public likes referenda.*

Statistical analysis shows, in fact, that judgments rendered in referenda tend to be conservative. The great majority of cases far outweigh two noteworthy exceptions, those of Italy and New Zealand, whose angry citizens used the device to impose reform on a reluctant political class.

Nationwide referenda have never been held in five major democracies—India, Israel, Japan, the Netherlands and the United States. However, several of the United States use referenda with regularity and frequency when faced with making authoritative political decisions, as does Switzerland.

Referenda have had an interesting history in the countries of Latin America. Of the 42 held there through the mid-90’s, 10 were in Uruguay, a country with a long democratic tradition. In 1980, a military dictatorship responsible for overthrowing an elected government in 1973 called a plebiscite on a proposed authoritarian constitution. Despite tight controls on the media and a climate of terror, Uruguayans rejected the proposal by a vote of 57 to 43 percent.

Perhaps the best known case of a referendum, however, comes from Chile. In October 1988, Gen. Augusto Pinochet, who had himself overthrown an elected government in 1973, held a third referendum on his regime. In 1978, the dictator had won a reported 75 percent of the vote in a referendum held, like that in Uruguay, under conditions of tight control of the press, thousands of opponents jailed after being tortured and no opportunity for international monitoring. The question posed on the first referendum was provided only the barest fig leaf for the government’s authoritarian pretensions:

In the face of international aggression unleashed against the government of the Fatherland, I support President Pinochet in his defense of the dignity of Chile, and I reaffirm the legitimate right of the republic to conduct the process of institutionalization in a manner befitting its sovereignty.

Two years later the regime hosted another referendum whose object was popular approval of a proposed new constitution. Held under the same conditions as that of 1978, the government-backed measure received 67 percent of the vote. Although the regime felt confident that it would rule the country into the next century, the new magna carta contained a provision that proved to be Pinochet’s downfall. After eight years, there was to be another referendum, in which the choices were ratifying Pinochet as president for another eight years, or holding competitive elections.

The Chilean opposition, which until that time had been embarked upon a series of nationwide strikes and other acts of protest which seemed to go nowhere, decided to seize the opportunity of the plebiscite to force Pinochet's hand. The decision to participate rather than boycott the regime-inspired election proved fortuitous. The government continued to control of much of the media, and enjoyed undeniable popular support from a significant segment of the population. However, the opposition ensured that on Election Day the playing field would be more level than at any time after 1973, inviting hundreds of international observers and creating a parallel vote counting structure, called a "quick count," to test the accuracy of official tabulations.

On October 5, 1988, Election Day, Pinochet was stunned by a 56 percent vote against his pretensions of *continuismo*. Suggestions that night that the results be ignored came to naught as another member of the military junta informed Pinochet that the people's verdict was clear. A year later, an opposition candidate for president was elected.

Other examples of referenda in this hemisphere include a 1992 vote in Canada on that country's federal charter. In 1993 Brazilians went to the polls to decide what kind of political system they wanted, following a period of instability caused by transition from military rule and the corruption of civilian leaders. The electorate was faced with two choices—a monarchy or a republic, and a presidential or parliamentary system. In the early 1990s, Argentine president Carlos Menem's threat to hold a plebiscite on presidential re-election, then banned in that country, forced opposition leaders to agree to create a new constitution. In 1998, Menem sought to have the constitution changed to permit a third term. Another Peronist party candidate, the governor of the province of Buenos Aires, threatened to hold a plebiscite in that vote-rich province, which had historically favored their party. Faced with polls showing he would lose such a contest, Menem abandoned his quest for constitutional change and for a third term. .

b. Constituent Assemblies⁸¹

Another form of popular consultation is the constituent assembly. This device entails electing special representatives from throughout the polity, to serve on a one-time basis, parallel to but separate from the country's parliament or congress, to decide a specific issue, usually the drafting of a new national constitution.

In Cuba, constituent assemblies have an unfortunate historical antecedent. In 1927, the Cuban Congress approved a plan for the modification of the 1901 Constitution. Incorporated in the plan was President Gerardo Machado's desire that the presidential term be extended and an election held for a Constituent Assembly to consider the revision of the Constitution. His supporters then packed the assembly and railroaded through changes permitting Machado to stand for reelection. This blatant manipulation of the popular desire for change deepened the public's image of Machado as a dictator, and stiffened resistance to his rule.⁸²

In the rest of Latin America, one of the most important examples of a constituent assembly playing a pivotal role for positive change comes from Colombia. Wracked by guerrilla and paramilitary violence, as well as under deadly assault from international narcotics organizations, in the late 1980s Colombia's democratic government was a study in failing legitimacy. Congress was unable to pass needed constitutional reforms. Luis Carlos Galan, the leading Liberal party presidential candidate and apostle for deep structural changes in the country, was murdered by gunmen paid by narcotics kingpins. Neither political reform

nor national reconciliation appeared possible unless a way could be found to solve the crisis through democratic procedures.

In the wake of Galan's murder a group of young constitutional experts launched a movement to call a plebiscite to convene a Constituent Assembly. Major constitutional reform would no longer be sought from a moribund Congress, but rather through a process of massive popular participation.

La Septima Papeleta (the Seventh Ballot) initiative did not have legal standing, as a referendum calling for a Constituent Assembly was not provided for in Colombian legislation. Instead the Seventh Ballot, so called because it was the seventh item on the ballot in the March 1990 general elections, became an informal test of popular support for constitutional reform.

The initiative won a resounding "Si," which encouraged the government to draft a referendum text that sought formal authority for the meeting. The referendum was formally placed on the ballot for the May 1990 presidential elections. This formal measure also received popular approval. Suddenly, the race for participation was on.

In order to be effective, the reformers in civil society needed to go beyond Colombia's traditional political parties, to encompass representatives of guerrilla groups in the process of forming their own parties, Indian groups, and others. Constitutional reform working groups were formed at Colombian universities, and the new President, Cesar Gaviria, lent his support to the demands for change. Throughout Colombia, more than 1,200 working groups were constituted in order to promote local participation in the process and to hear first-hand peoples' concerns, in order to gather proposals the president could then include in a draft Constitution submitted to the Assembly. Election of Assembly delegates was held in a single national district, so that regional *caciquismo*—alliances of corrupt old-line traditional politicians—had less influence.

In order for the process to be considered legitimate, it was necessary for the guerrilla groups willing to lay down their arms actively and transparently to take part in drafting the new Constitution. They were given access to television air-time, campaign financing and rights accorded to political parties by the Constitution itself.

The fractured nature of Colombian society was much in evidence in the criticism made by some sectors that it was unwise to place the future of the Constitution in the hands of an assembly comprised of just 70 people. Because of opposition in the Congress and on the part of several former presidents, it was agreed to restrict the items the Assembly could reform. Thus full participation could be assured while providing an important check on the power placed in the hands of a few. In addition, proponents of the Seventh Ballot agreed to a number of caveats designed to reassure the political class:

- The Assembly could not dissolve Congress nor convene after the period in which its mandate ended;
- Assembly members were prohibited from running for Congress for at least eight years after their participation ended, thus easing fears that out of the reform process a new political elite would emerge, and
- Members of the Assembly were popularly elected, thus allowing politicians to compete on familiar territory.

The new Constitution, approved in 1991, produced radical changes in Colombian political life and is considered one of the most modern and democratic documents of our time. It limits presidents to a single four-year term. It provides for broader participation in the system, allowing citizens to be directly involved in those fundamental questions in which they have an interest, and includes two reserved seats in Congress for the country's small Indian minority. A clearer delineation of the separation of powers promoted responsible government by assuring accountability to citizens that fosters efficient and transparent public administration. The judicial system was also strengthened, with new procedures to protect constitutional rights, and greater accountability, independence and effectiveness for that branch of government.

B. The Pre-Castro/Batista System: Theory v. Practice.

Where a government has come into power through some form of popular vote, fraudulent or not, and maintains at least an appearance of constitutional legality, the guerrilla outbreak cannot be promoted, since the possibilities of peaceful struggle have not yet been exhausted.

--Ernesto "Che" Guevara

Democratic renewal in Cuba can come only if a full measure of attention is paid to lessons of the past. This includes a frank recognition of the role played by the United States from 1898 until 1959 in circumscribing Cuba's sovereignty. As former U.S. diplomat and veteran Cuba-watcher Wayne Smith has observed to IFES, at the end of the last century:

Cuban patriots were virtually on the point of winning Cuba's independence outright. Spain was exhausted and being bled disastrously by the war. It had already granted semi-autonomous, self-governing status [to Cuba]... It was clear that it was only a matter of time—and not much time at that—before it had to go all the way and allow Cuba its independence. Just at that point, the United States stepped in, gave the Spanish forces the coup de grace refused to allow Cuban forces to participate in the victory parade in Santiago, imposed a military occupation on the island and then, as the price of leaving, forced the Platt Amendment down the throats of the unwilling Constitutional Convention. It also heavily influenced the Constitution of 1901, which most Cubans consider nothing more than a U.S.-dictated document. ...

U.S. troops left in 1902, but were back again in 1906 and stayed another two years. In fact, the U.S. virtually controlled Cuba politically until 1934, and then, even after abrogation of the Platt Amendment in 1934, controlled it economically.⁸³

It is also important to remember that in all of the island's history, for only 12 years, from 1940 to 1952, did Cuban voters have a sense of empowerment through free and fair elections and representational government. That experience, while not a happy one, is instructive for what it tells us about what the Cuban people wanted and what they received.

The Cuban Constitution of 1940 was remarkable if only for the public good it tried to enshrine as state policy. Under it, progressive civil rights principles were established. Among the rights that it guaranteed were constitutional protections on issues concerning family, culture,

property and labor. Voting was a right, an obligation and a function of popular sovereignty. The power and autonomy of the judicial branch was to be inviolate. Agricultural and industrial development was promoted.

The Constitution of 1940, however, was observed mostly in the breach. It was, as one scholar noted,

...only in effect for 12 years. Its implementation during this short period of time, however, was extremely arduous. Despite its extraordinarily progressive character, the Constitution of 1940 encompassed doctrines that were a) never totally achieved; b) at odds with other constitutional doctrines, or c) never implemented...⁸⁴

The declared intent of the 1940 Constitution contrasted heavily with the men who held office in the 12 years following its promulgation. Fulgencio Batista, who in 1940 won what was perhaps Cuba's only free and fair election ever, had previously plotted, in 1933, to overthrow reformist president Ramon Grau San Martin. When he took power a second time, with the support of the Cuban communists, he enjoyed ascendancy over both civilians and the military.

Corruption on a grand scale was ushered in with the return of Grau San Martin to the presidency, in 1944-1948, and under Carlos Prio Socarras, 1948-1952. According to one historian of the time, Thomas G. Paterson, "Grau and Prio swelled the civil service with political appointees eager to make money for themselves, public officials raided pension funds and the treasuries of the national, provincial, and municipal governments. The British Ambassador in Havana estimated that Prio himself stole \$90 million in public funds."⁸⁵

Batista, meanwhile, had returned to island in 1948 from his mansion in Daytona Beach, Florida, after being elected to the Cuban Senate from Santa Clara province. On March 10, 1952, he overthrew the corrupt Prio Socarras regime in a well-planned coup. The putsch, noted British historian Lord Hugh Thomas,

...came at a moment when the country had been rendered quite dizzy—first by a cycle of sporadic political gangsterism ... and second, by the evident corruption under and by two popularly elected Cuban presidents, Ramon Grau San Martin and Carlos Prio. These two clever, amusing, self-serving men did more to damage the good name of democracy (in all Latin America) than even England's Henry Fox.⁸⁶

Under Batista, noted Paterson, "the political system that Grau and Prio had sullied not only remained tarnished, but also suffered illegitimacy and authoritarianism. The Congress and Supreme Court bowed to Batista's wishes. Elections were rigged, and political parties refused to participate in a process oiled by bribes and sinecures and closely managed by the Presidential Palace."⁸⁷ It was during this time that the island reached its apogee as a tourist playground of sex and gambling.

Under Batista the Cuban military came to symbolize the corruption, torture and murder that served to underpin his regime. His *Servicio de Inteligencia Militar* (SIM), an American consul noted, "preferred not to take prisoners."⁸⁸ In mid-February 1957, American Ambassador Arthur Gardner advised Washington that "recurrent killings" by the security forces had created a backlash against the regime's "extreme methods and brutality." Batista, he

warned, faced “very grave pressure” that was gathering strength like “an enormous snowball.”⁸⁹

Batista’s coup and reign of terror crippled the electoral system, persuading many critics to exercise the option of violence. Although Batista repressed his opponents, he did not crush them. Batista’s repression, including censorship of the press and suspension of constitutional guarantees, was intermittent, imperfect and inconsistent before early 1958, when he clamped down hard on critics of the regime. Lapses, such as the general amnesty in 1955, gave renewed voice to his detractors. Perhaps craving public approval and legitimacy after his coup, Batista wavered between acting like a constitutional leader and a dictator.

Politically inspired violence rocked mid-1950s Cuba. Bombings, fires, conspiracies, riots, assassinations, arrests and tortures became commonplace. ... In April 1956, Batista’s secret police blunted a military conspiracy by nabbing and court-martialing Colonel Ramon Barquin and other officers ... That month, too, a (Revolutionary Directorate) student was killed after an attempt to seize a Havana television station, and other civilian rebels were mowed down by machine guns when they stormed military barracks in Matanzas. After the Matanzas attack, Batista suspended constitutional guarantees and filled his jails with Prio followers. The government also closed universities and secondary schools.⁹⁰

Writing about the same period, Scott B. McDonald and Georges A. Fauriol found Cuba’s political development “problematic.” They found that, in part due to the Platt Amendment, which made Cuba “a virtual U.S. protectorate, and residual *plattismo* attitudes in the United States following its abrogation in 1934,” Cuban nationalism:

was stunted; the political class was generally corrupt and more keen on rhetoric than on creating a civic culture that would promote and support constitutional and democratic government; and political violence had become a part of the game in student politics, labor-management relations, and between political parties. Moreover, poverty in the countryside was widespread.⁹¹

In 1957, responding to U.S. pressure, Batista promised to hold free elections, but pressed ahead with media censorship, the closing of the universities and the imprisonment, torture and murder of both moderate and radicalized opponents of his regime. The following year, he invited parties to select their candidates and, in February, restored constitutional guarantees for all of Cuba except trouble-wracked Oriente province. In March 1958, however, he suspended constitutional guarantees of freedom of expression, the right of assembly and the freedom of movement, and re-imposed press censorship.

On November 3, 1958, the promised national elections were held in the midst of growing popular insurrection. Constitutional guarantees remained suspended. The insurgents asked people to abstain from participating in order to protest the predicted fraud. Turnout was approximately 30 percent, as neither Batista’s hand-picked successor nor his major opponents--Dr. Manuel Marquez Sterling and the aging, discredited Grau San Martin--evoked any popular enthusiasm. (The majority of Grau’s party, the *Partido Revolucionario*

Cubano, was at that time opposing the electoral option and had joined Castro in boycotting the election.) The results, which gave the Batista stand-in a handy victory, were redolent with fraud and, even before the counting ended, Congress declared the electoral process finished and prohibited the results from being challenged.

Batista's last days laid bare a regime that was politically illegitimate, unable to maintain order and completely alienated from the country's middle class. Fidel Castro and the M-26 movement were able to turn the tables on the dictator by offering to fully restore the promise of the 1940 Constitution, recreating Cuba as a liberal democracy, and eradicating corruption.

C. Standards and Components of Free and Fair Elections.

The phrase "free and fair elections" sometimes has the quality of a Rorschach test; its specific meaning can depend on who is uttering it, when, why and under what circumstances. Yet, in the past decades, and particularly since the return to democratic rule in most of Latin America and the fall of Soviet communism, a general set of criteria have received wide international support as indicative of what constitutes a free and fair election. Periodic free and fair elections are an indispensable element of sustained efforts to protect the rights and interests of the citizenry, and help to ensure effective access to and protection for all human rights and freedoms.

There are several fundamental principles relating to the holding of periodic and genuine elections. They include the right of adult citizens to take part, directly or indirectly, in government by means of freely choosing their representatives and to cast ballots in secret. There must also be equality of opportunity to stand for election as a candidate, and to freely express political views, individually or as part of a group.

It is recognized that all states have the sovereign right to freely choose and develop their own social, cultural, political and economic systems, in keeping with the will of the people. However, it is the responsibility of governments—as well as that of the electorate and organized political forces—to establish and strengthen democratic processes, practices and institutions.

What follows is an analysis of the standards and components of free elections, as the terms are commonly understood and agreed to by the international community. (A fuller explanation of the concepts contained in this section can be found in Guy S. Goodwin-Gill, *Free and Fair Elections, International Law and Practice*.⁹²)

1. Voting and Election Rights

All adult citizens have the right to effective, impartial and non-discriminatory procedures for registering voters, and to vote in elections, on a non-discriminatory basis. The disqualifications for registering and voting should be set down in objectively verifiable criteria prescribed by law. Any denial of access to vote must be consistent with the State's obligations under international law. Each person denied either registration or the right to vote should be able to appeal the decision to a competent authority, capable of issuing a prompt determination on the merits of the case. Equal and effective access to a polling station is also an important consideration, especially for people living in remote areas and for the physically handicapped. The vote of each citizen should be accorded an equal value as that of any other citizen (the principle of "one person, one vote") and each voter is entitled to exercise his or her franchise equally with others. Voting must be conducted in such a way as to ensure the secrecy of the ballot.

2. Candidacies, Party and Campaign Rights and Responsibilities

All citizens should have equal rights to present themselves as candidates for election, and all citizens should have the right to join or to organize a political party or organization for the purpose of electoral competition. These rights should be conditioned only by objectively verifiable criteria prescribed by law and by the State's obligations under international law. As individuals and as groups, citizens should have the right to freely express political opinions; to seek, receive and impart information needed for making informed choices; to campaign on an equal basis with other political parties, including the ruling party, and to move freely throughout the country. All candidates and political parties must also have equal opportunity of access to the media—radio, television, billboards and posters, newspapers and magazines—in order to transmit their views to the public. Where media are state-owned, the government has an affirmative responsibility to ensure equal access to all parties and all candidates.

The lives and property of candidates should be recognized and protected, and all candidates and parties should have equal protection of the law and equal access to remedies for violations of political or electoral rights. At the same time, no candidate or political party should engage in violence. Candidates and political parties exercising their right to compete must also show respect for the rights and freedoms of others. Every individual or political party whose candidacy, party or campaign rights are violated through denial or restriction should be able to appeal the decision to an authority competent to correct errors promptly and effectively. Candidates and political parties competing in elections should accept the outcome of free and fair elections, and ideally should agree in advance to do so.

The only restrictions permissible on candidacy, party and campaign rights are those that have a demonstrable impact on national security or public order, the protection of public health, morals and safety, or the protection of the rights and freedoms of others. These must be consistent with States' obligations under international law. The principle of non-discrimination on grounds of race, color, sex, language, religion, political or other forms of expression, national or social origin, property, birth or other status should not be violated when applying these restrictions.

3. The Rights and Responsibilities of States

A State has affirmative responsibilities to guarantee the institutional framework and individual rights for periodic, genuine free and fair elections. It should make the necessary provisions, through legislation or other means, to carry these responsibilities out in accordance with its constitutional processes and its obligations under international law. These responsibilities include establishing effective, impartial and non-discriminatory procedures for registering voters, setting down clear criteria with regard to age, citizenship and residence. A state should provide for the creation and unfettered functioning of political parties; provide equitable provisions for their financing, during elections and afterwards; ensure the separation of party and State, and create conditions in which legislative elections can be held on an equitable, though competitive, basis.

A State should also seek, through policies and institution building, to ensure the creation of an unbiased and impartial mechanism for the management of elections. These efforts should result in professionally trained election officials able to design and implement coherent voting procedures that are made known throughout the populace. These officials should be skilled in various aspects of election management. These include registering

voters, updating electoral rolls and balloting procedures, ensuring the integrity of the ballot through measures to safeguard against multiple voting and other types of fraud, and providing for the participation of party agents and other national observers and of international election monitors, if needed. They should also take the lead in encouraging the adoption of a Code of Conduct to govern the conduct of parties, candidates and the media during the election campaign and polling period.

The protection of human rights is another important state responsibility. It should seek to ensure that the freedoms of movement, assembly, association and expression receive full protection, with an emphasis on their exercise during political rallies and meetings. Non-partisan coverage in state-controlled media should be guaranteed, and candidates and parties should be free to communicate their views to the electorate without interference.

A State should also take the measures needed for candidates and parties to have reasonable opportunities to present their electoral platform. All measures needed to assure that balloting is conducted in secret should be taken, as well as to create a threat-free environment on Election Day. Measures should be taken to ensure that all parties, candidates and their supporters enjoy equal security and that all necessary measures are employed to prevent electoral violence. Violations of human rights and complaints relating to the conduct of the election should be adjudicated by an independent and impartial authority, such as an electoral commission or the courts, during the timeframe of the election.

Elections specialist Guy S. Goodwin-Gill has identified 10 broad categories that cover the constituent elements of a free and fair election. They are:

- Electoral law and system
- Constituency delimitation
- Election management
- The right to vote
- Voter registration
- Civic education and voter information
- Candidates, political parties and political organizations, including funding
- Electoral campaigns, including protection and respect for fundamental human rights, political meetings, media access and coverage
- Balloting, monitoring and results
- Complaints and dispute resolution

We will now discuss each of these in turn.

a. Electoral Law and System

A State must adopt a voting system that facilitates the will of the people through periodic and genuine elections carried out on the basis of equal access and secret ballot. It is up to the State to define what “periodic” means. However, it is useful to note that the Inter-American Commission on Human Rights ruled in 1977, in the case of Chile, that the postponement of all elections for a decade or longer violated the American Declaration of the Rights of Man. Equal suffrage, however, does not necessarily mean a system of proportional representation in the composition of the legislature.

b. Constituency Delimitation

What is popularly known as “districting” goes to the heart of one of democracy’s central tenants, that of “representation by population.” For example, the equal protection clause of the U.S. Constitution was invoked by the Supreme Court when it struck down as unconstitutional a state’s proposed apportionment of congressional districts, as it did not provide for equality of voters in each district. However, other countries admit considerations such as geography, community history and minority representation as factors that may also be taken into account when determining electoral boundaries. There is no ideal ratio of population to representative in international rules or standards.

c. Election Management

The independent and impartial administration of an electoral process is key to an election being certified as free and fair. The role of independent civic monitoring, an aggressive media and effective judicial remedies can all help to ensure administrative impartiality. In many countries elections administration is a responsibility of the executive branch, with disputes adjudicated by the regular courts. It is essential that those conducting the election are seen as not having a commitment to any political party or leader in order to generate confidence by all parties in the process. Electoral commissions independent of the executive branch have also been established in many countries in order to consolidate popular confidence in the system’s independence and impartiality. Where impartial members who enjoy the confidence of all parties cannot be recruited, the election machinery may reflect a balance of party representatives. If those recruited act in an impartial manner over time, public trust may result. South Africa engaged in an interesting experiment in confidence building by appointing several international members to its Independent Electoral Commission. Where independence cannot readily be demonstrated, transparency and a hands-off posture by the ruling party can help to generate necessary popular good will. International election observation groups can—by visiting countries before elections occur and issuing preliminary reports—help to infuse emerging electoral systems with confidence and support. (A separate section on this issue is included in this report.)

d. The Right to Vote

Explicit State recognition of the right, or even obligation, to vote can help to create an affirmative environment for electoral participation. However, States may limit the right to vote to certain people, such as prison inmates, as long as the restrictions are not arbitrary in nature or have the effect of distorting election outcomes. “The rule of law requires that the classes of those disqualified from voting, if any, be known in advance,” writes Goodwin-Gill, “and that challenges be available in appropriate cases.”⁹³ Citizenship, age and residency requirements are also considered reasonable restrictions in most cases. Despite these limitations, it is useful to note that the global trend is towards broader franchises in which overseas residents and others are allowed to vote. Finally, according to Goodwin-Gill: “From recognition of the individual right to vote flows the necessity of voter registration machinery, without which, in the majority of cases, there can be no effective exercise of that right.”⁹⁴

e. Voter Registration

Accurate voter registration goes to the heart of the electoral process. It determines eligibility to vote, it is essential to grassroots campaigning, and it is the cornerstone upon which Election Day tabulations can take place. In order to assure that the voter registry—sometimes called an “electoral list”—is sufficiently inclusive so that free and fair elections can be obtained, attention needs to be paid to a number of factors. Voter registration poses a

host of serious issues, as formal recognition of that right is just the first part of the equation. There is the question of ensuring a credible registration system, through “self-registration,” extensive civic education efforts, or by other means, as well as periodic purging of those who have moved or died. Clear eligibility criteria need to be established, and these must be publicly communicated and consistently applied by elections officials. Inconsistent registration of names and double entries, either due to clerical error or computer software problems, can also pose challenges. Intractable problems with existing registers can lead to calls for re-registration, a costly and time-consuming process. Voter registration systems also need to be secure. Done correctly, the voter registration process can help to create and sustain public confidence and thus help to ensure free and fair elections.

f. Civic Education and Voter Information

In consolidated democracies, an environment has been created in which democratic values are understood and acted upon by the population. Civic education forms part of the public school curriculum. Voter information campaigns offer citizens instruction on how to vote (the mechanics of voting, not whom to vote for, obviously); promoting participation in the electoral process and fomenting adherence to democratic norms of tolerance and non-violent expression of political faith. Non-partisan civic education programs for adults can promote democratic values and are a critical element of the general educational curriculum. Civic education and voter information efforts are essential in societies that lack experience in voting in a democratic environment. (Civic education and voter information campaigns are explored in greater detail in another section of this report.)

g. Candidates, Political Parties and Political Organization

Every citizen, no matter what his or her status or station, has the right to participate in the conduct of public affairs, to be elected, and to have equal access to public service in his or her country. The principle of choice requires that there be a clear separation between the State and political parties, and that there not be State parties. The ruling party must be “de-linked” from the government. Ideological obstacles to participation—such as the need to be loyal to the basic ideology of the State—frequently violate the right of participation by individuals.

These rights may, however, be subject to reasonable limitations. Membership in a recognized political party may be required for candidature, provided that access to party membership and the ability to form new parties are subject only to reasonable restrictions. Parties may be required to obtain a certain number of signatures in order to qualify for a place on the ballot and a certain percentage of votes in order to qualify for legislative representation. Registration criteria, such as the need to obtain a certain number of adherents in all the country’s states or provinces, are subject to tests of reasonableness. Individual candidacies may be conditioned on criteria such as age, residence and the absence of disqualification, such as penal detention. In presidential systems, such as the United States, a member of one branch of government cannot serve in another. While ideological obstacles to participation are discouraged, States do have the right to limit the participation of those parties whose purpose is to destroy the rights and freedoms guaranteed in a democracy. These prohibitions can, under some circumstances, extend to parties which promote religious, ethnic or racial hatred, or which engage in war propaganda.

In countries undergoing a democratic transition, the ruling party or group often enjoys a monopoly on access to state resources. Thus the issues of government funding, private (or foreign) contributions and campaign expenses are critical. The source of funds is not the

only question; in the United States the Supreme Court has ruled that limits on campaign expenditures violate the candidate's freedom of speech. In the United Kingdom, where free speech guarantees are more limited, individual candidates can spend only a set amount in general elections, but political parties have no limits on what they can spend for national advertising. Public funding of campaigns is often justified as helping to "level the playing field," ensuring equal access to candidacy and popular participation, and helping to eliminate the more perverse elements of public corruption. The practice, however, has not always supported the theory.

h. Electoral Campaigns

The fairness of elections cannot be measured strictly by observing what happens on Election Day. Rather, the context in which the election is carried out also determines whether citizens have access to the information they require in order to choose among candidates for public office and participate effectively in the conduct of public affairs.

To ensure that an election is free and fair, the freedoms of movement, assembly, expression and association must be respected throughout the election period. Political parties and associated groups must be free of arbitrary and frivolous restrictions on their access to the mass media, or to other means of communicating their views to the population. Candidates, their supporters and political party activists in general must enjoy equal conditions of physical and material security. All parties must conduct their activities within the law. Secrecy of the ballot must be maintained, and the measures taken to ensure it communicated before the election to the population. Voters must be able to exercise their franchise without intimidation and fear. The mechanics of the process must ensure that fraud and illegality are prevented.

The presence of international observers can help facilitate the consolidation of democracy in transitional situations. These observers examine relevant aspects of the process and its organization and conduct, to determine whether these have been carried out in accordance to the laws of the host country. Because they are visitors to the country carrying out the election, they may be seen by all parties as impartial friends of the democratic process. By the same token, they have no standing as an agency within the process and should act neither to supervise nor to serve as a commission of inquiry. In rendering judgments on the process, observers seek to apply international standards to local conditions. Their observations focus to a greater degree on whether overall conditions were established that allow for free and fair elections, rather than on technical violations that can be remedied then or later.

Governments must also act to ensure that campaigns are peaceful, and that human rights are respected. Agreements by parties to limit incendiary rhetoric and to sanction violent conduct by their members can significantly reduce pre-election violence. Early intervention by the State or by political parties can help to improve campaign conditions over time, and ensure that a "tit-for-tat" dynamic of spiraling violence does not develop. Failure of a government to act quickly and effectively to end violence brings into question its own commitment to the democratic process.

The dissemination of party platforms and programs, and the appeal of individual candidates, depends to a large degree on its access to the mass media. The right of voters to seek and receive information is critical to making informed decisions at the ballot box. Abuses, such as government monopolies on broadcasting and print media, can work to discredit the democratic and electoral process in transitional democracies unless specific provisions are made regarding equal access.

A Code of Conduct agreed to by competing parties can also help to ensure peaceful elections and to develop popular confidence in democracy as means for resolving social conflict. A code can both establish basic ground rules and provide for a mechanism for periodic consultations between the parties and the professional elections system. By opening regular channels of communication, misunderstandings and incidents that could lead to deepening conflict can be avoided.

i. Balloting, Monitoring and Results

The principle of “one man, one vote” is well established in international democratic practice. Secrecy of the ballot is also now considered the sine qua non of free and fair elections. (How to ensure ballot secrecy is dealt with in another section of this report, as is the importance of election monitoring.)

j. Complaints and Dispute Resolution

In any election cycle disputes arise, even in those run by competent professionals who apply time-honored rules. In transition situations, these disputes tend to be more frequent, more virulent and have greater impact on the process itself, and on public confidence in it. Timeliness in responding to situations of conflict is of paramount importance. An independent and impartial authority—such as an electoral tribunal or the regular courts—must be established for resolving these disputes as they occur. It is fundamentally important that the availability of these procedures be well known to the individual voter, as well as to candidates and political parties.

V. ELECTORAL AND REGISTRY SYSTEMS

A. The Current Cuban Electoral System

1. Political and Administrative Divisions of Cuba

Through most of its independent history, Cuba was apportioned into six provinces and 132 municipalities. In 1973, the regime created further administrative subdivisions as an intermediate link between the provinces and the localities. Fifty-eight regions and 407 municipalities and precincts were added to the six provinces. The country then had three intermediate links between the national government and the grass roots level: the province, the region, and the municipality.

In 1975, at the First Congress of the Communist Party of Cuba (PCC), the political and administrative structure of the country, the same basic structure that had prevailed since it was instituted by the colonial Spanish regime in 1878, was substantially modified.⁹⁵

Through various studies that took into account the geographical realities of the country, its population distribution, economic activity, traditions and ties among the various locations, existing and planned road systems, and patterns of migration, as well as the experience of establishing so-called "organs of the people's power" in the province of Matanzas in 1974-75, it was decided to create fourteen provinces. These were: Pinar del Río, Havana, City of Havana, Matanzas, Villa Clara, Cienfuegos, Sancti Spiritus, Ciego de Avila, Camaguey, Las Tunas, Holguán, Granma, Santiago de Cuba, and Guantánamo. Isla de Juventud (Pinos) remained a special municipality administered directly by the central authorities. One hundred and sixty-nine municipalities were established in the aforementioned provinces. The number of electoral areas for electoral purposes was to be determined for each election by the Provincial Electoral Commissions at the suggestion of the Municipal Electoral Commissions, based on the number of inhabitants of each municipality.

2. The Electoral Law of 1976⁹⁶

The National Assembly of the People's Power (ANPP) is the supreme organ of power in the State, vested with constitutional and legislative authority. The ANPP chooses, by means of election from among its members, representatives to serve on the Council of State. The president of the Council is the Head of State and Head of Government.

The National Committee of the Confederation of Cuban Workers (CTC), the National Association of Small Farmers (ANAP), the Federation of Cuban Women (FMC), and certain other sectoral organizations have the power to propose legislative initiatives to the ANPP. In accordance with the electoral law of 1976, the candidates for delegates to the Provincial and Municipal Assemblies and for Deputies to the ANPP are determined and proposed by commissions made up of representatives of the sectoral organizations appointed by their municipal leaderships, and presided over by representatives of the Communist Party of Cuba (PCC).

According to the Cuban Government, the vote for delegates and deputies is free, equal, and secret and each voter has the right to a single vote. Electoral processes prescribed by law are:

- General elections, in which Deputies to the ANPP and Delegates to the Provincial and Municipal Assemblies of the People's Power are elected;
- Partial elections, in which only Delegates to the Municipal Assemblies are elected;

All Cubans who have reached the age of sixteen, who are in full possession of their political rights, and who are not included in the exceptions provided for in the constitution and by law, have the right to participate as voters in the elections and referenda that are called.

In municipalities with a population of over 100,000, smaller districts may be created for electoral purposes in accordance with the law.

To organize, manage, and validate the electoral process, the following Electoral Commissions were created:

- National Electoral Commission
- Provincial, Municipal, and District Electoral Commissions
- Voters Area Electoral Commissions
- Special Electoral Commissions

The National Electoral Commission is responsible not only for issuing regulations, but also for appointing the members of the other Commissions and administering all aspects of the electoral process, such as approving new voters areas, designing voting booths and ballots, vote tabulation forms, election certificates, Electoral List forms, etc.

The Electoral List is compiled at the municipal level and is prepared by the rank and file organizations of the Committees for the Defense of the Revolution (CDRs) and the ANAP. The principal data included in the list are:

- Voter's full name
- Date of birth
- Complete address. (In the case of rural areas, the grass roots peasant organization to which the voter belongs must be specified.)

The Council of State has the authority to call elections and is required to do so no less than 90 days prior to the election date.

It is important to emphasize the extremely unique nature of Cuban political legislation because its form and content do not bear any resemblance to the legislation of other countries in the region.

3. The 1992-1993 Electoral Process in the Republic of Cuba⁹⁷

According to Cuban officials, the Fourth Congress of the PCC (1990) initiated amendments to the electoral framework in force since 1976. The electoral process of 1976-92 included the hierarchy of Electoral Commissions, the appointment of single candidates in constituencies at the municipal, provincial and national levels, and the system of legislative assemblies at the three levels, referred to previously. Following are the main processes that characterized the 1992-1993 elections in Cuba.

a. The Preliminary Stage

With the convening of the Fourth PCC Congress, it was agreed to open debate in the legislative assemblies on the following issues:

- increasing the authority of the district delegates;
- producing convincing answers to voters' questions; and
- revitalizing the accountability of the assemblies.

In 1991, after completion of discussion in the 4th Congress of the Party, a resolution on the improvement of the organization and operation of the organs of people's power was approved.

In October 1992, in the 11th ordinary session of the National Assembly, 34 articles of the 1976 Constitution were replaced and 42 were updated.

With respect to the electoral system, the principal modification was the establishment of a direct and secret vote for deputies to the National Assembly and delegates to the Provincial Assemblies. These offices had previously been indirectly elected by the municipal assemblies.

b. Installation of Electoral Commissions

In November 1992, the State Council appointed the members of the National Electoral Commission (a president, a vice-president, a secretary, and fifteen members), as well as the members of the Provincial and Municipal Electoral Commissions. District Electoral Commissions were also created.

The Municipal Commissions were responsible for preparing the Electoral List for their municipality and for supervising the nomination of candidates for Delegates to the Municipal Assemblies. On their behalf, the District Commissions were responsible for handling the process for nominating Delegates to the Provincial Assemblies and Deputies to the National Assembly.

c. Nomination of Candidates at the Municipal Level

Nominating Assemblies at the area level were then held: one or two where the population did not exceed 759 and between three and eight when this limit was exceeded. An area may not have more than 2,800 inhabitants. The assemblies held by the residents of each area approved only one of the various candidates. Therefore, depending on the number of areas in the municipality, there were between two and eight candidates from among whom one delegate was chosen for each constituency. (The national average was 2.05 candidates per seat.) Photographs and biographies of the nominees were displayed in visible locations. A total of 24,215 nominating assemblies were held throughout the country, in which 28,474 candidates were nominated.

d. Election of Municipal Assemblies

In December 1992, 13,865 district delegates were directly elected by more than seven million voters. It should be noted that of this total, 46.1% (6,392) were re-elected.

These 13,865 new delegates made up a total of 169 Municipal Assemblies. With this, the first stage of the general elections ended.

e. Nomination of Candidates at the Provincial and National Levels

The National Commission of Candidates is comprised of 36 persons, all of whom belong to one of the sectoral organizations (workers, farmers, women, students, etc.) controlled by the PCC. A representative of the CTC presided over the Commission.

After various assemblies, inquiries, and meetings with the sectoral organizations, between 60,000 and 70,000 pre-candidates for the provincial and national legislatures emerged. From this universe, the National Commission chose 589 candidates for Deputies. These originated as follows:

274	Candidates nominated by sectoral organizations
180	Provincial Candidates
<u>135</u>	National Candidates
589	Candidates for Deputy ⁹⁸

In addition, 1,190 candidates were chosen by the Provincial Assemblies.

f. Election of Provincial and National Assemblies

To become a Deputy to the National Assembly or a Delegate to a Provincial Assembly, it is necessary to obtain more than 50% of the valid votes cast in the jurisdiction for which one is a candidate.

In the election of Delegates to the Provincial Assemblies, 7,795,306 people voted, and 92.84% cast valid votes (7,235,985). Of this number, 6,874,317 were unified votes for all the candidates, while 362,668 split their vote.

The number of people who voted for Deputies to the National Assembly in 1992 was 7,852,364 (99.57% of the population eligible to vote). Of this number, 7,300,629 cast valid votes, and 6,939,894 voted for all the candidates nominated by the Commissions. The rest -360,735-- split their votes between those not nominated by the commissions and those that were commission-nominated.

In March 1993 the new National Assembly of the People's Power took office. The supreme organ of state power, it is vested with constitutional and legislative authority. The Assembly then elected its leadership and the members of the Council of State. The Council of State is made up of a President, a first Vice President, five other Vice Presidents, a Secretary, and twenty-three other members. By unanimous vote, Fidel Castro Ruiz and his brother Raul were re-elected President and First Vice President, respectively.

D. Changes to be Considered in Cuba's Electoral System

The most important issues that should be reviewed by a transitional government, in considering possible changes in Cuba's electoral system, are:

1. The qualifications for citizenship and for registering to vote;
2. Procedures for registering multiple political parties and candidates;
3. The creation of a new electoral body (structure and functions);

4. Defining the responsibilities of the electoral body;
5. The timing and frequency of elections;
6. The voting age;
7. The audit and correction of the current Electoral List;
8. The professional qualifications of the staff to be engaged in electoral tasks;
9. How to resolve claims of alleged irregularities and appeals of decisions by electoral officials (from political parties and citizens), and finally;
10. The design and operation of a system for transmission of preliminary election results.

Each of these issues will be discussed in the sections that follow.

E. Participation in Elections

1. International Standards on Eligibility to Vote

The questions, "Who is a citizen?" and "Who has the right to vote?" are two separate and distinct issues. One can have citizenship with all of its privileges and still not fulfill all of the requirements for voting. Citizenship does not automatically confer the right to vote in any country. Indeed, in some countries and in certain types of elections, non-citizens may also vote.

Generally speaking, citizens of any country are considered eligible to register to vote if they meet both the constitutional and legal requirements for and definition of citizenship and the requirements for being able to vote. When citizenship is determined, citizens must then meet the requirements for registration, which in almost all countries includes age, legal domicile (as is currently the case in Cuba), and residency in the country, province and/or municipality for a minimum period of time. These three requirements are accepted internationally, and they are thought to be necessary to maintain the integrity of the electoral process.

The issue of residency or domicile can mean that potential voters have to have a place that they call home, where they intend to live the majority of time. This definition has been accepted even for people who live temporarily outside the country or who work in a profession such as the military, where they are required to be away from their residence or domicile a majority of the time. Voters can be allowed to register in the jurisdiction they indicate as their residence and may vote only in that jurisdiction, either in person or by absentee ballot if one is provided for in the law. A residency requirement for a certain period of time is often established because governments want to be sure that the voters know and understand the issues of their community and can make educated choices about elected officials. Durational residency is not so widely accepted internationally, but it is a requirement for many local elections worldwide.

The requirement for a minimum period of residency in Western European countries has been discussed and upheld by the European Commission on Human Rights. The reasons cited included: the assumption that a non-resident is less directly involved in and knowledgeable about national affairs; the impracticality of candidates' presenting electoral issues to non-resident citizens; the need to prevent electoral fraud, the risk of which is increased by any form of non-resident voting; and finally, the desirability of linking the privilege of voting with the obligation to pay taxes. (Non-residents presumably do not pay taxes, or pay fewer taxes than residents.)⁹⁹

There has been a tendency over the past five years to expand the franchise by including overseas residents. This is common practice in the United States, Canada, Europe, many of the countries of the former Soviet Union, and some Latin American countries such as Peru.

In the Philippines, overseas citizens cannot vote by absentee ballot because the Philippine National Commission on Elections does not have the capability to administer voting by the large number of citizens that reside outside the country. Overseas citizens may come back to their local jurisdiction to register to vote and must remain or return again to their jurisdiction on Election Day in order to vote. In every case where a citizen registers in person, they must also establish that they do in fact have a residence/domicile in that local jurisdiction, so that the place of registration is not arbitrary. There is a strong movement in the Philippine Congress to establish an overseas absentee voting process, but only for local elections.

Goodwin-Gill points out that the right to vote is not absolute and may be subject to other reasonable restrictions, as long as they are not arbitrary and do not interfere with the free expression of the popular will. For example, convicted felons or persons adjudged legally insane or mentally deficient.¹⁰⁰ If certain categories of citizens are disqualified from voting, they must be made aware of that fact and have an opportunity to challenge their disqualification in a court of law. Future Cuban election authorities will have to define voter registration requirements for all categories of elections that they will administer. Self-governing local jurisdictions might be permitted, as in the United States, to determine their own requirements for voting. This, however, is not the practice in Latin America.

2. The Right of Suffrage under the Laws and Constitutions of Cuba

In the event a provisional Cuban government decides to hold elections, one of the first questions it must decide, either by constitutional change or by an electoral law, is the right of the franchise, or the right to vote. In almost every country in which sovereignty resides with the people, citizenship generally signifies and conveys, with certain exceptions, the right to vote. Cuban authorities may find themselves in a situation analogous to that of the legislative and electoral officials in the countries of the former Soviet Union. Many of these had significant diaspora populations who made known their desire to return to the country of their birth or heritage in order to participate in its new democratic electoral process. The rights and obligations of the Cuban diaspora that a transition government may wish to consider will be addressed later in this study.

The historical and legal precedents for Cuban citizenship, and by extension, for the right to vote, are an important point of reference for transition officials. In the Constitution of 1901, rights of citizenship were established for:

Native-born Cubans, who were defined as those born of Cuban citizen parents within or outside the territory of the Republic of Cuba, those born within the Republic of foreign parents who claimed Cuban citizenship upon coming of age, and those born in foreign countries of Cuban parents who have forfeited their Cuban nationality, in the event the children claimed Cuban citizenship on reaching the age of majority.¹⁰¹

Naturalized Cubans, who were defined as foreigners who met certain requirements, such as establishing residency within the Republic for a period of five years and who declared an intent, after two years, to claim citizenship.

Cuban citizenship, and thereby voting rights, was forfeited in the event a citizen acquired citizenship in any other country.¹⁰²

The Constitution of 1940 set forth similar standards for Cuban citizenship, providing for citizenship by birth or naturalization, with only slight changes in the time requirements for naturalization.□ Like the Constitution of 1901, citizenship was deemed forfeited by the acquisition of foreign citizenship or the "acceptance of dual citizenship."¹⁰³

The Fundamental Law of 1959 in general reiterates the standards for citizenship in Cuba's first two constitutions, with an exception for those foreigners who served in the revolutionary army and wished to claim Cuban citizenship. In addition, foreigners married to Cuban citizens who had resided in Cuba for a period of two years and who forfeited their foreign citizenship were allowed to become citizens of Cuba. Finally, foreigners who resided for five years in Cuba and declared their intention to acquire Cuban citizenship within their first year of residency were allowed to become citizens. Cuban citizenship was forfeited, under the Fundamental Law¹⁰⁴ by those who:

- Acquired foreign citizenship;
- Entered the military service of another nation; or
- Became naturalized citizens of Cuba but subsequently resided for three or more years in their country of birth, unless they officially made known every three years their intention to maintain Cuban citizenship.

Voting rights and citizenship requirements currently in force in Cuba are defined in the 1992 amendments to the Cuban Constitution and the current electoral law. The Constitution reiterates the provision stating that Cuban citizenship is lost as a result of the acquisition of foreign citizenship and/or the acquisition of double citizenship.□¹⁰⁵ The electoral law states that in order to vote, a Cuban must "be a permanent resident in the country for a period of no less than two (2) years before the election and be entered in the Register of Voters of the municipality where he resides."¹⁰⁶

3. Issues of Citizenship and Voting Rights in a Transition Context

One of the first decisions that transition authorities must make in planning for elections is the question of citizenship as it relates to voting rights, and in particular, whether non-residents of Cuba will be accorded the right to vote. In the event no residency requirement is established, a second decision must be made as to which Cuban citizens living overseas will be allowed to vote. For example, will dual citizens be permitted to vote? What about Cuban citizens who served in foreign military forces? Or the children of Cuban citizens born abroad? Once these questions are addressed, transition authorities must consider the logistical questions relative to such voting. For example, whether voting may take place only within the island requiring eligible voters living abroad to return to Cuba to register and vote -- or whether voting will be organized in polling stations set up abroad. In considering these critical questions, transition authorities may wish to consult both current and previous laws and constitutions.

In the event a transitional authority decides to be guided primarily by Cuban legal and constitutional precedents, it would find them, as indicated above, to be remarkably consistent, whether the transitional authority looked to the current law, to the Constitution of 1940, or to any of the laws and regulations previously in force in Cuba throughout its independent history. Whether the transitional authority decided to refer to Article 15 of the 1940 constitution or to the current election law, it would find itself denying citizenship to

thousands of Cuban nationals who left the country in the wake of the Revolution and subsequently acquired citizenship in the United States, Europe, or elsewhere. In examining this issue, the transitional authority may want to distinguish between what is argued in this paper to be two distinct groups of "Cubans":

- Cuban citizens who left Cuba and acquired foreign citizenship; and
- Cuban citizens who left Cuba and currently reside in a foreign country but have not acquired foreign citizenship.

As to the first group, it should be noted that there will undoubtedly be numbers of people who wish to participate in the Cuban electoral process, despite their current citizenship status. A great number of these people fled Cuba because they felt their lives were threatened, and many others left due to the non-democratic nature of the regime. Many acquired foreign citizenship not out of disloyalty to the nation of Cuba or its people, but because they felt that they could not safely return to their native country. Consequently, a strong argument can be made that citizenship and voting rights should be restored to this first class in order to allow them to participate fully in the political processes of a transitional Cuba, at least to those who are willing to return to live in Cuba.

With regard to the members of the second group--those who have never acquired foreign citizenship--several legal questions must be considered by transition officials. First, this group has never relinquished Cuban citizenship. As a consequence, they continue to consider themselves citizens of Cuba, and may even travel with a Cuban passport or identification card. The current and previous Cuban constitutions all clearly recognize the citizenship of this group of people, regardless of their length of absence from Cuba, because they have not relinquished Cuban citizenship by acquiring that of another country. However, the current election law's two-year residency requirement would apparently deprive this class of the right to vote, even though they are Cuban citizens. Transition officials will need to consider the merits of the assertion of voting rights by members of this group, as these assertions will no doubt be made at the outset of any transition.

In the event transitional officials wish to address a third classification of possible voters, the adult children of Cuban citizens or former Cuban citizens living abroad who have not claimed or acquired foreign citizenship, the issues of citizenship and voting rights are less clear. Moreover, residency requirements would presumably prevent members of this class from voting. Residency requirements have been adopted by many countries throughout the world.¹⁰⁷ There are several reasons: the assumption that a non-resident citizen is less directly involved in or knowledgeable about their country of citizenship and its political process; the difficulty for candidates to inform citizens abroad about campaign issues, and the desirability of linking representation and the payment of taxes.¹⁰⁸ However, there is a gradual trend in a number of countries toward broadening the franchise to include non-residents.¹⁰⁹

In summary, Cuba's transitional officials have a number of options available to them in addressing the issue of voting rights for the diaspora. They could consider some or all of the members of the three groupings as citizens with the right of franchise. They would also clearly have the option, based on past and current constitutional precedent, of denying the right to vote to those unable to meet reasonable residency requirements and/or those who have foreign or dual citizenship.

These issues are important because the logistical plans of the electoral administrators must take into account whether there are persons living abroad or who have recently returned to

the country who will be permitted to vote. For this reason, a decision on the subject of residence and citizenship must be one of the first actions to be taken by a transitional government planning to hold elections.

The Cuban community living abroad is quite large, and if, in the first transitional elections, these persons were to be considered eligible voters, the electoral authority would have to take a series of actions with broad economic and operational repercussions. The expatriate population would need to be incorporated into the voters' list, the means by which they could vote defined, and procedures adopted to make this right effective.

If the decision is made to leave the law as it stands, at least for the first transitional election, it will in any case be necessary to reconsider the issue prior to the following election. The subject cannot be avoided; it is only a question of timing.

4. Issues Concerning the Voter Registry

The same points could be made with regard to voter registration. While the current registration system could also be maintained in a transitional situation, there may also be advantages to changing it.

Registration in Cuba is universal and therefore closely linked to the official records maintained by the municipal governments. (In Cuba, as throughout Latin America, the entire territory is divided into municipalities, so that everyone, no matter how isolated or rural the community in which he or she may live, is subject to a municipal government. Municipios are therefore more closely analogous to counties in the United States than to cities.) Voters are automatically registered, upon reaching voting age, by the Area and Municipal Electoral Commission. Consequently, voter registries enjoy a high level of accuracy, and they are continually updated to reflect changes in the population. While the transitional government, for various reasons, might prefer to conduct a nationwide re-registration of the entire adult population, the considerations of time and expense mentioned above argue forcefully for using existing voter registries in the first transitional elections.

However, Joe Baxter, elections specialist and international consultant, puts forth a practical reason for re-thinking the voter registration process. The current Cuban voter registration system requires that people re-register with the local authorities whenever they move. The same system was used in the countries of the former Soviet Union. The experience of those same countries indicates that with the onset of freedom and democracy the old system begins to fall apart. For example:

- Given freedom, people may simply not register with the local authorities.
- Given the freedom to move anywhere in the national territory, there may be a significant movement of people (especially the young) from one area to another with few if any registering with their new local authority.
- People may be reluctant to register if they have been living illegally in an area, even though the former Communist laws have been abolished.
- Tenants may be reluctant to register because landlords may then be taxed on the rental income and pass along that cost to the renter.

For these reasons, the transitional authorities may find it necessary to compile an entirely new register of voters, based on either a house-to-house enumeration or through voluntary self-enrollment as in the US and other countries. It should be noted, however, that the former is quite expensive--Canada has recently abandoned house-to-house enumeration for precisely that reason --and the latter will produce a significantly smaller number of voters than does mandatory registration.¹¹⁰

F. Restoration of Political Parties and their Right to Nominate Candidates

The transitional government will of course have to consider what role it will permit political parties to play in both the political and electoral arenas. If it decides to be guided by the 1940 Cuban Constitution, provision could be made for parties to serve as the primary means of organizing policy discussion and formulation, as they are throughout the rest of the Americas and in democracies throughout the world. In addition, drawing again from the 1940 Constitution, parties' rights to be the primary vehicle for the nomination of candidates could be restored. This scenario would broaden public participation in the political process on the national, provincial and municipal levels and remove the need for the Castro-era candidacy commissions. It would also eliminate the role played in the current nomination process by the Council of Workers, the Federation of Cuban Women, and other Communist-controlled groups currently granted special rights in the nomination process.

G. Selection, Structure and Responsibilities of the Electoral Authority

1. Selection of Members

Cuba relies on Electoral Commissions at the national, provincial and municipal levels, in addition to those that correspond to electoral areas and special commissions. The commissions emerge from the nomination of the members of the National Electoral Commission by the Council of State; thereafter, each commission is responsible for appointing those lower down in rank. The selection of those who will administer elections is therefore made by the state.

In modern democracies, elections are a continuous process in which the electoral laws and procedures are continually revised and wherein civic education is a basic component. Elections are, therefore, a permanent activity. Public confidence in the electoral process depends to a considerable extent on the independence of the individuals who organize them and consequently on the reputation of the institution for which they work. The mechanism for choosing the commission members responsible for managing the election and safeguarding electoral laws is of major importance in projecting a good image of the process. Nominations to these posts usually are made by the freely-elected chief of the Executive Branch, often from lists submitted by institutions such as the Supreme Court or by the political parties. This is not the case in Cuba, due to its form of government.

Nevertheless, in its legal and administrative structure, Cuba's current system of national, provincial, municipal and district electoral commissions, as well as the Area Commissions and Special Commissions, is very similar to the system used in a number of other Latin American countries. Moreover, the system corresponds to the types of elections conducted throughout Cuba's history (national, provincial and municipal) and broadly reflects (in theory if not in fact), modern notions in terms of the duties, obligations and rights of election commission members. The same structure could be used to administer a fully free and fair election, under either the current electoral law or any amended or new law that may be

adopted by a transitional government. The problem in Cuba lies not with the administration of elections, but with the political conditions under which they are held.

The members of the current Cuban electoral commissions are experienced in some of the basic duties required of election officials, including:

- preparation of the voter registry,
- preparation of balloting sites,
- procurement of ballot boxes,
- maintaining the security of the ballots, and
- supervision of the balloting, the tabulation of votes, handling of documents and verification and announcement of results on Election Day.

One of the key questions for the transitional Cuban government will be whether to work with the existing electoral structure and staff on transitional elections. The most crucial factor in this decision is time. If the date of the first transitional election allows enough time to review and restructure the electoral organization as necessary, and to recruit and train qualified personnel, then it might be possible to completely reorganize and restaff the electoral system. If the urgency of elections does not allow sufficient time for restructuring, then it may be safer to make nominal adjustments and proceed with the existing system. Three months is probably too short to revise the system. Some significant changes could be made within six months. A total restructuring of the system would probably take a year. (Election calendars for these three different scenarios can be found in Appendix 1.)

The drafters of this document have not had the opportunity to observe the administration of elections in Cuba first hand. However, it is readily apparent that a significant level of technical and administrative competence has been reached, manifested by the fact that the election commissions have processed between seven and eight million voters and ballots in a single day.¹¹¹

On the one hand, maintaining the current system and staffing would eliminate the need to train new commission members and employees in the most basic areas of election administration. In the event a transitional government would wish to conduct elections under a new or amended law, the existing commissions could be trained to adapt to the new or amended law(s) quickly and efficiently. This could be a factor in the event a transitional authority wished to conduct elections fairly soon after coming to power. The added expense of identifying, organizing and training entirely new election commission members and employees should also be taken into consideration.

The transitional authorities may wish to look to the experiences of several countries of the former Soviet Union, which adopted new or amended election laws while maintaining their previous system for the administration of elections, including the retention of many of the commission members, particularly on the national and regional levels.¹¹² In Ukraine, for example, an entirely new electoral law was adopted, which made sweeping changes in virtually every facet of the electoral process. However, the structure for administering the elections was left basically unchanged. It was decided that the existing structure, while previously used solely for Soviet style non-competitive elections, could nevertheless be easily adapted to democratic, multi-party elections.¹¹³ The experience in Ukraine and other former Communist states suggests that Cuba could also retain its current administrative framework and staffing, regardless of the form of its electoral code and regulations.

On the other hand, according to Joe Baxter,

The personalities who administer an election system are just as important as the system itself. Election managers must be able to instill in the public and the political parties confidence in the impartiality of the process. Experience has shown that building that confidence is almost impossible for 'holdovers' from the previous regime. In fact, it is likely that the old regime has packed the various commissions and local administration with cronies from the Committees for the Defense of the Revolution (CDRs). The effect of this type of situation is still evident in Ghana [whose CDRs were based on Cuba's], despite two elections and six years of democratic rule.¹¹⁴

While the various levels of commissions seem likely to be retained by any future Cuban government, it is likely that broader representation of the civil society on the commissions will be required to develop the public confidence to which Baxter refers. Several countries of the former Soviet Union allow representation on each of the levels of commissions to every party contesting an election. This is also the case in many countries of Latin America (e.g., Mexico, El Salvador, Honduras). While this arrangement means larger commissions than might otherwise be necessary, it also engenders the confidence necessary to ensure public acceptance of the election results.¹¹⁵

Therefore, the transitional Cuban authorities will have to consider the question of maintaining or changing, in whole or in part, the existing electoral structure and staff, taking into account the time factor as a key variable in their decision-making. Regardless of the particular method used for selecting commissioners, it is crucial that those chosen to form part of the electoral administration be seen by the public as honest and trustworthy individuals with proven capability in legal and organizational matters. They must also be seen as sensitive to political concerns but at the same time able to transcend their own personal preferences in order to carry out their work fairly and impartially. Transparency must be the goal throughout the process.¹¹⁶

2. Structure of the Electoral Authority

With respect to the type of entity that should regulate the electoral process, we will briefly describe some of the existing types, especially those common in Latin America, as a means of suggesting options that the transitional government may wish to consider.

A fundamental requirement, of course, is that the electoral authority be able to count on a high level of autonomy from the legislature and the executive, including an adequate budget and its own facilities. The functions of the Commissioners must also be differentiated from those of the staff, and the staff's responsibilities should be established based on specific functions.

The Commission must have the capability for self-management, to appoint and dismiss personnel, and, perhaps most important, to make decisions about the development of the electoral process. This does not mean that the electoral institution need have the power to legislate, even though in some countries its functions indeed go that far (resulting in the authority's being labeled "the Fourth Power" of government). Rather, it should be able to sign agreements and issue decrees that facilitate moving forward the electoral process and removing the obstacles that are often produced by loopholes in the law. Because of the time

pressure under which the electoral commission usually operates, it is often impossible to get these loopholes corrected by the national legislative body.

It is essential to recognize that an election works well if, among other things, there is a good legal fit among the contents of the Constitution, those of the electoral law, and the resolutions (especially regarding election procedures) made by the electoral body.

Effective autonomy is also a function of where, within a government's legal and administrative structure, the electoral body is placed. In past years in some countries the institution was accountable to the Ministry of the Interior or of Justice, or even to the Judiciary. Today there is a tendency to eliminate direct ties to any of the three established branches (Executive, Legislative, and Judicial) and to give the electoral body free rein in its decisions. Nevertheless, it has not been easy to distance the electoral body from the legislature with regard to budgetary issues. Appropriations are approved by the Legislative Branch, and in some cases delays or refusals to approve the funds the Electoral Commission believes it requires is seen as an element of control or pressure from the legislature or from the political party that has a majority in that Branch.

In some Latin American countries the electoral commission is composed of representatives of the political parties, the argument being made that there are few if any true independents, and therefore the best way to ensure that no party controls the commission is to balance it with representation of various parties. In some cases not only the commission members but all of the staff positions are distributed among the parties in an old-fashioned patronage system. Countries where this type of system is used include El Salvador and Paraguay. In Mexico the voting members of the commission are respected independents, but the parties are also permitted to name representatives with voice but not vote. Until 1996, the commission members were all party representatives.

No system is perfect. Appointing party representatives to the electoral authority in hopes they will balance each other does not necessarily result in impartiality.

The role that is assigned to the commissioners or members of the electoral authority of the electoral body is extremely important to the operation and the structuring of the electoral process. In some larger countries, the decision-makers are supported by an operations department made up of career staff members. In others, the commissioners or members themselves are involved in the daily work and the detailed monitoring of the operations that make up the electoral process.

From among the different types of electoral organizations described above, the Cuban transitional government will need to try to take the best elements and eliminate, insofar as possible, the flaws found in each. It is clear that there is no "best" combination and that the context, the current political situation, and the country's history must all be considered.

3. Responsibilities of the Electoral Authority

It is important to entrust to the Commissioners the tasks of monitoring enforcement of the electoral provisions of the Constitution and the laws, and of making the decisions necessary to make the election work, based on the recommendations presented by the Commission's staff. The staff will consist of specialists and career personnel who are involved in electoral activities on a full-time basis (which the Commissioners, typically, are not).

Following are the basic elements for establishing a professional and permanent electoral body, with distinct stages of development. This structure must be replicated at the operational level for the provinces and municipalities, as the standards and procedures that regulate activities in any part of the country must come from the national commission.

a. Election Organization

One of the departments of the Commission must be responsible for election organization and logistics, including among its duties everything from the demarcation of the electoral areas through the printing of ballots, the registration of candidates, and the setting of schedules for the whole electoral process.

b. Voter Registry

Of equal importance is the Voter Registry. If, at the beginning, the electoral body does not have responsibility for the Voters' List, it will be necessary that they acquire it. (The details regarding the Voters' List are the subject of another section of this document; in this section the purpose is only to describe the structure and functions of the electoral body and, in particular, of the Voter Registry Department.)

c. Institutional Relations

In many electoral institutes or commissions there is an office or department in charge of relations with the political parties, which may include the registration of new parties, the removal of the legal status of old parties that are no longer functional, the registration of their statements of principle and political platforms, and the registration of their lists of candidates. If the electoral law provides for public subsidies of the parties' campaigns, the Commission may administer these funds, ideally under very clear rules.

d. Permanent and Temporary Personnel Training

The electoral organization will have to prepare its personnel (including the commissioners) for the tasks that will be assigned to them. When election time arrives, any new or temporary personnel (employed because of the additional workload produced by the election) will have to be informed about the elements that make up the election and the role they will play. Therefore, the existence of a structure within the Commission dedicated to training is recommended.

e. Civic Education and Information Dissemination

One of the basic tasks of any electoral process is that of civic education, which is even more important in a nation in transition that has a pressing need to teach citizens the universal concepts of democracy and respect for free and fair electoral processes.

Closely tied to civic education is the task of disseminating information. The population must be informed, sensitized, and mobilized toward participation in the electoral process.

Knowledge of the candidates and the political organizations or parties that are sponsoring them, the dates and procedures for voter registration, the qualifications for registering and voting, and the date of the election are some examples that require the design of a strategy for disseminating information to the mass communication media.

f. Administrative Apparatus

Finally, any activity of this magnitude requires an administrative apparatus that ensures a good use of resources and takes care of the needs for personnel, material and financial resources. In addition, the Commission should establish the criteria for a Career Civil Service that guarantees the continuity of the institution by providing job security to those who have demonstrated ability and honesty, and who have gained the experience that comes with training and practice.

H. Timing and Frequency of Elections

In nations in which the head of the executive branch and members of congress (whether unicameral or bicameral) are directly elected, it is common that for each presidential election, there are two elections of the Legislative Branch.

One of the elections usually coincides with that of the president, in order not to duplicate the great organizational and economic effort that the country must make, but also for a fundamentally political reason. As the president begins work with a congress that was elected at the same time, the simultaneous mandates legitimize each other.

In the middle of the executive term, all or part of the legislative body usually comes up for election. These elections are known as mid-term legislative elections. In political terms, they signify either a ratification of the good performance of the government in power or, conversely, election of an opposition congress to provide a check on an executive branch perceived as not fully successful.

In Cuba there is no division of powers like that explained above. If a transition to democracy occurs, a separation of powers will be introduced, and mid-term elections are a likely consequence. As far as specific election dates are concerned, the electoral authorities must take into account weather conditions, civic holidays, and special seasons of economic activity, such as plantings or harvests, that may affect the level of citizen participation.

I. Options for the Electoral List

The Electoral List is the instrument through which citizens are recognized as voters.

This list is a basic element in the planning of electoral processes because it makes it possible to locate the voters in the various geo-political and administrative areas. Reliable registration information is needed to create electoral districts of an appropriate size to facilitate voting and to assign the appropriate human and material resources to each district. If the registration system is of good quality, it will also reduce the possibility of fraud by double voting or impersonation.

The registration of voters makes it possible to identify those who are eligible, preventing those who do not meet the legal requirements from voting. At a minimum, a well-conducted preparation of the Electoral List should generate public confidence in the reliability of the process.

It is known that many countries have experienced problems in their elections due to the low quality and poor reliability of voter registration, which is reason enough to invest considerable

attention and resources to it. Without reliable registration procedures, the basic principle of democracy, "One person, one vote," is nearly impossible to institutionalize.

In Cuba, the Electoral List passes through many hands, although this in and of itself does not mean it is unreliable. According to the Electoral Law of 1976, the General Electoral List is the responsibility of the Ministry of Justice, which shares that responsibility with the offices responsible for issuing an identity card to every citizen, and with the political and sectoral organizations of the PCC.

The preparation and maintenance of the List is the duty of the Municipal Electoral Commissions. The law of 1976 called for the issuance of voter registration cards, of which there is no subsequent mention. A special provision in the same year stated that the voter cards would not be used in the following election. They therefore may never have been distributed.

In practice, the List originates from the "Address Registration Books," which are the responsibility of sectoral organizations like the Committees for the Defense of the Revolution (CDRs) and the ANAP. Given the current social and political structure in Cuba, these lists probably provide good coverage in a strictly technical sense. Many basic services are tied to having a Government Identity Card, which means that if an individual has not updated the card after moving, he/she cannot receive services. The sectoral organizations decide on the district level whether someone shall remain in the Book of Addresses and therefore on the Electoral List. This determination appears to be of an ad hoc nature, without the benefit of standardized procedures or citizen input.

When an autonomous electoral body is established by a transitional government, these lists would fall under its jurisdiction, as would the maintenance of the registration system, including additions, deletions and changes of address or of the voter's legal status on the rolls.

The electoral law must incorporate reliable mechanisms for voter registration and maintenance of the registration system, making it necessary to document all actions by the registrars. Persons must not be deleted unilaterally on the basis of the perception of individuals or organizations inside or outside the electoral body.

Dates and places for registering, updating and displaying the lists, and the procedures and forms to document the entries, deletions or changes to the system, must be uniform and must be applied in a similar way throughout the country and in accordance with the law.

In the short term it will be difficult task to design, produce and distribute a separate voter registration card, but it is a crucial, definitive, and unavoidable step. Because the national identity card is prepared by a different authority, it is not possible to verify it, and the responsibility for identifying duplicates, falsifications, and impersonations would fall on an office (the Electoral Registration Office) that does not have any say in the issuance of the identity card.

1. Medium-Term Options

In some countries where the Electoral List is the subject of distrust and conflicts, an entirely new list has been prepared. This might be considered, but only for the medium term, since it would require significant resources and time.

There are three ways to carry out this task:

- visit all of the people in their homes to register them;
- set up units in strategic locations where people can come to register; or
- a combination of both.

To a large extent the choice of technique will be governed by the level of mistrust in the existing list and by the available resources. The house-to-house census technique is the most highly recommended for ensuring the highest percentage of coverage, even though the responsibility for errors and omission would fall on the electoral body. It is also the most expensive technique.

Whatever decision is made, the entire population must be made aware of the creation of a new list, which must have the support of all sectors. Therefore a communications campaign must be designed, using different strategies in accordance with the environment (rural, urban) and the channels used (printed or electronic mass media).

In summary, the procedure to be followed is to take the existing records, verify them, establish a period for voters to update their data, and then to correct the lists. Later, an effort will be made in the medium term to issue a voter's identification card on the basis of the new and presumably more accurate and complete registration.

2. Short-term Options

For an election in the short term, the steps to be taken would be:

- create an autonomous electoral body;
- create a department within the electoral body with responsibility for the Electoral List (including training and resources);
- transfer the existing Registration Books or voters' lists to the new organization;
- verify the lists and/or books, as explained below;
- open a period in which new voters may register and those already registered may correct their information on the lists;
- correct the lists in accordance with the results of the verification and re-registration;
- prepare new lists of voters;
- publicly display the new lists;
- receive challenges and complaints of improper inclusions or exclusions;
- make the corresponding corrections; and prepare the final lists.

As can be seen, in even the simplest of the cases (an election in the short term), the production of a reliable Electoral List takes time and resources.

It must be pointed out that the Electoral List is completely tied to geography, which means that the list and its maintenance must be accompanied by maintaining and updating the electoral geography and the corresponding cartographic materials. This means that the electoral authority must also be responsible for the demarcation of the electoral districts from which municipal, provincial and national legislators are elected.

3. Creation of the Voter Registry Administration

a. Personnel

Like many other activities of the electoral process, voter registration requires technical personnel capable of organizing large operations, planning for many contingencies, preparing substantial budgets in great detail, and coordinating management, administrative, and information systems. The director of registration must meet all these conditions. He or she must also be politically sensitive and knowledgeable of Cuban geography. The director must hire personnel with similar qualities, plus logistical capabilities, and, of course, personnel with training and experience in computers, since it is essential that the Voters List, as well as other electoral activities, be computerized.

To begin operations there must be manuals by area and position, which will have to be prepared with support from international as well as Cuban advisors. The manuals should include strategies for training both executive and support personnel. Once the higher levels have been recruited, trained, and taken up their posts, they must assume, among other duties, the tasks of recruiting, choosing, and training their staff.

This initial group must contact the institution in charge of the previous voters list and the address registry books, in order to carry out the transfer of this information to the transitional electoral authorities. If either the voters list or the address registry is not embodied in a magnetic medium, that would have to be done on a priority basis.

b. Information Management

The transfer of these instruments is not an easy task and involves Castro-era authorities who may not, at the delicate time of transition, be willing to release the information. An important coordination effort should take place with community leaders. The physical transfer must be carried out using controls to ensure that all electoral zones in the country have been covered and that the materials are preserved through magnetic means. If possible, the lists and books should be compared by magnetic means to detect whether or not there were systematic omissions.

After having successfully transferred the information required, verification methods must be designed, as well as a work schedule for updating the lists (assuming a near-term election).

A statistical sample of data collected through home visits may be necessary to confirm the accuracy of the Castro-era data. A computerized verification would initially assure that all geographical units are included in the files, that no locations or electoral zones are duplicated, and that full and complete data are available.

Thereafter, demographic assays may be carried out to verify the consistency of the data gathered, covering several geographic areas to be compared later on with population estimates or census data by age or sex.

A field verification is conducted by choosing a representative sample of names from the lists and books at the regional level for the purpose of paying home visits to verify the data. Such visits will be useful to confirm the scope of the coverage, to update information and to ascertain the quality of the information. The quality of this sample will be largely dependent

on the available resources. Notwithstanding, it is essential that all fourteen provinces of Cuba be represented in the field sampling process.

Verification will indicate the level of reliability of the registry documents and the regions in which it will be necessary to make greater efforts. It is also an indicator of the quality of previous work, providing important criteria for the selection of personnel who will work on updating the lists and on preparing the training manuals and courses.

4. Registering, Updating and Displaying the Voters List

Registration of new voters, updating of the previous list and public display of the new electoral lists will take place at the electoral district level. Therefore, the work program should consist of design and operation activities, both centralized and decentralized down to the electoral districts.

All changes to the voters' list must take place during the registration and maintenance stages. Standardized forms must be designed to add or delete names or to change addresses. Manuals should be prepared for the personnel engaged in public relations and those in charge of tracking information flows. Validation and comparison criteria, together with the corresponding instructions, must be prepared. Coordination agreements must be established with the National Registry of Births, Marriages, and Deaths and with the judges, who are the sources for deletions from the List.

In the area of logistics, registration offices must be set up to which people may go to carry out the required formalities. These should ideally be public spaces obtained by agreement, i.e. with the support of the authorities, or else they may be rented, which must be taken into account in the budget. Use of public spaces is preferable due to the reduced cost and the promotion of transparency in the process.

Obtaining facilities includes the responsibility for providing furniture and equipment. Given that this is a temporary activity, it is preferable to borrow space and equipment rather than to make considerable disbursements.

The supervisory personnel in the districts will have to recruit temporary staff for this phase and train them. These temporary staff members should pass a standardized proficiency test in order to be hired.

All of this activity must lead to a single National Electoral List. It should include all necessary information on all the registered citizens and there must be a way of checking that there are no duplicate registrations. Hence all the changes gathered in the different places in the country must be brought together in the capital. Therefore, the purchase or rental of vehicles or a service agreement with some institution needs to be included in the electoral budget. The transfer of any type of electoral materials, either from the capital to the regions or vice-versa, is an issue that affects not only voter registration but the whole election. It is often overlooked in electoral programs and budgets.

5. Maintenance and Verification Activities

Once the available personnel and resources are in place, registration and maintenance activities may be initiated.

Since our recommendation for the short term is to make use of the existing files and not to create a new list from scratch, an extensive voter education campaign will be needed to disseminate information on the number and addresses of places to which people can go to register or update their information. These campaigns and the registration process must, at a minimum, have a length of 90 days, after which it is recommended to display the Electoral Lists for 30 days. During this period citizens, as well as political organizations and parties, may report the anomalies contained in the lists, either due to improper inclusion or exclusion or errors in the information about a citizen. An informational campaign will also have to be prepared and implemented to inform and sensitize the population about the importance of reviewing the accuracy of the lists.

From the time anomalies are identified by citizens or organizations, the Electoral Registration Office will have 30 days to analyze, respond to, and incorporate or modify -- as the case may be -- the correct information in the lists in order to ensure their accuracy.

From there, the printing of the lists by Region, District, Electoral Area, and Polling Places may begin, in the number of copies required. Twenty days should be allowed for this process.

In total, 170 days will be required from the updating to the printing of the final Electoral Lists.

Simultaneously, as mentioned above, verifications should be made of the previous voters list and the books of addresses. When the results are obtained, the correction of mistakes that were detected will begin.

There is a risk that the verification process will uncover major deviations that will make it impossible to use the previous list as a starting point for information. A contingency plan will have to be made to re-register those who were already registered and who were not required to register again.

In addition, once information has been obtained on all the voters by geographical level, the review of the Districts and Electoral Areas must be done in order to propose boundary adjustments that will maintain the population balance among the areas.

Administration of the Electoral List is an activity that involves a large amount of information (at least seven million entries, one per voter) and for this reason it needs to be computerized.

6. National Computing Center

It is recommended that a National Computing Center be created that contains a computer network with the database of all the voters of the country, plus a certain number of personal computers for organizational, monitoring and administrative work.

At the level of the fourteen provinces and the special municipality (Isle of Pinos), computer networks could be set up that contain the relevant part of the list and -- if resources allow -- they could be linked electronically to the National Center. If this link-up were possible, many of the procedures would be simplified since the information flows would be reduced to one step (both input and output).

The Registration Office must rely on cartographers who will be in charge of the continuous updating of the maps of the various regions of the country. They would design the distances

and routes that the electoral information must follow in its distribution and, at the conclusion of the process, its recollection.

7. Planning and Transparency

Even though an adaptation of the existing voters list has been proposed for the first transitional election, the Registration Office must, from the time of its creation, begin to plan for an autonomous, independent registration with its own documentation. Failure to do so will lead to a vicious circle in which, upon completing one election, the office will not be in a position to undertake the planning of a new list, since the next election will be right ahead. This lack of planning has been noted in several other countries, to the detriment of all concerned.

One of the principles that electoral officers must always keep in mind is that their work must show the utmost integrity in fact and in appearance. This means that each step of the planning must incorporate the elements that make it possible to verify each and every one of the actions undertaken. In the face of any challenge of a political or legal nature, the electoral body cannot rely on dogmatic responses, but must provide convincing proof that will erase doubt and reinforce transparency and trust in the work of the organization.

Recently, in an election in Latin America, there was concern about the accuracy of the Voter Registry. The authorities were dogmatic in their responses, and technical proof was not provided to buttress their arguments. In the end, the party that had complained won the election and, of course, the complaints about the lists were forgotten. Nevertheless, electoral authorities must be prepared to back up their work with strong, transparent processes and tracking mechanisms.

For this reason, planning for all of the activities, especially for the preparation of the voters lists (due to the scope of the task), must incorporate procedures and security measures that guarantee that the process can be replicated, if that is required.

Precautions must also be taken to print the number of copies of the lists as required by law, plus a reserve copy that is kept by municipal electoral officers as a replacement for the list assigned to the polling places in case of loss or damage.

Copies are usually sent to the parties and political organizations so that they may verify, during the election, that voters are actually registered.

J. The Electoral Civil Service

Job security in an autonomous body is very important because it promotes loyalty and rewards experience. Upon creating an institution of a permanent nature, decision-makers must design a system that allows those who demonstrate ability and honesty to have job security. By keeping experienced people on the job, future election operations may be carried out more professionally and with greater public confidence.

The Electoral Civil Service must be created by law as an essential element of the electoral process. The law must include mechanisms for inclusion or exclusion of an individual through merit and due process.

1. Transparent and Competitive Recruitment Process

The recruitment process for both permanent and temporary employees must include public advertising, formal interviews, reference checks and a competency test in order to assure transparency. A standardized competency test would serve as a common denominator among all applicants and would allow the institution to set a basic level of skills and competence among all its employees. Such a test would also serve to dispel impressions of favoritism in the hiring practices of the institution, thereby contributing to its credibility and transparency.

2. Division of Labor

Electoral employees of course have different tasks and qualifications. A preliminary classification could be that of managers, support personnel for electoral processes, and administrative personnel.

It is also necessary to differentiate those who cover planning or regulation tasks and those in charge of the operational activities, as well as those who work in the central offices and those who perform their duties at a regional level.

3. Training

For all of these employees, training courses must be designed, not only in connection with their duties, but also with regard to everything that pertains to electoral matters. Each specialist should also be a competent generalist in election processes. Their work, as well as the training courses, should be evaluated in order to make informed choices about permanent hires, ignoring pressures from political forces or recommendations from relatives or friends.

It is important to note that a system of this type is not viable without continuous education. The personnel of an electoral body must be knowledgeable and sensitive to the importance of electoral processes, laws, and what is called today "Democratic Culture." Training should not be limited merely to qualifying a person for an operational post; all election officials must be worthy representatives and implementers of the transition sought by the country, as the institution where they work is the arbiter of that process. The confidence that the people have in the institution comes from the confidence that they have in its employees.

These systems are not usually put into practice upon the creation of the institution, but legal provision must be made for their eventual incorporation. It is obvious that employees will have to earn their positions. The merit of their performance must be judged over time.

Working in an electoral body requires having a certain philosophy of life, which in may be absent in countries where there has been no previous experience of democracy. Hiring and training is of central importance and it must begin from the very moment that the institution is created.

K. Legal Recourse for Political Parties and Citizens in the Event of Alleged Irregularities in the Electoral Process

One of the problems with the current electoral structure in Cuba is the virtually non-existent possibility for a citizen to challenge actions of the responsible electoral entity.

In any free and fair electoral process, there must be hearing and complaint procedures, available to both individuals (e.g. those excluded from registering or from voting) and to

political parties and organizations and open to the public, and an authority to hear and resolve such irregularities.

All those behaviors that violate the electoral law need to be handled carefully via legal avenues, including, but not limited to, the following:

- exclusion from the Electoral Lists,
- an incorrect voting location for a voter,
- the presence on the list of individuals who should not appear there,
- irregular behavior by voters, pollworkers, or party representatives on Election Day,
- ballots that appear where they should not be, or
- a number of votes significantly greater than that of voters.

The citizen must be given the possibility of appealing to the authorities and must be provided easy access to legal procedures. Forms must be designed, personnel to help fill them out must be on hand, and efficient procedures for a prompt resolution of the complaint must be available. An expeditious solution to appeals brought by citizens and organizations contributes immeasurably towards a transparent and participatory electoral process.

The new transitional government may wish to consider the recreation of the Superior Electoral Court (CSE) established by the 1940 Constitution and the restoration of its powers. By vesting the powers to supervise the electoral process and enforce the election law in a newly independent judicial branch, the government could help restore trust in the legitimacy of the entire electoral process -- particularly if time and money have forced retention of the current electoral and registration machinery. This is true for a number of reasons. First, re-establishing the CSE would remove the legislative and executive branches from control over a process in which they have a vested political interest. Second, it would confirm the judiciary as the final arbiter of all disputes in the electoral process. Third, the extraordinary powers granted to the court would serve to guarantee the efficient administration of the elections and, most importantly, the peaceful transfer of power after election results are announced.

In the event that the transitional authority were reluctant to restore this particular court, serious thought should be given to granting the courts of general jurisdiction the power to oversee the electoral process in Cuba and to preside over the resolution of electoral-related disputes. This arrangement would enable voters, political parties and candidates to file complaints regarding the administration of the electoral process directly with the courts. Disputes would be insulated from political pressure and, hopefully, resolved in a timely fashion.

L. Final Vote Count and Transmission and Publication of the Results

1. The Counting of Votes

Elections are not the property of the government, the political parties, or the electoral authority. Elections belong to the citizens of a nation. For this reason, election results must be witnessed and known by everyone. Confidence and peace after an election depend to a great extent on the promptness and transparency of the vote count and the transmission of results.

Election results transmission consists of various steps, as follows.

The first step takes place at each ballot box, where the pollworkers (*miembros de la mesa*) count, ballot by ballot, the citizens' preferences. It is important that the same persons who received the votes from voters throughout the day be the ones who do the counting and that their tabulations be recorded in an appropriate formal way. The pollworkers should count and record not only the votes received by each candidate, but also the invalid and blank ballots, which may provide an indication of either the voters' protest (a preference for none of the above) or their confusion (unclear, confusing ballot design). In either case, the information is worth knowing. Pollworkers should also count the unused ballots, and these plus the those used should equal the number received at the beginning of the day's voting.

This count must be done in the presence of those citizens who are authorized by law to be in the polling station. In some countries, any interested citizen may witness the count. More typically, however, only pollworkers, authorized party representatives and accredited domestic and international observers are permitted to be present. Upon completing the count, the results must be made public through a notice displayed outside the polls or in a suitable place. This serves as a check against any effort to change the results in between the polling place and the regional or national tabulation center.

The record of results together with other documents required by law must be sent to the appropriate authorities immediately after the counting is completed. It is not appropriate to delay this step.

The information received from the polls allows the provincial or district officials to make the tabulation for the district in question. The final tabulation is usually called the District Count. Ideally, it should be completed within three days after the election.

The district or provincial level tabulations must then be sent to the national authority so that the National Count can be made. It is recommended that this count be completed within a week after Election Day. These counts are of an official nature and are final as long as there are no legal claims or challenges by organizations or citizens that are validated by the appropriate court. Finally, the results should be published in book form, for future reference by electoral officials and historians. This will not occur, of course, until months after the election.

2. Transmission of Preliminary Results

We have been speaking so far of the final official results. However, an element that contributes enormously to the peace and confidence of the population is the tabulation of preliminary unofficial results.

Preliminary results are those that are made public on the night of the election. They are based on a system of immediate transmission to a data-gathering unit that rapidly announces the count to the public. They are unofficial, because the data-gathering center has not physically seen or verified the official form (in Spanish, the *acta*) filled out at each polling place. These are not normally all collected in the capital until days after the election. Nevertheless, information gleaned from the preliminary results allows the media, political parties and the population in general to see a clear trend, or even virtually complete results, before going to bed on election night.

As a result, the normal tension that surrounds the question of who won and who lost an election is relieved. Although this information is subject to change because the official count

could change the figures or because the parties and/or citizens may challenge some results, it is true that preliminary results almost always point to the winner. On few -- very few -- occasions is there a reversal of the apparent victory.

One effective system for transmission of preliminary results requires the pollworkers at each polling place to complete a special form with the results of their count, and that form is immediately transmitted by computer, fax machine, radio or telephone to a national data collection center. The chief pollworker (*presidente de la mesa*) may be responsible for this transmission, or it may be done by special volunteers sent from the electoral authority expressly to collect these forms. At the collection center the results are tabulated and made available in a pre-established location, to which parties, the press and the general public have access.

The ways in which the infrastructure and the procedures and security measures for rapid, secure transmission of results can be set up are varied, and would have to be the subject of a detailed description in another type of document. What is important here is to emphasize that in any transparent electoral process it is advisable to include a preliminary results system.

M. Election Logistics Management

An election is basically a set of many simple activities linked in a process of sequence and priority. Each activity by itself may be very simple, but all of them are essential.

The management of a process must be based on a detailed and precise plan, and knowledge and expertise used to assign logical times and resources to each step. Any deviation from that process could lead to serious technical, budgetary, or even worse, political, problems.

The first step in organizing an election is to formulate a schedule of major activities, or macro-activities, always in accordance with the provisions of the constitution and the electoral law, and then to subdivide these into more detailed tasks. Typically, the schedule is defined by working backwards from the date of the elections, since that is already fixed by law and in this regard there is no room for flexibility.

Once the activities are set out and their sequence and priority determined, the next step is to fix estimated times for each of them, beginning with those (if any) that are required by law to be completed a certain number of days before the election. If no date has been set for holding the election, such as is the case in planning a transitional election in Cuba, plans may be made in the reverse direction of that described.

Some preparatory tasks are tied to others, but not all. There are various lines of action that come together on Election Day, even though there is no connection between them. For example, activities related to producing a reliable Electoral List on time have nothing to do with printing certain materials like ballot boxes, or with the procurement of indelible ink to mark voters' hands. However, related or unrelated, everything must be ready and in place for Election Day.

A planning model that gives an idea of the timing for the processes mentioned herein is attached as Appendix 1.

The following are activity blocks that include all the fundamental actions required for an election and show how they relate to each other. These are the basic points to consider in the preparation of the election schedule.

1. Personnel: Permanent and Temporary

The creation of a new or reformed electoral body, and a clear promulgation of its legal power and authority, is the initial activity, and all the others depend on it. The appointment of honest, capable, and knowledgeable persons, who are so perceived by public opinion, and who are committed to upholding and enforcing the law, is the next essential step. (In different countries, these may be called commissioners, magistrates, or members of the council or board. We use the term commissioners here as a generic one.)

The appointment of executive staff by the new election commissioners offers the opportunity for a first demonstration of autonomy. In making these appointments, commissioners must be able to identify the types of job specialties needed and the characteristics of the persons to be hired. The executive staff then must hire support and temporary personnel. They are differentiated in that the support personnel will perform design and supervisory tasks, and their period of employment is longer. Temporary personnel are hired for programs and operational tasks of a specific and limited duration.

The activities associated with the updating of the Electoral List represent a special case that must be initiated as soon as the institution is created. They will require temporary employees in large numbers.

Another group that must be hired from the outset is the Training Group, since all those joining the team, in planning, design, or operational activities will require instructions, manuals, and training for their positions. The Training Group will take care of all technical education activities until the date on which the pollworkers are trained, a few days before Election Day.

2. Electoral List Preparation

As mentioned above, the earliest tasks are those related to preparation of the Electoral List. A technical group must be in place as soon as the procedures for revising and updating the Electoral List are defined. Another group must define procedures, forms, and time periods for the campaigns of registration, updating, and displaying of lists, ensuring that the computer infrastructure is capable of confronting these challenges and the challenge of printing the thousands of pages of multiple copies of the lists.

Updating the Electoral List requires office space throughout the country as well as vehicles to reach areas of difficult access in order to bring the opportunity to register to vote to the most vulnerable and underprivileged populations. The changes in the list -- additions, deletions, or name or address changes -- must be documented, which means it will be necessary to plan for the design and printing of these changes and the development of the computer systems that will incorporate this information into the database of the List.

The number of physical locations and vehicles will depend on the potential demand. This can be evaluated once the currently existing lists and books are received, a comparison is made with demographic projections, and results from verifications are available.

At a certain point -- if not at the beginning, then several months afterwards -- it will be advisable to establish a group to plan a voter's registration card and a system of security measures to protect it against falsification. This group will study the characteristics of the National Registry of Births, Marriages, and Deaths and of the National Identity Card, the pros and cons of using the national ID card for voter identification or having a separate voters' card, the logistics for issuance of a document of this nature, the costs, and how to keep this registration card current.

3. Political Parties: Presentation of Platforms and Candidates

Since any free and fair election must provide for the participation of multiple political parties and independent candidates, one of the activities that needs to be included in the work plan, and therefore into the schedule, is that of the presentation of the political platforms of each organization (if the electoral law or political parties law so require) and later the registration of candidates. The scope of this latter task obviously depends on the number of different elections to be held (for example, whether elections for mayors, city council members, national, regional, or provincial deputies coincide with the election of the head of the Executive Branch). In an election in which voting for various offices occurs at the same time, the registrations of candidates are usually staggered, with registration for the most important post allowed to take place first and so on, in succession.

Candidates must be fully identified, and their compliance with the legal requirements for running for public office must be verified by the commission within a reasonably brief period (typically, one week). If non-compliance is found, the commissioners must notify the nominating organization in time to replace the candidate or submit the grounds for non-conformity in writing, including arguments in support of their position.

4. Campaign Timeframe and Conduct

The maximum time allowed for updating voter registration rarely exceeds six months, which means that electoral campaigns would last for that length of time. The expense and the likely public boredom or alienation resulting from a long period of exposure to political campaigns must be considered. Many experts believe it preferable that campaigns, and therefore the registration of candidates, do not exceed three months.

5. Ballot Printing and Preparation of Electoral Materials

The printing of ballots depends on the candidate registration period. Printing can only begin once registration closes. Ballots vary greatly in design from one country to another. In some countries, only the party's name and symbol or logo appear on the ballot. In most countries, the candidates' names also appear, at least for the Presidency and other major offices. In some countries it is customary to print the photographs of the candidates on the ballots. In any case, it is not possible to send the materials to the printer prior to the closing date for registration because of possible replacements of candidates or the withdrawal of some party. The decision whether to include candidates' photographs on the ballots is a question of custom and culture.

In addition to the ballots, other election-related materials (ink, forms, instruction manuals for the pollworkers, voters' lists, etc.) also require preparation, so that they will be ready and delivered to the different electoral districts five days before Election Day.

Some of the materials require somewhat special processes, as is the case with electoral stain, which in many Latin American countries is applied to each voter's index finger, immediately after voting, as one of a series of security measures to reduce the possibility of voting twice.¹¹⁷ The supplier must be chosen more than six months in advance so that the amounts necessary for all the voters are produced.

The same is true of the ballot boxes, which should be regulated by the law in terms of the characteristics required for security and ease in handling. Voting booths or screens to ensure the secrecy of the vote are generally made of hard, heavy materials. Six months is the standard amount of time required to obtain the necessary materials.

6. Logistics and Communications

The speedy transmission and tabulation of preliminary results in particular depend on the infrastructure installed for the election. Special communications, telephone lines, fax machines, vehicles, forms with built-in security measures (not special paper but rather codes that make it possible to detect falsifications of forms and possible transmissions of false data) are also required. Special procedures may also require specific manuals and personnel with specific skills. These considerations are important because there is a tendency for electoral officials to remember the importance of this activity only when Election Day is just around the corner.

Research into the telephone and communications networks available throughout the country should be carried out eight to ten months in advance of the election. This is so that if an area lacks means of communication, there will be plenty of time to seek possible solutions.

7. Poll Worker Selection and Training

As will be explained below, our recommendation with respect to the manner of choosing pollworkers is the one used in Chile and other highly literate countries, namely, a random selection by place of residence. Sufficient time should be allowed for the selection, because procedures must be developed to weed out those who do not have the minimum qualifications (e.g., literacy) or who, because of their occupation or political militancy, should not participate in this very important task. It is important to present the opportunity to work in a polling station as a civic duty and a key position in implementing democracy.

The selection should be made about three months before the election. More people should be selected than are needed, in order to compensate for the dropout rate. By the time the potential poll workers are chosen, all the procedures to be carried out on Election Day should have been defined. The training and information dissemination groups should be ready with the concepts and materials to be transmitted to the selected Pollworkers in the classroom and through the mass media.

8. Mechanisms to Address Challenges

Frequently overlooked is the recourse to challenges that must be available to citizens and parties. These mechanisms must be defined in terms of the form these challenges must take and in what time period, as well as the role of the authorities to whom the challenges may be presented. It is essential that electoral employees be made aware that they are the ones who must facilitate access to these resources in order to make the election more transparent and participatory.

N. Preparation for Election Day

1. Production and Dispatching of Electoral Material and Ballots

The design and printing of materials, forms and ballots must be centralized and subject to security controls which would prevent the misappropriation of materials by unauthorized persons, uncontrolled production and undocumented transfers and deliveries.

Procedures must be prepared which will allow the production and dispatching of materials to be audited. The support of the security forces should be requested, particularly with regards to ballots and reports that could be illegally used, thereby causing challenges to the results of the elections based on bad faith or negligence. Controls on production and distribution are easier when automated control processes, such as bar code reading, are used. These technologies are inexpensive and widely available today.

Voting materials may be distributed to districts and presiding officers at the polls all at once or on two separate occasions. The first would be the delivery of materials and tools such as privacy screens, ballot boxes, pens, etc. The second, which would be closer to Election Day, is the delivery of forms and ballots.

2. Election Results Transmission

As election results documentation travels through the system, each leg of its journey must be recorded and signed for by an election official. Although this measure seems basic, it inherently requires the person signing to take greater care because his or her signature appears on the document.

3. Campaign Conduct and Media Access

The electoral law should include a special section regulating the conduct of campaigns, in terms of time as well as format. In addition, the government should consider whether it wishes to finance the parties' campaigns in whole or in part. If private contributions toward campaigns are permitted, the government must also decide whether these are to be limited or regulated in any way.

Access to electronic media is also a matter for potential regulation. In almost all countries, the electronic media are either owned or licensed by the State, and therefore the stations may be required to devote a specific minimum of time to public activities. One such activity would be election campaigns. They may also be required to make this time available to parties and independent candidates without charge. If so, a formula must be devised - equal time for all parties, regardless of size, or some other basis.

At a minimum, campaigns should be the subject of a code of ethics that can help prevent or reduce defamation by the parties against candidates who are opposed to their interests.

4. Poll Worker Selection

The means by which poll workers are selected is one of the most controversial issues in electoral processes. In Cuba, the sectoral organizations that are controlled by the government and the Communist Party, have designated the pollworkers.

In our view, the system least susceptible to any possible partisan influence or manipulation is a random selection, coupled with a law providing that the participation of those selected is compulsory. (Even if compulsory, participation will be more willingly undertaken if budgetary resources permit paying a small wage to pollworkers both on Election Day and during training classes.) A number of persons that exceeds the number actually required on Election Day should be chosen so as to allow for the inevitable no-shows. There is also inevitably a percentage of candidates who do not meet the minimum qualifications for this job. Provisions may be made to facilitate participation by people with physical disabilities.

Selection methods vary. The names of all the registered voters assigned to a particular polling place may be placed in a container and names drawn from the container, to serve as pollworkers at that polling place. Or a letter of the alphabet may be chosen, with those whose paternal surname begins with that letter being selected; if the required number of candidates is not obtained, the next letter is used as well. But there are many other effective methods.

5. Domestic and International Observation

For reasons discussed in Chapter VI of this report, it is important that the law establish a procedure for accrediting representatives of political parties, other non-governmental organizations and members of civil society to observe the elections, including the vote count and transmission of results, from inside the polling sites. The transitional government may also decide to invite and accredit international observers.

In the case of party representatives, they may be granted specific authority to document irregularities, and their allegations should be noted on the official forms prepared at the polls. In general, party representatives (and perhaps the other observers present) should sign the election closing report at each polling place, which is a good indicator of the degree of monitoring applied to the process and how many irregularities were present.

6. Transparency and Public Information

All the steps taken by the electoral body must be public knowledge. This means that the office or section of the commission that is responsible for the dissemination of information must have a detailed knowledge of the election schedule and based thereon, must design the corresponding public awareness campaign.

It is very important to rely on a team specialized in public relations to respond to national and international press requests and to attend to visitors and observers. This team should be provided with simple and handy materials such as leaflets and training videos for public information.

The dissemination of information serves several purposes:

- to acquaint people with the imminent electoral process,
- to promote voter registration,
- to provide information on registration requirements,
- to inform about the responsibilities of the poll workers,
- to report the basic procedures to be followed by voters during the voting process,
- to encourage people to vote, and
- to report the preliminary results and the final count.

Dissemination of information will also help to reduce false accusations that may be made by some candidates, thus avoiding situations where the absence of public dissemination is used to discredit the electoral entity itself.

O. Election Day

1. Polling Site Management

The time the polls need to remain open is related to the number of potential voters assigned to each polling station and to the procedures established for voting. The simplicity or the complexity of the steps each voter must go through determines the time each voter requires to cast his or her ballot. This time, multiplied by the total number of potential voters at a particular polling place, will yield the necessary length of the voting day. Also, in some countries, women and men vote in different places (Chile) or at different times during the day (Dominican Republic), or at the same place and time but in different lines (Ecuador), all of which could affect the amount of time required for all voters to go to the polls.

In Cuba, the law states that Election Day runs from 7 a.m. to 6 p.m., providing voters 11 hours to vote. That time is greater than that generally permitted in other countries, but there is no reason to change the period that is traditional in Cuba.

It is strongly recommended that each polling station be assigned no more than 750 potential voters. Ballots should be numbered serially. The time-consuming requirement in some countries that the chief pollworker and some of the other workers sign each one should be avoided. The numbered ballot keeps the vote secret and helps prevent ballot fraud because the number series would not be known until the polls open, thus making it practically impossible to present illegal ballots.

The custom of voting in large public facilities, e.g. schools, where a number of polling stations can be placed in one single place, is common practice in Latin America. A secure place must be chosen in each locality in which to store ballots, forms and other materials until Election Day. If general registration is planned, the polling centers should correspond with the registration sites. In other words, voters should be able to vote where they registered, or close by.

One hour before voting starts, the poll workers come to collect their materials, or the election authority delivers them to the polling places in order to begin setting up the polling site. Preparation of the polling site must be done by the workers at each polling table (*miembros de la mesa*). Setting up the polls must be scheduled so that it can be completed by the previously advertised time for opening the polls. The first step is for the poll workers to inventory all the materials and ballots which have been given them, based on the number of citizens registered on their particular list of voters. They should place the voting booths/screens in a strategic position so as to ensure that the vote is secret.

All actions must be recorded on the form for the opening of the polling site. The members of the table and the representatives of the parties in attendance must all sign this first form. The polls are then opened to the voters, who must stand in line and have their ID card in hand for purposes of identification before casting their vote.

If, at any time, anyone disrupts the order of the election, the president of the table may call upon the public security forces -- who must be stationed in or near each voting facility -- to

remove the disruptive party. The president of each table should record any such instances in a "President's Log."

2. Voting Steps

- The first voter in line is received.
- A pollworker requests the voter's authorized identification (either a special voting credential or the national ID card).
- Pollworker locates voter's name on the list and enters the word "voted" opposite the voter's name, or the voter is asked to sign opposite her name.
- The voter is given the ballot or ballots (depending on the provisions of the election law), and she votes in private behind a screen or inside a booth. (In some countries, a single voter may be allowed to go inside a school classroom, and this alone may be sufficient to ensure privacy. However, the presence of at least two screens or booths at each polling table so that more than one voter may vote at the same time, will speed up the process.)
- At this time, processing of the second voter begins, thus reducing total time and allowing more people to vote.
- When the voter returns from the screen, if there are multiple ballots (for President, for Congress, etc.), she is told which ballot must be placed in which ballot box. Then the appropriate thumb or finger is inked to the cuticle, and her ID card returned, as provided by law. Or she is given a document as evidence he/she has voted, or a stamp or punch or hologram is affixed to her ID card as is in some countries.
- At the time specified for closing the polls, if people remain in line, their names or ID cards are requested, and only they will be allowed to vote. If the polls are located in a facility such as a school, the doors of the school are closed and only those voters inside at closing time will be allowed to vote.
- Once the last voter has cast his/her vote and has departed, the ballot boxes are opened, the votes are counted and the records and reports are filled out.

3. The Vote Count

The contents of the ballot boxes are generally placed on a table in order to verify, first, that no ballots were placed in the incorrect box (in the event that multiple ballots have been used). Misplaced ballots are placed in the appropriate box. The votes from only one race at a time are counted, as indicated in the pollworkers instruction manual. The number of voters who cast votes is determined from the list of voters, and then the votes received by each party or candidate are recorded, as well as any voided or blank ballots.

It must be very clear in the law, in the pollworkers' training and manual of instructions, and in the public information disseminated by the elections commission, when a vote is to be considered valid. Normally, voters are told to place a mark within a box or circle alongside the name of the party or candidate. Not infrequently, the voter may place his/her mark outside the designated space, or may use a different type of mark than the one specified. The law and its application by the pollworkers should always favor the intention of the voter. Where the voter's intent is clear, the vote should be considered to be valid, even if it is not

strictly within the provisions of law. This is the case, for example, where a minor portion of the mark on the ballot falls into the space for another candidate. A situation where the mark falls into the space for two candidates such that the voter's intention is impossible to discern warrants invalidation of the vote.

4. Results Transmission

Upon completion of the counting, the corresponding report is filled out; the form for transmission of preliminary results is also completed and signed and the representatives of the political parties are requested to do the same. They may at this point state their complaints or disagreement.

In addition to the official forms, the results should also be recorded on a large sheet so that they are visible and legible, and this sheet should be posted on the outside of the school or other facility so that the public may know the results at each voting table. The poll's closing report is filled out, and all the day's forms are gathered together. The reports, ballots, and materials are then carried to the appropriate local election official by the president of the table. The president is accompanied by those of the other poll workers and party representatives who wish to participate.

At the district level, a group of persons must be prepared to receive the forms and ballots and deliver them to the district electoral authorities. The law may permit announcement of the incoming preliminary results to the public and the parties at the district level, or it may require that all announcements come from the national data center.

From this moment, district electoral authorities should have three days to complete the tabulation and, if necessary, recounting of the ballots cast in their district. They then send their results to the capital city, so that the national count may be completed and the final official results released.

VI. ELECTORAL OBSERVATION

Observation of elections by independent and impartial local or international groups can help to provide objective information about the electoral process. Because the observers' primary mission is to report significant incidents that may affect or distort the process or patterns of fraud and other manipulation, their presence can help to promote citizen confidence that such incidents and patterns will not occur and thereby promote participation. Observers may also undertake to evaluate the overall human rights situation in the country, with special emphasis on political rights and the role of the State in protecting those rights and freedoms.

It is likely that in any transitional situation in Cuba, there will be many appeals to the new regime both to hold early elections and to allow for participation by domestic and international observers. Because observers, to do their job, must have unimpeded access to the polling places, they must be invited by the election authorities and given credentials ensuring such access. Many of the organizations seeking to deploy observers will likely have been involved in monitoring the political and human rights situation in Cuba for some time. Others may have been less involved with Cuba, but will be experienced observers of many other elections in new and emerging democracies around the world. The expertise of both types of organizations can be invaluable as Cuba moves away from non-democratic government because they can help the transitional authorities legitimize both themselves and the new government, which will be the product of the elections.

The role of international observers can be crucial in highly polarized situations, particularly those in which transitions are beginning with significant numbers of officials from the old regime still in place. For more than a decade, international electoral observation has been seen as critical to transition processes, helping to promote citizen confidence and participation in the process, while also providing election officials with needed insight and impartial advice.

A. International Observer Missions

1. Observer Selection

The process of making electoral observation credible to all parties begins with the selection of the observers. Independent, impartial and objective people should be sought out, preferably those with prior experience in observing Latin American elections. In the case of foreign delegations, facility in Spanish will be a prime requisite. Practical experience in politics can be a plus, when it does not cloud independent judgment; and expertise in electoral administration is invaluable. Persons with skills in systems analysis and those with investigative talents (used appropriately) can round out a delegation. Although not every observer will unite all the ideal qualities, each should have an understanding of international standards for the conduct of free and fair elections, and specific knowledge of the electoral laws and procedures that will have been adopted by the Cuban transitional authorities. Sensitivity to issues of historical development and special problems associated with the transition situation is important.

2. Mission Design

Observation missions can vary in size and in the length of time they participate in the process. Cuba's geography, population density and political situation suggest that only those delegations of 12 or more people will be able to provide useful insight into the electoral

process. Each additional delegation member will increase the mission's breadth of expertise, the number of people who can be interviewed about the process, and the number of polling sites that can be observed. While the length of stay can vary widely, depending on the mission's objectives and the sponsoring organization's familiarity with Cuba, delegations should arrive at least 4-5 days before election day and remain until the outcome of the election is clear and it is possible to say whether the popular will has been respected. If announcement of the final official results is delayed, and in particular if there is substantial controversy about the results, the mission should leave at least a technical team in country until the final results of the balloting have been announced.

In the run-up to voting, observation missions can perform a number of highly useful and necessary tasks. Credentials must be obtained from the election commission, interior ministry or other relevant authority. Meetings should be held with appropriate government officials in order to explain the mission's terms of reference and the sponsoring organization's objectives in fielding a delegation. The mission will also want to meet with a cross-section of the political community and civic organizations. In addition to government officials, it is important to seek out elections administration officials, party leaders and candidates, human rights groups, professional organizations (including labor unions), and representatives of racial, ethnic and religious minorities. These meetings will also allow the observers to increase and update their knowledge of the Cuban electoral process and political and human rights situation. Interviews should be conducted away from the eyes and ears of government officials, in order to reduce any possibility of intimidation.

3. Election Day Deployment

Both prior to election day and during the actual balloting, observers should be deployed as widely as possible in order to obtain information about the process first-hand and to investigate, where appropriate, complaints that indicate patterns and practices of manipulation. Deployment of observers should be based on a previously determined detailed plan. When many different observer missions are in country, as will almost certainly be the case for the Cuban transitional election, it is very useful if some entity undertakes to coordinate observer deployment (see E, below).

Typically, observers are deployed in teams of two, as a compromise between safety and security, on the one hand, and the need to cover as many polling sites as possible, on the other. Each team should be assigned to a specific area, whether selected parishes of a large city or an entire province, and given a list of all polling stations within their assigned area. Typically, each team selects at random, on the morning of election day, the route it will take within its area and the specific polling sites it will visit. Thus neither the government nor the political parties can know exactly where or when observers may appear. All observers will be briefed by their sponsoring organization about the specific procedures they are to follow at the polling places, and how to handle citizen complaints or problems discovered in the field. Observers should be present at both the opening and the closing of the polls, at one of the polling sites within their assigned area, and should remain after the closing to observe the vote count. Observers are usually the only persons other than pollworkers present during the counting of ballots.

Election monitoring can help create public confidence through a number of actions. These include:

- Checking to make sure voting stations open and close on time as stipulated by law or by the electoral authority's previously announced rules;

- Checking against improper voting, such as double voting, or impersonation of other registered voters;
- Ensuring that ballot boxes are sealed and empty before voting begins;
- Checking that voting is carried out in secret;
- Checking that all those people qualified to vote who show up at the appropriate voting stations are allowed to do so;
- Documenting problems as they occur;
- Monitoring agreed-upon changes in rules, such as the opening up of additional voting stations, or to extend the hours of voting due to climatic or other conditions;
- Reporting unauthorized political party activity in or around the voting stations;
- Monitoring acts of intimidation and violence;
- Observing the counting of the votes, and receiving a copy of the final tabulation from each observed polling place, in order to verify the accuracy of regional or national tabulations, and
- Documenting the legality of procedures used to settle challenges on issues such as damaged or voided ballots.

Observers must also take great care not to interfere with the voters' access to the polling places and ballot boxes or with the work of election authorities, unless these specifically request assistance.

All observers, domestic or international, have as their primary mission the determination of whether the electoral process actually constituted a genuine expression of popular will., i.e., whether the candidate announced as the winner by the election authorities actually have a majority (or plurality) of the valid votes cast. Flawed processes, in which random imperfections occur, can nonetheless be deemed successful by the observers if that standard is met.

When arriving at a judgment, observers should use not only their own first-hand observations, but also information gleaned from the delegations of other reputable organizations, as well as credible insights and data from other sources. Conflicting information will suggest the need for impartial investigation and clarification. Judgment of the validity of reports of irregularities needs to be held in abeyance until that investigation is finished.

B. Domestic Observers

Effective local monitoring, which can be conducted by political party representatives, civic organizations or recognized impartial elections groups (such as the League of Women's Voters in the United States) offer the best case scenario for helping to ensure free and fair elections. Effective local organizations can field hundreds or even thousands of monitors throughout a country, rather than the scores or at most a few hundreds brought to bear by the international community. Local observers are also cost effective; they will not require international airfares and often have little or no meal or lodging expense. Most importantly, their detailed knowledge of the culture and society in which they live allows for nuanced observations that can enrich analyses based on international norms and local practice.

There are two types of domestic observers: representatives of local political parties and representatives of non-partisan, independent NGOs. In several Latin American countries, the pollworkers are chosen either by the political parties or by the election commission from

lists supplied by the parties. The balance of different parties among the pollworkers helps ensure that no party can control or manipulate the results. In other countries, like the United States, pollworkers are ordinary citizens, whose political preference, if any, is unknown. In those countries the parties are usually permitted to have representatives – sometimes called observers or witnesses – present at the polling place to monitor the voting process. One of the signs of a free and fair election that international observers look for is whether at least two parties are represented at virtually every polling place.

The other type of domestic observer is the kind deployed by non-partisan civic organizations, such as *Transparencia* in Peru, *Decidamos* in Paraguay, *Ética y Transparencia* in Nicaragua, and *Alianza Civica* in Mexico. In transitional situations like Cuba's, however, there are often no NGOs dedicated to strengthening political participation, since such activity is usually illegal or strongly discouraged by the dictatorship. Even if such NGOs are founded in the early days of the transition, they are likely to have few members and fewer resources. If time permits before the first transitional election is held in Cuba, international NGOs may be able to help fund and train a domestic observation effort. The benefits would far exceed the cost.

Training

A fundamental part of preparing for both domestic and international observation is training. In transitional situations such as Cuba's, it is expected that most local observers will be untrained and know little or nothing about the election process. It is important that observers understand that, while they will be trained to look for anomalies and patterns of fraud and other abuse, their deportment on election day can itself help to ensure greater transparency in the process and trust from the people.

In order to do their work effectively, observers need to understand the roles and responsibilities of pollworkers, which vary from country to country. They should be versed in who is eligible to vote, what security and logistics concerns there may be, the role of candidates' or party representatives, how votes are counted, and what pollworkers are supposed to do with election materials once the count is completed.

Training should include the registration, voting and counting processes. Standardized forms or checklists might be developed to assist observers carry out their tasks. They should include a format for reporting allegations of irregularity or failure to adhere to proper procedures. It is very important that training include specific instruction on what to do with this information once it is obtained.

Training domestic observers should not be the responsibility of the Cuban government. Local non-governmental organizations (NGOs) should be encouraged to take the lead in providing training on the mechanics of the electoral process. To be successful, training should seek to maximize trainee participation and role playing, rather than mere rote memorization. Readings and question and answer sessions should be supplemented with practice on issues such as what constitutes the appropriate construction of a voting booth, what are standard procedures for voting and ballot tabulation, how voters fill out required election materials, etc.

Training sessions should be planned well in advance, use clear and understandable terminology, and present material in a way that is both accessible and in the likely order it will become relevant on election day. Training manuals using illustrations and graphics to assist readers in visualizing their tasks can be very helpful. The manuals should faithfully reflect local election laws, rules and regulations and international norms and standards.

International observers, coming in the main from established or recently established democracies, will come to their tasks with greater knowledge of democratic principles and processes generally, and of the conduct of free and fair elections. Mission members who have not previously observed a Latin American election or who are not intimately familiar with Cuban history and culture will, however, require training.

Opinion Surveys, Exit Polls, and Quick Counts

Modern statistical sampling techniques have led to an explosion of public opinion polling around the world. There are three principal kinds of statistical samples taken before and during elections, and because they are frequently confused in the public mind it is important for observers and election administrators to understand and explain that they are very different and serve very different purposes.

1. Opinion Polls

Opinion Polls are surveys taken by private polling firms or by the media to determine how voters are likely to vote. A properly conducted survey of a thousand or so likely voters has a margin of error of plus or minus three percent. However, voters may change their minds – the lament of U.S. pollsters in 1948 that they “stopped polling too soon” – and voters in countries where Big Brother is still fresh in everyone’s mind may express no opinion or say what they think the pollster expects them to say. Although Latin American polling is improving, the margin of error in many political polls in the region has been closer to 10 percent than to three.

2. Exit Polls

Exit Polls are surveys conducted on election day, usually by the media, among voters exiting the polling places. Because they are limited to people who in fact have voted, rather than those who say they intend to vote, and because they ask, “for whom did you vote” rather than “for whom do you intend to vote,” exit polls in theory are more reliable than pre-election surveys. However, there have been notable failures, e.g., the U.S. Senate race in the state of New Hampshire in 1996, which was called erroneously by a major TV network, and the 1996 presidential election in Ecuador.

3. Quick Counts

Quick Counts are not surveys. They are tabulations of the official election results at a scientifically selected sample of polling places – a sample chosen to represent the nation in microcosm. Because the number of places is small, a small number of people can obtain the results and phone them in to a central tabulating center, and the result can be known very early on election night – hence the name “quick count.” If the sample is properly balanced, the count can be very accurate. The Carter Center, which frequently does a quick count in countries where it has deployed an observation mission, says its results have never differed by more than three percentage points from the final national results. Quick counts served important purposes in elections in Chile in 1988, in Guyana in 1992 and 1997, and in Nicaragua in 1990. Early identification of winners and losers helps to lessen opportunities for possible manipulation of the voting and, when the quick count confirms and substantiates the official results, it can discourage protests and controversy over those results. The early announcement of probable results helps to reassure polarized populations of the

transparency of the process and can help to facilitate the peaceful transfer of power by generating consensus about the legitimacy of the vote tabulations.

Quick counts are often carried out by international observer missions – they are a standard feature of observations conducted by the Organization of American States, for example – but are also increasingly being done by political parties (Chile, 1988) and by domestic observer organizations such as SAKA in Paraguay and the Electoral Assistance Bureau in Guyana. However, building a scientific sample is particularly difficult in countries where there are no previous competitive elections from which to draw data. Total reliance should never be placed on any substitute for complete, accurate official results.

Coordination among Observer Missions and with Election Authorities

Because transitional elections are both times of great national moment and moments of great popular expectation and confusion, it is important that observation missions be coordinated among themselves and with the appropriate election authorities.

A primary task of international delegations is to seek to create, wherever possible, correct and cooperative relationships with local elections authorities. Ideally, international missions can play the role of informal troubleshooters, alerting officials to potential problems and difficulties before they become major roadblocks to truly free and fair elections. This may be possible even when the government is hostile or indifferent to election observers. The election administrators often welcome help from international missions that the central government has chosen to ignore.

Because of international interest in Cuba, any transition scenario is likely to be crowded with real or would-be observers. Thus coordination, to the extent possible, is highly desirable. In some countries, the host election authority has attempted this. Often the U.S. Embassy will offer to coordinate the allocation of areas to be observed among the U.S.-based observer organizations. In other cases, one of the international delegations will invite the others to share information on a voluntary basis and thereby avoid duplication of effort.

In the best of circumstances, foreign organizations that have sent or that intend to send observers could create a temporary, ad hoc organization similar to the “international donors’ groups” which are organized by major foreign aid donors. Regular consultations between the group and national election officials could help in determining needs and relative responsibilities. At a minimum, efforts should be made so that duplication or lack of planning does not squander scarce international resources or increase the already great responsibilities of the host country election officials.

An equitable division of responsibilities and greater focus in resource deployment are but two of the advantages gained through cooperation. At a time of great uncertainty and anxiety, the presence of professional elections experts acting with discipline and foresight can inspire confidence and imitation among those with less experience.

Observer groups should seek opportunities to share information and insight with other observers and with the election administrators, if, as is usually the case, they are honest and sincere people attempting to do the best job they can under difficult circumstances. Unless the administrators are themselves party to election fraud, they should be informed of the observers’ findings before any public announcement is made. Joint announcements by observer delegations of their findings, both before election day and after the votes are

tabulated, can serve as an object lesson in situations in which collegiality at the local level may be in short supply.

VII. CIVIC AND VOTER EDUCATION

A. History of Civil Society Organizations in Cuba

A change in the type of government in power in Cuba will create new freedoms, and the transitional authorities must decide how to deal with them. For example, as state controls over labor unions and other non-governmental organizations are relaxed or revoked, how will such organizations continue to function, and what new organizations might emerge as a result? In an open society, what role, if any, should the government play in the regulation of civic organizations?

Transition authorities may wish to examine the history of civic organizations and civil society in general in Cuba prior to 1960. In many countries, and Cuba is no exception, political parties, agricultural and labor unions, political clubs, professional organizations, and church and religious organizations have contributed to the building of an open society. In Cuba, as in many other countries, civic organizations have organized, led and informed the public. Most importantly, they have provided the means to organize peaceful protest against policies considered to be opposed to the interests of the groups in question. Cuba's rich tradition of civic participation may provide some guidance to the transitional government in terms of its possible relationship to civic organizations.

Civic organizations in Cuba had their beginning with the formation of social clubs (*centros*). These were originally organized by Spanish colonists to assist fellow countrymen who were arriving in Cuba. The largest clubs maintained schools, houses for the elderly and hospitals.¹¹⁸ Cuban non-governmental organizations concerned with social welfare began to emerge from this background and were active in advocating women's rights and providing social services to the poor. They included the Cuban Foundation for Social Services and the Cuba Good Neighbor Foundation.

Trade unions also became part of the civil society framework in Cuba. The first island-wide trade union congresses were held in 1887 and 1892. Workers continued to participate in unions after independence, and these took root in the sugar, tobacco and mining trades. In 1924, railway workers formed the *Hermanidad Ferroviaria de Cuba*, and the *Confederación Nacional Obrera de Cuba* was created a year later. In the 1930s and 1940s, workers exercised their constitutional right to demonstrate and to strike, and became an integral part of Cuban society. As noted by Dr. Ernesto Betancourt in the Executive Summary of this report, a number of civic organizations, including the Havana Bar Association, led by Dr. Jose Miro Cardona, and the University Students Federation played leading roles in the struggle against the dictatorship.

The most ubiquitous founder and supporter of civic organizations in Cuba was the Catholic Church. In addition to operating privately run schools and hospitals, the Church sponsored numerous lay organizations dedicated to providing social services. These included Catholic Action, the largest lay organization within the Church, with offices and programs at the national and provincial level. This traditional lay entity was active in operating health clinics and involved in literacy and other education programs designed to assist the rural poor. Another lay Catholic organization, *Comandos Rurales*, was comprised of university students from Havana, and established and operated community development projects in remote areas of the Sierra Maestra mountains. The youth lived among the farmers in that area and taught literacy classes. The Catholic lay organizations were some of the last non-governmental social and civic organizations to operate independently in Cuba following

Castro's ascendancy to power.¹¹⁹ Some of its humanitarian causes are still being carried out by the international Catholic organization, Caritas.

In building a civil society free from government control, transition leaders can look to the prominent role played by civic organizations in pre-Revolutionary Cuba. At a minimum, transition leaders should consider what role Caritas and the Catholic Church might play in ensuring the delivery of immediate humanitarian and social services to the public during a transition. Ensuring that adequate supplies of food and medicine are distributed to the population during the uncertainty that is likely to prevail will be a priority for the transitional government. In the event the transition government is temporarily unable to provide the population with sufficient food and other supplies, the church is one option to consider for the facilitation of such assistance. Allowing non-governmental organizations to assist in providing basic services would enable the transition government to focus on other duties, such as keeping public order, until such time as a new government has been elected and is able to provide for the basic needs of the public.

A new Cuban government would also need to set policies related to the registration, operation and regulation of associations and other civic organizations in Cuba, thus deciding the manner and limits of the role they might play in Cuba's future. In looking to Cuba's past, an argument could certainly be made that such organizations have played an important role in Cuban society and should be permitted to do so again.

B. The Importance of Voter and Civic Education in the Transition Experiences of Other Countries

Voter education and the wide dissemination of information help the people to determine what reforms are in their best interest, and which leaders show the most potential for carrying out the programs needed to realize them. Where public information is lacking, the public may become effectively immobilized; voting may be seen as less important in determining future policies. At each stage in the transition process, citizens need to be educated and informed about the need for change, the goals set forth in the process of change, the public's role, and the progress made so far.

Public opinion surveys can assist transition leaders to determine what information needs to be addressed on a priority basis. IFES recently sponsored a series of surveys in the non-Russian republics of the former Soviet Union. The findings, contained in several reports, were designed to serve as the basis for efforts in each republic to create voter education and public information strategies tailored to specific citizen groups. Experiences in former Communist countries could also provide significant insights for a transitional Cuba.

It will be important for Cuban transition leaders to realize that even broadly-held beliefs about people's interest in and knowledge of politics may be faulty and in need of fundamental re-examination. In the Central Asian republic of Uzbekistan, for example, a survey found that some common assumptions about public interest in politics were simply wrong. For example, it is sometimes assumed that vast portions of Central Asian societies are excluded from the debates concerning their countries' future due to their own disinterest or lack of access to information. In Uzbekistan in 1996, only one in five people was found to be substantially disengaged from current events, while 79 percent were considered to be fairly attentive. Seventy-one percent of Uzbekistanis were at least somewhat familiar with what democracy was, and 72 percent knew the definition of a market economy. The survey report noted, however, that there was ample opportunity to improve the availability of information, as only about half the respondents in each category--political and economic developments

and citizen rights vis-a-vis government authorities--had sufficient information. In other words, much more work needed to be done in citizen education.¹²⁰

Polling data can also be helpful in determining the extent to which electoral participation is bridging the gap in fractured societies, and what more needs to be done. A survey conducted by IFES in neighboring Tajikistan, an emerging nation wracked by civil war, found a huge consensus (70 percent) that voting was the most important right offered by democracy. It also found, however, that three-fourths (76 percent) of Tajikistanis were dissatisfied with the electoral system, with a similar number saying they had little or no information about the Central Election Commission (CEC). Nearly half of those surveyed (44 percent) said that they believed that the CEC favored certain groups, while 84 percent said they either favored reform of election laws or did not know whether they did. In a country where 93 percent said that they expected to vote in the 1999 elections and 47 percent still said having one political party was the ideal--popular perceptions about the fairness and efficacy of the electoral process are of critical concern.

Polling data can help transition leaders take stock of what might be going wrong in a system in which publicly expressed views are somewhat contradictory, thus serving as a sort of "miner's canary" about the health of the transition process. In Kazakstan, interviewers found that fully three-fifths (61 percent) of the population said that they were not interested in politics. Declining interest was sharpest among those whose support for liberal democratic reform was the highest or the fastest-growing. The public's growing alienation--and the linkage between discontent and disinterest--did not, IFES researchers found, emanate from the view that government was incapable of making a difference for the better. All social and ideological groups responded affirmatively, by a margin of more than two to one, when asked if the national government in Almaty could "significantly improve the lives of our citizens through its policies and actions." Kazakstan, the researchers noted, has

a substantial majority who believe that government can make a difference, including both those interested and uninterested in politics. What this means is that the sense of disempowerment and disinterest which the citizens of Kazakstan feel does not concern government in general, but rather the government under which they now live.¹²¹

Even the best case examples of transitional government can carry within them potential problems that need prompt amelioration, or risk exploding into future popular discontent. In Kyrgyzstan, sometimes called the one "island of democracy" among the Central Asian republics, a substantial majority said that they believed that independence from the former Soviet Union was good for their country, despite the feeling that life in Kyrgyzstan had actually worsened. IFES researchers found that most people said that they believed that they could change the situation in their country through elections. However, a majority also said that they were dissatisfied with the electoral system. Their complaints ranged from the need for better enforcement of current laws, to better monitoring of elections, to equal and fair conditions for all candidates.¹²²

Cuban transitional authorities should also seek to make sure that all voter education and public information strategies meet their target audiences on common ground. Half the globe away from Central Asia, in El Salvador, IFES involvement in efforts to promote effective participation by citizens in Salvadoran society resulted in a specific recommendation that educational efforts on democratic values for both children and adults include a gender focus, which would help to address major concerns in the daily lives of Salvadoran women. NGOs were also encouraged to incorporate a gender focus in all of their projects, in order to

strengthen civil society in the most effective and equitable way possible. The IFES study also concluded that it was necessary to develop training curricula for the media, so that information about citizens' responsibilities, rights and the laws of El Salvador could be more widely disseminated.¹²³

C. Voter and Civic Education in Cuba

1. Public Information

As Cuba moves into and through its political transition, the new government should understand that there will be an immediate need for comprehensive, long-term citizen information and education programs. Issues such as new economic policies, the creation of a new system of laws and courts, and open and transparent elections would be essential elements of these voter and civic education programs

Voter education stresses key information that voters must have to participate in the election process, including eligibility requirements and times and dates for registering and voting. Civic education stresses the more theoretical bases of democracy and the rights and responsibilities of citizens living in a democratic country.

Cuban citizens 40 years of age and under will have to learn how to choose among competing political views and ideologies. They will have to learn the basic tenets of democracy and the fact that the active participation of ordinary citizens is essential to making it work. The Cuban voting public will have to learn their role in transitioning from a paternalistic and passive society to an active and open one. The educational process and this kind of extreme change in mindset and attitude will not happen overnight. The fact that most Cubans are literate does not make this type of dynamic change automatic or easy. There will assuredly be resistance to new approaches, especially from the population over age 45, and there will probably be long periods of fear and mistrust about the planned changes for the adult population as a whole. In order to help relieve what will likely be a long period of fear of change and uncertainty, Cuban people will have to know what is going on, where it is happening, what it means, and most of all how it affects them personally.

Transition in Cuban governmental structures will involve social as well as political change and change of any kind, good or bad, will be traumatic for the people. "Whenever human communities are forced to adjust to shifting conditions, pain is ever present."¹²⁴ Timely and appropriate information, placed in an understandable context, can help to reduce pain, complacency and apathy. In countries moving from totalitarianism to democracy, it is vital that information be given to the public on what is happening in the transition process and what the expectations for citizen involvement are going to be. In Cuba, one of the most visible changes will be new election laws, requirements, and procedures. Helping citizens understand what the changes are and how they will affect the future of their country can help create a new and positive perception of the transition process and increase support for new government institutions and a new election system.

During the initial stages of the Cuban transition process, the changes in the election system may become the focal point of people's knowledge and perception about the new government structure. If the public views the process as positive, they will be more likely to support new systems and have confidence in the results of the elections. Successful transition processes require an informed electorate that feels empowered to make independent and non-threatening choices in an open and transparent election. It will be incumbent upon the Cuban transition government and the new election authority to create a

positive and safe environment for change. It is important to remember that people will tend to believe more of what they see than what they hear. When the new Cuban election authority begins to implement programs and procedures that demonstrate the value of democratic principles people will begin to trust the process.

The willingness of Cuban government officials to incorporate democratic principles during the transition process will have to be demonstrated and these principles will have to be fully explained to the public. If Cuban people are to accept these principles, they will have to be understood as central factors in the transition process. Creating understanding and a positive environment does not happen accidentally. It is the result of actions and proactive programs developed by the new leadership through non-partisan civic education programs and continuing voter information efforts.¹²⁵ Civic and voter education is the cornerstone for understanding new programs, processes, and expectations.

In the area of elections, freedom of choice, expression of political views and freedom of association will be new for most Cuban citizens, yet these basic democratic principles are inherent in a free and open society. For Cubans who have never voted in elections where there is a genuine choice, civic and voter education are critical. Studies about countries in transition demonstrate how voter and civic education can help achieve the democratic goals of open, free and transparent elections.

An environment must exist in which the values of democracy are understood and acted upon by the population. Such an environment is not something that simply emerges. It is a consequence of actions by people in leadership positions. The government can play an important role in stimulating activity through non-partisan civic education programs that promote democratic values among the adult population and form an essential part of the general education curriculum. Political parties, civic organizations and the media have an important role to play in this connection.¹²⁶

Election officials must understand the effects of dynamic change on citizens and then develop strategies that will be consistent with a successful process of change. Because developing citizen confidence and understanding will be critical in the transition process, new election authorities in Cuba should consider working with experts in the field of communication and public relations. During a time of transition, information and awareness become the most critical tools in developing citizen support for change, or at least minimizing resistance to it. The change process requires that the public understand that the move from the status quo to new initiatives may require extra burdens. Experienced and professional public relations experts can help election officials develop the theme and messages that will improve citizen understanding and support for the transition election process.

It is important to avoid false expectations about when things can happen or how they will happen. The most important message to be delivered to an unempowered society is that during the transition changes can either happen to or with the people. Either way, change will take place, with specific consequences in their lives.

2. Understanding the Change Process

John P. Kotter, in his book *Leading Change*, points out:

*People who have been through difficult, painful, and not very successful change efforts often end up drawing both pessimistic and angry conclusions. They become suspicious of the motives of those pushing for transformation; they worry that major change is not possible without carnage; they feel that the boss (government officials) is a monster or that management is incompetent.*¹²⁷

Kotter goes on to point out that people in the 1950s and 60s, even in more open societies, did not live through an era when change and transformation were common. The norm was one of less global competition, a slower-moving environment and less frequent change. In today's world, change for many is a difficult and frightening process. Information-deficient, controlled and coercive societies react particularly negatively to change.

New information and education programs should be based on an understanding of the change process and should help move people from apathy to action, or at least to support. There are eight steps in the process of creating major change:

- Establish a sense of urgency: that is, examine realities and the opportunities they create.
- Create a coalition: put together a group or groups that can become change agents.
- Develop a vision for the future and a strategy for getting there.
- Communicate the change vision clearly, using every vehicle possible, and present a role model.
- Empower people and encourage input, ideas, and new methods.
- Reward and recognize creativity and changes as they occur.
- Anchor new gains and changes in institutional policy and procedures.
- Change systems that run contrary to the transformation vision.¹²⁸

All of the steps in the change process will require continuous public information presented in a way that is meaningful and understandable to the public. Having communications, training and public relations experts working with election authorities during the transition period can help to ensure successful program development and implementation.

3. Communications and Public Relations

Developing and delivering civic and voter education programs involve both communications and public relations components. All forms of public communication should be used to deliver the message and information to the people, regardless of the country's level of sophistication in delivering these types of programs. The Cuban people will probably begin to develop a sense of trust and security in the transition if they begin to see and hear information from sources that used to be restricted by the government. Delivery systems include:

Face-to-Face: meetings, public forums. In-person events make it possible to see and hear whether or not you are meeting the needs of the audience.

Radio: live broadcasts, taped messages, spot announcements, news reports, talk/discussion programs, call in programs. The questions to consider are: Is radio coverage adequate to reach the intended audience? Should radio be the primary or only a complementary medium for the delivery of messages? In order to maximize results, the message should be packaged to appeal to the listener. Finally, there must be sufficient repetition in order to make an impression.

Television: live broadcasts, taped messages. This is the most effective single medium if the coverage reaches enough of the intended audience; rural or poor populations may not have access to television. The options and considerations are similar to those of radio. However, because television is usually the most expensive media, it is essential to target, plan and package the delivery of the messages for the highest impact.

Written: newspapers, brochures, flyers, posters. These messages should be short and targeted. Where newspaper circulation is low, more reliance must be placed on other media. Since there is no way of obtaining immediate feedback there is no way of knowing if the message has been clearly received. It is a good idea to pre-test the written messages ahead of time to be sure they are useful, understandable, and pertinent.

Video/Teleconferencing: This technique may be useful for training and discussion of information intended to extend the reach of the primary communicator to rural or remote areas that might otherwise not be able to benefit from direct contact. It is the best alternative to a live presentation. The participants are able to have a dialogue with the speaker, and the speaker can receive instant responses to the information being discussed. This requires access to broadband communications facilities for optimum results.

Internet/Electronic-mail: This communications tool is becoming more effective as users improve their technological capabilities. With current technology, all of the above methods can be used on the Internet. It can be used locally, nationally or internationally and is relatively inexpensive. Its usefulness in present day Cuba is probably very limited, but it would certainly be useful in disseminating information internationally, an important consideration for the transition government.

The programs and messages developed will depend on which communication methods are selected and on the nature of the target audiences. Developing and presenting information or education programs will help create trust in the new election process and confidence in the election outcome. Effective communications create a perception among the voters that will determine their image of the new government, the transition process, and the credibility of election results.

A favorable image is created by presentation, delivery systems, and respect for the audience. A good communicator/public relations professional will:

- Be aware that the voting public may not be familiar with new vocabulary, procedures, requirements or methods. It is up to the election authorities to improve the public perception of their work by making sure the message is understood as well as received.
- Make sure the message is presented without jargon or legalistic terms.
- Make a positive, non-intimidating impression through appearance, tone of voice and presentation style.

- Encourage and answer questions candidly and confidently. The questions people ask provide feedback about the effectiveness of the message.
- Have a clear purpose and objectives. Messages not only provide important information, they create an image of the organization, build good will, credibility and trust.

Communication is a two way street; one must listen as carefully as one talks. Messages should provide only the information people need at that particular time. Too much information causes over-load; too little, suspicion. Using non-verbal methods to reinforce the intent of the message often helps reinforce the learning process. Variety in presentation styles can make the message more interesting, and using both words and pictures helps people understand what is being said. Most adults conceptualize messages as visual pictures in their mind, so using pictures will help reinforce the message.

The primary objective of election communications is to convey transparency: a sense of openness and candor from the administrators of the process. The more frequent and effective the communication, the more trust people will have in the process and in their ability to perform their part in it. Well-informed citizens feel empowered and know why and how to participate in government and in the election process.

Election officials have to be convinced that they have a responsibility, whether or not the law or regulations require it, to inform citizens, political parties, candidates, media, election workers, and others who participate in the election process about the rules, regulations, requirements and timetables of the process. A good election communication program will make certain that all of the stakeholders in the election system will have timely and accurate information, so that they can participate effectively. For election administrators, good information and communication reduce the amount of repetitive work that must be done both locally and nationally. Good communication is about defining people's needs, developing information and messages that will be immediately helpful, and delivering programs in a way that best suits the targeted audience.

D. Common Lexicon for Civil Society and Democracy

Election administrators in Cuba should recognize that during periods of transition, all information, education and motivation programs must be developed and delivered by both public and private sector organizations. A well-executed departure from the former system of channeling all communications through the government and government-controlled media will include the involvement of Cuban non-governmental organizations (NGO) in a democratic approach to information dissemination. Before determining what programs to develop and when, there has to be an agreement on what direction the transition is taking. Once the direction is clear, then the change process can begin. The transition process can use new methods, new information delivery systems, and new messages to develop fresh and positive images of the new system of government, including the election process.

An essential first step for new election officials is the development of a lexicon about democracy and civil society. The meanings of the words used to describe government institutions have been misused and abused by the Castro administration. The transition government will have to define what they mean by democratic institutions, then help the people to learn the meaning of the words and to understand how the elements of a democracy and civil society fit together. Old fears and perceptions have to be minimized and

new information and motivation presented. Much of this education process will fall on the election officials, because the election may be the first public event to demonstrate the direction of the transition.

Election administrators will need to articulate what a civil society is, how it is structured and how a new election system works within a dynamic environment. Both short-term media events and longer-term civic education programs can help to deliver these messages. All programs should be based on a motivating theme that explains why the changes will be beneficial and then gives information on how to participate.

It is important to explain the development of a civil society and democratic governance in a way that demonstrates the correlation between the two elements. An active civil society is an essential component of a democratic government. Civil society incorporates two dimensions--state accountability and citizen participation. Non-governmental organizations engaged in civic action, education, public policy, advocacy and citizen oversight of government further both goals.¹²⁹

The working definition of civil society that will be used for the purposes of this report is as follows: *Civil society is the sphere of voluntary personal, social and economic relationships and organizations that, although limited by law, is not part of governmental institutions. Civil society provides a domain where individuals are free from unreasonable interference from government.*¹³⁰

A civil society can be defined as having six critical elements:

1. Public perception of identifying with the country;
2. An economic base which does not impede, and in the best circumstances supports, NGO development;
3. A political party system, i.e., groups organized for the systematic representation of the public;
4. An informed electorate voting in elections which offer a choice of candidates and ideology;
5. Institutionalized and organized NGOs that can express public concerns; and, most importantly,
6. An independent media.

Whatever the definition, electoral participation and an informed electorate are key elements and election administrators must make certain that all voters have equal access to information, from a variety of sources.

How to inform voters depends on the objectives of the program and the type of information being disseminated. Short-term programs using electronic and print media are good for getting out messages that need immediate attention, but are not designed to change attitudes. These short-term media programs are voter information programs. Longer-term programs designed to provide more detailed information and impact attitudes are called civic education.

E. Voter Information Program Development

A voter information program is a short-term program designed to give specific information about selected aspects of the pre-election and election process. These programs should be designed to inform, educate and motivate the public. They are delivered in a variety of ways and provide voters with the awareness and information they need to participate in the election process. The messages are designed to provide the where, when and how to do something and the motivation to do it. Generally, voter information programs are developed to provide information on:

- times, dates and places of voter registration,
- posting of voter registration lists,
- locating voting precincts, and
- voting procedures.

Additional information about elements of the election process that could be provided include how and where the votes will be counted and the measures that will be implemented to ensure the integrity of the election process.

Voter information programs are typically begun thirty-five days prior to an electoral event and last through Election Day. The programs can be public service announcements 30 to 60 seconds in length, broadcast on radio and television. Longer information talk shows of up to thirty minutes, with members of the election commission making the presentations, may also be useful. Regardless of the length or media used, voter information programs must be targeted to present only information that is critical to a particular election event.

1. Planning the Program

In order to plan a program that meets the needs of the various constituencies affected by the transition, recognized program planning techniques should be employed. These will involve determining the program's requirements and limitations based on time, money, resources and expertise available. Defining the target groups can be done by using focus groups, using existing data, and working with government and non-government organizations.

a. Target Audiences

Natural groups to be targeted for information include: registered voters; potential registrants; political parties; other organizations that can nominate candidates; the candidates; media outlets; election observers; poll workers; NGOs, including labor and professional organizations; and business and industry. All of these groups, organizations and individuals will need a well-defined and expertly prepared voter information program.

Programs should be designed to inform, motivate, prepare and educate the public about the election process. This includes answers to questions about what to expect in terms of new laws, requirements, and procedures, and what to expect over time in terms of changes in past procedures. When people have this information, they will gain confidence in the new election system and its ability to ensure that the will of the voters will be respected.

b. Program Goals and Objectives

The next step in program development is to determine the program's goals and objectives. Specific and achievable targets need to be set so that each program or program module will provide the information required by the targeted audience. Only after goals are established can delivery systems be determined.

c. Program Delivery Systems

Delivery systems can be any of the communications channels discussed earlier, or they can be done by government and non-government organizations. Since the information task of the transition is going to be extensive and critical to a successful change process, all possible delivery systems must be employed. Election commissions, at both the national and local levels, could establish a working advisory group of business, industry and citizen leaders who can help coordinate and disseminate all official election information and materials. The involvement of new people, as well as new procedures, will enhance transparency and public trust that positive change is taking place in the system.

As the saying goes, "perception is reality." It is therefore important that voters see new people and new procedures. Many times in transition situations, voters are intimidated by the fact that the same people are running the elections. Public opinion research done by IFES in the Central Asian states of the former Soviet Union may be of interest here. These studies show that one of the primary reasons voters do not have confidence in the government or the electoral system is that there have been no obvious changes in the administrators, in the system, and in the methods of "police security."¹³¹ The transition election commission in Cuba might be well advised to incorporate representatives of various NGOs and religious communities, because these organizations are often the most widely respected and trusted.

2. Developing the Media Program

Following is a comprehensive program development guide for media dissemination of voter information. It is probable that the Cuban transition election authority will have to work quickly to establish itself as credible during the transition process. Therefore, the guide can be of significant benefit in all stages of program planning.

The most important issue in any media campaign is that multi-media approaches tend to ultimately reach a majority of citizens. The most salient issue with radio and television is programming, particularly which programs attract which target audiences. When choosing between radio and TV for primary and secondary coverage, it is important to understand who listens, when they listen, and whether appropriate messages can be developed for each target audience. Knowing what types of messages to develop, how much lead-time is needed, and when the messages will be aired are critical factors to the success of the voter information program.

- *Determine Program Goals and Objectives:* Determine what the primary and secondary goals will be. There will probably be a spill-over effect from that determination which is an added benefit of the program development.
- *Analyze the Current Situation:* Determine the actual facts in terms of demographics and legal requirements. Decide which existing elements can be maintained, and what will have to change over time. How might the changes affect the program? Decide what to do in the event there are no minimum legal requirements. Transition election authorities will have to decide what amount of

information needs to be disseminated and when, keeping in mind that information is critical to success and trust. Information programs should not be shortchanged at the beginning of the process.

- *Develop Evaluation Criteria:* Determine ways to measure whether the programs succeeded in meeting their goals and objectives. The evaluation criteria should be based on the resources available, production and media costs, what can be done for free, how much time there is for program development and implementation, and the demographics of program delivery. When developing a media campaign, it is a good idea to use focus groups before, during and after the programs to measure public reaction and adjust the messages accordingly.
- *Determine Target Audience:* Will the audience be specific, or it will be all voters? Will it be special categories of voters such as 16-24 year olds, women, or farmers? Should it focus on urban or rural messages? Each target group will respond differently to message design and content. It is important to understand what time of day is best to reach the target audience and in what setting. This information will be invaluable when deciding what type of media to use and when.
- *Marketing and Media Strategy:* Incorporating the following elements into the media development stage will help ensure that the correct media and message are being used to reach the intended target groups. This is the stage where a voter information theme should be developed--a theme that people can identify with and something that helps them feel they must become part of the transition. Examples of voter information themes are:
 - The future of our country is in your hands.
 - Your vote is your children's future.
 - If you want to make a difference, vote.
 - Participate in your country's future.
 - Who, If Not You?

Some basic steps in creating an effective marketing and media strategy include:

- Utilize all available resources to achieve maximum impact in the most cost-effective manner to accomplish program objectives.
- Ensure all materials and announcements focus on the objective.
- Determine if the message should be positive, negative or both.
- Determine primary medium for the target audience.
- Ensure that all media selected will support the program objective, keeping in mind that rural citizens may not have television, may not have electricity all day, etc.
- Start dates may vary but must be coordinated by the program director.
- Make messages creative, entertaining, interesting and informative. The Cuban people may not react favorably to "talking heads." In former Soviet countries, "talking heads" tend not to attract attention or provide lasting information. Cuban transitional election authorities should develop new methods and demonstrate change through the media programs.

- *Use of Television* - Television may be expensive, even if the government is able to require the TV stations to carry its messages. Because production for television can be time consuming and costly, it is necessary to first make certain that it can give substantial enough coverage to make it cost effective. If there is no requirement for television channels to provide public service messages, then some arrangement should be made with broadcasters to air the messages during prime time and at free or reduced rates. If the television stations are government controlled, it will be easier to direct them to air all public service announcements (PSA) and provide prime time for longer election related shows (although there are other obvious downsides to continued government control). The transitional election authority will have to make all necessary arrangements to be sure that wide coverage will be given to election- related issues.
- When planning a media program for television, know what time broadcasts occur, where they are received (in both urban and rural areas), what they require in terms of production quality, what facilities are available for assisting in production, and how much lead time is needed for scheduling. When developing programming for television, there are several collateral products that can be made from a TV spot. If the quality is good, the audio portion can be used for radio. Graphics can be used for newspaper ads. Some spots can be incorporated into training materials for local election officials and election-day workers. Time and money are the most important factors in television production.
- *Use of Radio:* Radio will probably have nation-wide coverage and will be the media of choice in the rural areas. Media studies worldwide indicate that in transitioning and developing countries, most rural people have radios in their homes, and often take portable radios into the fields or on boats when they are working. Radio reception tends to be stronger and more reliable than TV broadcasting, and has a greater number of broadcast hours.
- *Print Media:* Newspapers of all sizes and distributions, magazines, posters, flyers, church bulletins and the like. Print media require graphics which embody the theme of the voter information program, and which carry the specific message needed at the time of publication. The use of print media is generally best one week before an election event to remind citizens about what they have to do in order to participate. For example, print media and posters are good as reminders for voter registration opportunities, voting times and day, sample of ballot make up and special notices. However, print is not good as a primary method of voter information, as many newspapers do not reach remote areas. Furthermore, using print media does not meet the needs of citizens who may have a problem with literacy and therefore with understanding the important or new requirements of the election law. Print media should be considered only as a supplement to all other types of programs.
- Business and industry use certain types of media that help them advertise their businesses and get out important messages to the public. Grocery bags, napkins and coasters, and the like make excellent supplemental outreach materials, and can penetrate a lot of places and homes that other types of advertising cannot. Also, businesses can distribute such printed materials to their employees. Any type of printed materials will reinforce the primary sources of voter information. The more times citizens get a concise, informative message about the process

and how it works, the more likely they are to perceive that the transition government sincerely wants the electorate to become well informed voters.

3. Supplementing the Voter Information Campaign

There are many other ways to supplement the voter information campaign, ones that will not seem intimidating to voters, and that will carry non-political, non-partisan messages. Movie theaters may be a good place to show the made-for-TV spots or to deliver longer taped information programs, particularly if there are movie theaters in outlying areas. Schools and churches frequently have posters and flyers which children and parishioners can take home. Discussion groups can also be planned at these locations. In rural areas schools and churches are often the primary medium of social communication and, thus, a focal point of people's lives. Local election officials can be trained to present programs concerning new election laws, rules, requirements, and regulations as well as encourage citizen input and participation. These in-person opportunities will improve the image of the election operation and increase citizen confidence in the outcome.

Political parties, NGOs, community organizations, unions, collectives, and activists groups should also become part of the voter information effort. Representatives of these groups often have contacts in communities where election-related information will be critically needed. In a transition situation, every public and private sector representative should be enlisted as part of the information initiative in order to increase access into information-deficit constituencies.

- *Press Briefings, Press Releases:* All government and independent press must have complete access to the national and local election authorities and feel free to report election-related news without fear of reprisal. The media, whether state controlled or independent, should be encouraged to report election events, candidate and ballot access information, voter registration and voting information, and other issues which impact the election process.
- The local and national election commissions should hold press conferences, issue press releases and give press interviews on a regular basis. The commissions should have a spokesperson who arranges and coordinates interviews and briefings as well as writes and edits press releases. Gaining the confidence of the press will help ensure that they participate in dissemination of critical information about the election process.
- Internet: This can be an effective method for delivering an unfiltered message and a particularly good way to reach the international community whom the Cuban authorities will need to be supportive in the transition effort. It can become a repository for all election-related materials as well as a way to provide the national and international press with up-to-date information.

4. Creative Strategy

A theme should be developed for the transition/election cycle which will be used in all media programs. Creative work should be done by a public relations company or a professional in the field. This will help insure quality and efficacy. New informational advertising has to be interesting. This is especially important if election information was formerly presented in "officialese" or with implied or subliminal threats built into the messages. Under the new government, the media campaign should contain a motivational element that:

- Creates an emotional appeal that motivates the targeted audience to perform the desired task (i.e., to register and vote)
- Contains specific messages for each targeted audience
- Develops a general message for all citizens
- Creates excitement and interest

The informational component of the creative work should do the following:

- Explain the facts, using one message for each electoral event.
- Emphasize the relationship of the facts to the individual.
- Make sure that the message is understandable.
- Specify pertinent dates, times and places for each activity and make sure they are accurate.
- Explain the desired result of the activity.

Following are examples of creative strategies for various electoral events.

a. Voter Registration

The purpose of the campaign is to motivate citizens to register and then to check the voter registration list to make sure their name and address are entered correctly. Use all media outlets, public and private sector organizations, meetings and discussions. Focus on the importance of the registration process in a democratic government, the issue of "if you don't register you can't vote," or in a more positive vein, "if you register, you can vote." Emphasize that there is a limited time period for registration and that potential voters must act before the deadline. Explain the legal requirements of the registration process, such as what eligible persons need to bring to the registry and what serves as proof of registration. This campaign should begin seven days prior to the beginning of the registration process. Messages can be run several times a day through the registration period.

b. New Election System

Explain that this is a new election system using newly developed programs and democratic processes and procedures. (Free and fair elections have not taken place in Cuba since 1940.) Explain the importance of the new government and of the election, as well as the citizen's new responsibilities. Tell the citizens what to expect and what safeguards are built into the system to protect its integrity. These informational programs should be launched 35 days prior to the election and run on a daily basis during prime time.

c. Voter Registration

For the voter registration campaign it is critical that every potential voter know and understand what they must do to be qualified to vote on Election Day. Therefore, the election commission should develop at least three 30-second TV spots and four 30-second radio spots with the assistance of a professional production company. There should be one display ad for all newspapers and a series of press releases launched with a press conference. In addition to the media programs, flyers and posters should be developed which can be handed out at various meetings, schools, churches, community events and the like. All the information must contain the times, dates and places for registration, what voters must bring for identification, what forms they must fill out, what they can do if they cannot fill out the forms for themselves, and what they will receive as proof of registration. Election commissioners and local election officials should be prepared to attend meetings, seminar and community events so that they will be able to determine if citizens understand the requirements and methods.

5. Scheduling the Media Programs

Once the programs are developed, they must be scheduled so they can be launched to coincide with major electoral events. Scheduling must take into account media capabilities in each geographic location and should cover a wide variety of air time. All scheduling should take place during prime-time hours, so that most people will have an opportunity to hear or see the information. It is important to develop a calendar of programs and scheduled air times, launch dates, and number of times each program or spot will be run. Monitoring of these spots can then be more easily accomplished by local election commissions and the groups who are working with the transition election authorities.

6. Role of Election Officials

In addition to the media information program, election officials should be prepared to become advocates and spokespeople for the transition process and attend as many community meetings as possible. While the media programs are critical to the success of any information program, there is no substitute for face-to-face communications. It is important to give all the players an opportunity to see how people react to the various messages they are getting and for citizens to be able to ask questions about the change process. Meeting people in person will help election officers evaluate the success of the program by asking questions such as: Are people seeing the spots? Are the spots understandable? What questions do they provoke and what else do people want to know? Evaluation of the program should begin immediately after the program is developed and be terminated only after the program ends. If, during the evaluation process, the election authorities find that any of the messages are not being understood or causing confusion, they can be eliminated or redone.

7. Program Evaluation

All media information and education programs should be monitored and evaluated periodically. Evaluation is undertaken to determine the effectiveness of a program based on the program's goals, and to determine how programs can be improved in the future. There are many valuable outcomes of program evaluation, such as accountability, appropriate resource flows, and new program development.

When planning an evaluation program, it is useful to focus on the problem and the objectives the program was designed to address. Program administrators will want to know if the program was successful in reaching the intended target audience and the benefits the

audience received based on the information the program contained. Since there is a cost involved in creating and disseminating the program, determining how well the program met its objectives will help determine new programs. Determining future needs should be based on a clear-eyed evaluation of the success achieved by the current program. Obtaining needed resources should be based on the evaluation findings.¹³²

There are a variety of evaluation techniques that can be used for media programs. These include:

- Focus groups developed to monitor and evaluation the programs
- Public opinion survey data
- Observation of citizens' ability to participate
- Interviews with election officials to determine the types of questions asked by citizens and the types of problems encountered
- Interviews with Election Day workers and NGO groups

Once the evaluation data is analyzed, recommendations for future programs can be developed and defended. Short-term voter information programs should be employed throughout the transition period to ensure that all citizens have the opportunity of becoming familiar with the process.

8. Importance of Timely, Accurate and Relevant Information

Providing timely and accurate information to citizens is critically important because people without information cannot act responsibly. "People without information cannot monitor themselves or make sound decisions. People with information can."¹³³

Citizen empowerment and movement toward an active civil society will take time, effort and understanding. Empowerment comes from teaching others the things they can do to become less dependent on the government and more self-reliant. Through election information and motivation programs, citizens' perceptions will be developed and reinforced.

Information is the first step in empowering people. When developing the messages, it will be helpful to incorporate the following overarching themes:

- *Purpose:* changes in the election system to encourage multiple candidates for public office, representing a variety of views and concerns.
- *Value:* to create access to the political process for all citizens and to build a government that is responsive to their needs.
- *Image:* a new picture of the future; where we are coming from and where we are going.
- *Goals:* What, when, where and how to do that which good citizens in a democracy are supposed to do?

- *Roles*: Who does what, how do the people fit into the new society?
- *Organizational Structure and Systems*: How can people and organizations support the new system?

This kind of information sharing will help break down hierarchical thinking and help people be more responsible. Information allows networks of people to understand the current situation in clear terms and begin to build trust throughout the country.

F. Building a Civil Society Through Civic Education Programs

Countries in transition do not automatically gravitate toward democracy, nor do citizens understand what democracy means in terms of government responsibilities and citizen roles. Public opinion research done by IFES in former Soviet countries reveals that for the most part citizens neither understand nor agree on what democracy is or what it means. For some it is complete freedom, for others protection of personal rights, while many speak of higher standards of living. Few see democracy as a society governed by laws.

In these same studies, when asked about the formation of non-governmental organizations (NGOs), there is uncertainty about their necessity and no agreement on their use or function. Moreover, while most people agreed that civic organizations, including political parties, are necessary, they are also undecided about joining such organizations. This can probably be attributed to lack of information about them and lack of experience in voluntarily joining groups. The data analysis tells us that in many former Soviet states there is no relationship between attitudes and behavior where civic groups are concerned. There seems to be a disconnection between the public's positive attitude toward the formation of civic organizations and their lack of desire to join them.¹³⁴ From a program development standpoint this is significant because it demonstrates that people coming out of a dictatorship do not necessarily know or understand the basic principles of democracy nor are they automatically inclined to support it.

As mentioned above, the definition of civil society for the purposes of this report is as follows: *Civil society is the sphere of voluntary personal, social and economic relationships and organizations that, although limited by law, is not part of governmental institutions. Civil society must be a domain where individuals are free from unreasonable interference from government.*¹³⁵

The space for civic life and civil society should be broadened in Cuba as soon as possible. Based on past experience in developing democracies, it is probable that most Cuban citizens will not understand the need for citizens to be concerned with the affairs of the community and nation. Using messages accessible to the people is critical because of the lack of vocabulary in a post-totalitarian country to describe civil society, citizen support and input, and civic life. A lexicon will have to be developed as the transition is taking place.

Larry Diamond, Senior Research fellow at the Hoover Institute, points out :

If we think of democracy largely in electoral terms, one could argue that at least 20 of the 22 countries in Latin America with populations over one million are democracies today. But if we demand more of democracy than electoral competition (however vigorous and fair), many other principles come in play. Power must lie in fact with elected officials and their appointees, not the

military or hidden elites. Presidential power must not overwhelm and demean other branches of government, but must rather be constrained and held accountable by the legislature, the judiciary, and institutions for checking corruption. Government in general must be subject to the scrutiny of a free press and civil society. Citizens must be able to pursue their interests not only through parties and elections, but continuously through mobilizing in all manner of independent organizations. They must also be able to make intelligent informed decisions, and this requires a pluralistic mass media that is not controlled or intimidated by government. All of this requires more than just elections. It demands a legal and constitutional order that protects basic freedoms of belief, expression, publication, assembly, demonstration and petition; a rule of law that ensures due process. Real democracy must encompass real civil and political freedom.¹³⁶

Experience over time demonstrates that institutional reform does not occur without strong demand from the people. The purpose of civic education, then, is to define democracy and democratic institutions so that citizens can assist in the restructuring and strengthening of their society and culture. An educated and aware citizenry will ultimately provide the demand and oversight for the protection of human rights, and for parties and legislatures that are responsive to and representative of the people.¹³⁷

"Good government" requires a motivated and empowered society to demand accountability from the new political and governmental institutions that will be developed. Civil society development will come through the popular embrace of democratic institutions, changes in government structure, and the creation of an awareness that citizens have the right and responsibility to create pressure on the government to meet their needs. The government must encourage citizen input and the formation of NGOs that are truly independent of government control. Trust must be developed between the government and its citizens. This kind of dramatic change in attitudes and behavior does not take place quickly.

Beginning to build citizen motivation, confidence and empowerment can begin at any time before or during the transition period. Civic education can begin with simple programs that teach pride in citizenship and in country, and a desire to improve current social and economic conditions. It includes understanding historical social struggles such as that experienced by Cubans in the 1950s and 60s when there was a quest for an improved quality of life both materially and ethically. Whatever form the programs take, they should become an integral part of the transition process, so that citizens will be able to participate in the process of change.

G. Understanding Civic Education

Educators, academics, and governments have, over time, come to realize that, in order to develop and maintain a free society, citizens have to have the knowledge, information and skills necessary to understand and maintain it. The goal of civic education is to build an informed, responsible, and participatory electorate that can share in political life and that understands the fundamental values and principles of democratic institutions. Citizen effectiveness and responsible participation requires "acquisition of a body of knowledge and of intellectual and participatory skills."¹³⁸ There are many institutions such as family, church, clubs, advocacy groups, etc. that can help develop and shape civil awareness and interest in

representative government. Historically, schools have been the primary institution for teaching civic competence and responsibility.

Civic educators agree that formal and early education should be given in civics and government to help students gain a basic understanding of civic life, politics and government. In Cuba, there have been civic education programs in the schools which taught the principles of the Revolutionary Government and provided students with the skills they would need to support it. As the government begins its transition, officials must develop new educational programs geared to increasing students' understanding of the workings of democratic government and political systems, as well as of other types of systems. A formal education component should provide an understanding of the fundamental rights and responsibilities of citizens and the framework for competent and responsible participation in government. Lessons learned in school tend to be brought into the home by students. This often leads to family discussions and supplements ideas and learning for adults as well as students.

The formal educational process can be augmented by many related learning experiences in both the school and community, all of which can enable students to learn how to participate in their own governance. Participation in community and informational educational programs, such as mock elections and student government, and meeting local and national government officials can supplement the learning and awareness that is gained in school-based programs.

Too often, the value of in-school civic education programs is underrated because educators say that students glean knowledge about government and democratic institutions through subjects like political science, history, or economics. That may be partially true, but civic education should be seen as central to the development and functioning of a democratic society, especially in a country like Cuba where major changes need to take place. Currently there are many countries where people already have the right to participate in and control their governments but, like Cuban citizens, they have not developed the skills and knowledge necessary to do it effectively. Democratic development will flounder until citizens know and understand what are the rights and responsibilities required of citizens in open societies.

When Cuban election authorities and educators begin to develop civic education for the schools and community groups, they should address both the knowledge and skills necessary to participate in government and the political process. The skills needed include:

- Ability to influence policies and decisions by working with others;
- Ability to articulate interests and make them known to key decision and policy makers;
- Coalition building, negotiating, compromising and consensus seeking;
- Managing conflict constructively;
- Monitoring local and national government and politics;

H. Determining Program Contents and Delivery Style

In the initial phases of program development, that is, as the transition process begins, Cuban authorities should base the educational curriculum on the events that require immediate information and education programs. That will help ensure that program content is directly useful to the voters.

Content and delivery style should be based on what is known about the various target populations. Generally speaking, citizens in urban areas who are university educated and who are already stakeholders in the government or the country will respond sufficiently to short-term media-type information programs and written materials. Less educated and rural populations generally respond better to face-to-face communications where they can see and hear, and ask questions to reinforce their learning.

If electronic media programs are going to be used as a source of information, the programs should provide a variety of speakers and employ the use of charts, pictures, graphs, or whatever is appropriate for presentation. Communication studies show that minds begin to wander after 18 minutes, so there must be changes in voice or the use of visual materials if the program is going to maintain people's attention.

Important electoral information--such as time, dates, and places of registration--can be broadcast in short media spots, but if so, no more information than is necessary should be provided to get the desired result. If, on the other hand, the program is geared to new laws, procedures, or equipment, then a longer educational type program will be necessary.

All program content should be based on an analysis of past problems and issues and future expectations. It should incorporate information that can develop confidence in the election system and the outcome of the election. It should also provide the contact information for local and national election officials. By knowing where to get the necessary and official information, voters will feel more confident in their ability to participate effectively.

All content should be geared toward assuring the voter's understanding of processes and procedures. These run from candidate and political party ballot access information, through understanding how the votes will be counted, secured, certified, and the winners declared. Citizens will want to know how the new process will protect the integrity of the system and have assurances that the will of the people will be reflected in the election outcome.

Finally, education program content should create an awareness and confidence in people's ability to cope in the new system, as well as to understand it. The new system should put more responsibility on the citizens to provide oversight and insights into how the process functions, as well as making suggestions for improvements. Civic education should suggest ways for citizen input using the independent media, as well as how to work with local and national officials to evaluate programs, procedures, and processes.

The transition authority should consider also developing programs for citizen groups on how to become effective in a civil society. This kind of program would be devoted to demonstrating how citizens and citizen groups can provide input to local and national election officials, political parties, governmental units, etc., for continuous improvement in government strategies and programs. In essence, it could be an educational opportunity crafted to help officials collect needed data on how well the transition is working, how well the government's programs are working, and whether or not there is understanding and support for the various stages and changes in the transition process. It would also indicate how citizens' groups could communicate their information to appropriate governmental officials.

Developing such a program for NGOs can also be helpful to administrators who are new to the election process and have no institutional or practical knowledge about election process or administration. Elections and election programs are a time-sensitive and legally

demanding function, and require a sense of organization, timing, management and logistical ability that take time and experience to develop.

Election management is unforgiving in the sense that election administrators have only one opportunity to run the program and it has to be done correctly the first time. There are no second chances in election administration. That is why it is critical for administrators to be professionally trained in program development, quality and time management, logistics and planning, and evaluation techniques, or to be able to count on technicians who are.

I. Types of Civic Education Programs and Course Content

When planning and developing a civic education program or course curriculum, there are many elements that can be incorporated. Which are chosen depends on the direction the government decides to take, and the speed with which the transformation occurs. There is the issue of what to call a civic education program: building a civil society, civic enlightenment, education for democracy, education for citizenship, participatory government, are some of the possibilities. The program title of the program should be something that is meaningful to the people and something with which they can identify. Like the voter information programs, civic education programs should have a theme which is carried through all programs and materials. Offering consistent messages in times of change can help reduce the perception of chaos and confusion.

In many transition scenarios, the core of the old or former political culture may not be incompatible with the new vision, even if some specific norms are. The challenge for the new officials may be to graft new practices, programs and procedures onto old roots while shedding inconsistencies.¹³⁹ In terms of election procedures and practices, the changes that occur will probably be in areas that do not necessarily directly affect the voters. In fact, there are many current Election Day practices in Cuba that can remain through the transition period. The changes as well as the continued practices should be thoroughly discussed in all educational and training events.

While it is true that educational programs during the period of transition are primarily intended to teach new facts and skills, they are also designed to help change attitudes about the totalitarian system and develop support for the new system. Changing political culture and norms is not something that can be done easily. Noted one commentator:

Attempts to grab it and twist it into a new shape never work because you can't grab it. Culture changes only after you have successfully altered people's actions, after new behavior produces some group benefit for a period of time and after people see the connection between the new actions and the new programs. Thus, most culture change happens in stages.¹⁴⁰

As administrators develop education programs, they should keep the following principles in mind:

- Changing political culture comes last not first: most changes in norms and shared values come at the end of the transformation process.
- Change in political culture depends on the results: new approaches usually sink into a culture only after it is clear that they work and are better than the old methods.

- Change in political culture requires a lot of talk and information: without a lot of instructions, information and verbal support, people are often reluctant to admit the validity of new practices.
- Change may require changing key people: no matter how much the old system changes, if the people running the system are the same, even at the local levels, people will not perceive change and therefore not support it.

In all stages of program development, a common theme should be used. The theme should take into account the need for new visions, new words, and new directions. Repackaging former government rhetoric will not instill a sense of change or confidence in the transition process. The citizens of Cuba should hear fresh new messages that help them identify with the new government's transition policies and election procedures and help them understand the importance of their participation in the process. In the first stages of the transition, people will want some continuity of messages so they can identify with what is going on around them. Most of all, people will want to know the "who, what, when, where and how" of the changes, and where they fit in as individuals and communities.

Certain elements should be incorporated into the educational programs regardless of the target audience. These elements are: *the meaning of democracy; the role, responsibility and rights of citizens; the fundamentals of good governance and democratic principles, procedures, and institutions; democratic laws and courts; and citizen responsibilities in the new government.* Worldwide, these elements tend to be the foundation of all civic education programs, whether they are school or community based.

The educational programs should also include a section explaining the relationships between elections and general civic education, and how elections and responsive government contribute to the development of a civil society. Also, there should be information about:

- the role elections play in a democracy and how that is different from previous Cuban elections;
- the role, responsibility and rights of voters;
- citizen access to information;
- the roles of election officials, political parties, candidates, and NGO groups in elections specifically and government in general;
- new legal and procedural requirements in the elections process;
- procedures that will be used to protect the confidentiality of the vote, security of the ballots, and integrity of the election process.

In other words, with all new programs, the public will have to know how things will be different, how they will be the same, and how both changes and continuity will impact on the people.

All of the new programs and information should be designed to help empower the people. Nothing, however, will assist in the empowerment process more than demonstrating that the new government seeks to understand people's attitudes, needs, fears and concerns. All of these elements can be incorporated into both the information and education programs developed throughout the transition period.

1. Developing Education Programs

As with any program, there must be clear goals and objectives. It is critical that programs be designed for specific segments of the population, possibly divided by age and geographic location, and special groups such as women, students, labor, farmers, etc. Each group will have different needs and abilities, so program objectives may differ even though every group might need the same general information. The objectives should be based on who is being taught, the length of the program, and the expected outcomes.

Instructional objectives of education programs can vary. They can range from:

- Factual overviews of new election processes and procedures and the need to participate in the registration and voting process

to

- Behaviorally-based programs that encourage involvement in civil society development and teach citizens such things as the meaning and application of oversight, the formation of collaborative relationships with government and NGO organizations, strategies for government reform, etc.

The objectives should contain elements that help create a demand from a broad base of citizens for implementation and maintenance of democratic institutions, as defined by international standards and norms. The programs must provide not only the information but the new skills needed to help citizens develop the capacity to make their government responsive. Finally, the programs must include the values, norms and practices that make democracy governable, and that offer support to governmental authorities.

Citizens should, through education, understanding, and practice, support continued development of citizen-based government institutions and programs. Educational programs will create better understanding of government in general as well as new government programs and procedures. The programs should also generate citizen support for the necessary changes made during the transition period.

Whatever the program objectives are, there will be both short-term and long-term benefits for both the citizens and election administrators. These benefits can help develop a supportive constituency for future electoral reforms. The benefits are:

- Building understanding and confidence in government officials and programs. Education programs can be designed to improve communications, promote new and innovative strategies for change, and promote citizen support.
- The use of educational opportunities by election officials to conduct voter registration. In addition, local election officials will have an opportunity to participate in local education programs, get acquainted with new voters, and develop new and supportive constituencies. They will also be able to use these opportunities to determine how well their short-term information programs are working.
- The encouragement of a new voting mindset. Even though Cuban citizens have been required to vote in the past, the concept that the purpose of voting is to empower people and encourage responsive government will be new. Young people who will be voting for the first time will have an opportunity to meet the administrators of the process and give and get feedback on the transition process.

- The creation of a channel for reaching the community at large. Because education programs will be given in schools, trade centers, labor halls, religious centers and the like, there will be many more in-person opportunities for election officials. In addition, in rural areas, many of these meeting areas are the social focal point for the community so people of all ages and all political persuasions will probably gather when there is an education event going on.
- The conservation of staff and office time when faced with the same questions over and over again. During any election cycle, voters, political parties, candidates, media and others, tend to have many questions, problems, and issues that need to be addressed. Educational events can provide election officials with additional opportunities to learn about the issues first hand and react in a positive manner.
- The education of citizens on the need to protect their vote and their electoral system. In any civic education program, election officials should have an opportunity to present election related information and to reinforce the need for making every vote count by safeguarding the integrity of the election system.

Educational programs that include civil society, civic and electoral components benefit everyone. New voters, students, teachers, resource people, election officials--all will learn from one another and be able to reinforce the need for on-going education and skill development. These experiences will demonstrate how people can become safely involved, while developing a sense of being part of the change process and the future of the country. The civic education programs must begin at the earliest age possible and their lessons taught continuously throughout a lifetime. The programs can begin teaching young people respect for law and order, the need for fairness in representation, and that people must have the opportunity to decide who governs them and how.

2. Establish Educational and Training Objectives

All election programs have to have definitive learning objectives, and include materials written to meet those objectives. Adult learners are especially sensitive in their need to know what they will learn and in determining if the programs met the stated objectives. Meeting the needs of the learners and the stated program objectives are good ways to instill confidence in the programs, the presenters and in government officials providing support for the process.

After defining the educational needs of the various target groups, learning and training objectives can be established. Course objectives should be behavioral in nature, that is, stating what people will be able to do once they complete the program. Also, objectives need to be measurable, so that both the participants and the presenters can evaluate the program for effectiveness. Finally, learning objectives must state clearly at the outset what the programs expect to accomplish, so that participants can focus their attention on what is being presented. The objectives help determine what is expected from the learner in terms of time, effort and expertise. Once the problem is clearly defined, determining which problems need to be addressed by educational/training programs, and which can be dealt with by informational media programs, will become clearer. Training objectives will relate to, and evolve from, defining the training needs for each target group.

When establishing educational learning objectives the following should be considered:

- The ranking of learning needs in order of priority or event.

- What needs can be resolved through education and what can be resolved through other kinds of programs.
- The amount of time and funding available to spend on educational programs.
- The time potential learners have to spend learning and whether the program is voluntary or mandatory.
- What can be accomplished with education programs and what will be the benefits of in-person programs to the election officials.

3. General Civic Education Curriculum Content

Educational programs that describe new government realities must begin with a frank and honest recognition of national realities. It will be important to assess the public's current knowledge and attitudes about the former government as well as their attitudes about potential changes that will be taking place throughout the transition process. In addition, the transition government needs to know what the people know about democratic systems, open and direct elections of officials, self-government, and legislative development. This is especially true in a country that has been ruled by presidential decree and where the legislative process has been by-passed.

In general, public opinion surveys in former Soviet countries as well as in the Americas reveal a low level of civic awareness, a cynical and detached populace and a general rejection of the notion that voting can change anything. Even in newly democratic countries in South America, confidence in government is shallow, as is a sense of trust and efficacy.¹⁴¹ "Democracy remains poorly institutionalized, haphazardly responsive, and weakly accountable," noted Larry Diamond. Civic education can do two things if properly designed, it can "reform and strengthen democratic institutions; and change the underlying culture" --over time. It is important to teach citizens by means of various educational methods so that they will be able to help create an effective government and bring about institutional reforms.¹⁴²

The ultimate goal of civic education should be generating a demand for a democratic government that values its people and their input and builds continued support for democratic reforms. In order to do this the curriculum should contain information on the following concepts:

- Basic principles and values of democracy
- Philosophy of competitive politics and dialogue
- Appreciation of freedom
- Restraint of power
- Political choice, freedom of assembly, freedom of speech
- Accountability of leaders and citizen oversight

- Constitutional government and respect for the law

The curriculum should include not only the theory but also the facts of recent history in Cuba and other countries in transition. There needs to be an element of practical application so that the citizens can learn to compare and contrast what they had with what they can have as they move through the transition. The educational process allows people to develop a sense that they can benefit from the experiences of other countries going through similar transitional processes.

Since this type of general education is a long-term process, modules should be developed for use in the school systems, both public and private. Public opinion research demonstrates that young people are generally the most responsive and receptive to civic education and are the most likely target group to support change and transition. Therefore, civic education programs for young students should start in the early grades and become part of the yearly curriculum that teaches students the history of their country and its political development.

As students move through their educational programs, more concrete materials should be introduced which demonstrate the

...growing body of regional and international covenants and institutions that guarantee human rights and, in effect, a right to democracy. Any comprehensive program of education for democracy should include study of the Universal Declaration of Human Rights. It should also include the various democracy-affirming charters and resolutions of multilateral organizations. The most important of these are the OAS resolution 1080 on the Collective Defense of Democracy (adopted in Santiago [Chile] in June 1991), the 1993 Vienna Declaration and Program of Action on Human Rights, and the growing architecture of OAS, UN and Organization for Security and Cooperation in Europe (OSCE) organizations.¹⁴³

Including these materials in the educational programs can provide legal knowledge as well as norms for respect of human rights, a subject many young Cubans will take to heart. As a vehicle for institutionalizing democratic reforms, civic education should contain information on how to separate power among different branches of government, decentralize authority, and structure the elections of representatives so that "governing coalitions (or majorities) can be assembled while the abuse of power is checked."¹⁴⁴ Curricula should emphasize the notion that elections and representative government are the key to democratic reforms and process. If there is no pressure from the people the government will not feel compelled to change.

The education process works best when young people learn how to form civic groups or governmental organizations and feel free to associate publicly and participate actively in the government's decision-making processes. This can be done through a variety of programs such as developing collaborative relationships between school officials and officials of education departments to form student governments. These allow students to practice elements of democracy, elections and representative government.

Elementary school age children can learn about campaigning, elections and voting through voting for their favorite animal, color or food. At this level it is possible to incorporate all elements of the general curriculum, but in a simpler method, using examples and concepts which are being taught as part of the curriculum at other grade levels.

In all new civic education programs there should be modules concerning the constitutional, structural, and institutional changes taking place in the country at any given time. Through the education process, it is possible to keep citizens updated about the state of the change and to determine how well the changes are being understood and accepted. The educational process can take place in schools of all types, as well as in community events. In fact, during the initial phases of the transition, it will be appropriate for local and national government officials, as well as local election officers, to attend community functions. There they can be available to give out literature or information, answer questions, and respond to concerns. Community events are also a good place to alert people of educational opportunities within their local institutions, so that everyone will have the opportunity to attend the events.

4. Education Program Planning¹⁴⁵

Education programs can last for one hour or one year, depending on the program objectives. The success of the program lies in the ability of the learners to be able to use the information to participate in representative government with a minimum of difficulty. Programs for adult learners should be participatory, incorporate the latest principles of adult education, and provide information that is immediately useful. Educational programs can also be geared toward longer-term learning. Both kinds of programs should be taught in a classroom setting.

Election officials and curriculum developers should look at the current knowledge and skills of the learner, and then determine what they want to teach. When developing educational programs, election authorities should work with academics who have experience in developing curriculum for school-based programs. These educational experts will be able to assist in developing curriculum modules that fit into existing educational programs. They will also be able to teach election officials how to train teachers and educators on how to present the new programs. When developing new modules for civic and election education, election officials at the national and local levels must become on-site resources for the schools. All election administrators should participate in train-the-trainer sessions for teaching the new curriculum.

It will be important that the new modules include innovative and interesting means of building skills so that citizens will be able to participate effectively. Election officials will want to coordinate the information, themes and times of their shorter voter information programs with their longer-term education programs.

The following is a guide for election administrators to use when planning an election related civic education program:

a. Program Design

1. Content - determine what needs to be covered.

- concepts
- principles
- facts
- skills: what if anything will people have to be able to do in order to succeed?
- values of the learners

2. *Modules - Decide how the content can be organized into manageable units.*
 - length of time for each unit
 - amount of material contained
 - schedule required
 - resources needed
3. *Sequence: Organize each unit in to a logical sequence.*
 - move from simple to complex
 - stay focused on topic
4. *Presentation Method - Determine the most interesting and efficient way to present the materials.*
 - Lecture
 - Demonstration
 - hands-on or practice
 - question and answer session discussion
 - role-playing
5. *Facilitators - Decide who should facilitate the new programs.*
6. *Positive Learning Environment - Create a positive learning climate.*
 - Become acquainted with one another: when people know who is teaching them and what the expectation for the learning will be, they become more receptive.
 - Make learning fun and interesting
 - Develop a safe learning environment
 - Involve the learners in the learning experience

b. Targeting the Audience - Understanding Their Needs

Before beginning to develop the education program, it is important to know what the learner's needs are going to be for the short and long terms.

1. *Targeted Audience - Determine who the audience is.*
 - Age group
 - Geographic location
 - Ability to reach the targeted audiences
2. *Information Needed - Define the information needs.*
 - What does the group need to know?
 - How was that determination made?

3. *Desired Outcome*

- Is the outcome going to be to provide information, change behavior, change attitudes, or all three?

Based on the answers to the questions above and knowing what resources are available--the time and money--will help determine the length and timing of the program. Working with educational organizations and institutions can provide an important supplement to the civic education program development and delivery systems.

Program planning also requires that the programs be presented to the targeted audiences at times and places which meet their specific needs.

c. Designing a Learning Plan

There are many ways to design a learning plan, but perhaps the most efficient way is to answer the following questions:

- What are the questions that should be answered through the educational program?
- How will attending the educational program benefit the participants?
- What skills should be taught, and what is the best method for teaching them?
- What attitudes should be addressed and what is the most efficient way to begin attitudinal change?
- What is important to know about the participants?
- What data should be incorporated into the learning experience. Where is the best place to get it? Who are the resource people?
- What is the most efficient and effective way to collect the data?
- How much information is too much? How much is not enough?

When these questions have been answered, then program development can begin. Education and training must be considered an on-going process. After each training or education cycle, education programs will need to be evaluated, then redesigned to meet new needs. It is important to keep in mind that there will have to be different types of educational programs developed over time, because people's the needs of the people will change as time progresses, changes take place. As young people come of age to participate in politics and government, voter information curriculum will have to be renewed to make it reflect changing realities. The changes that take place over time will include updating new laws, requirements, procedures, constitutional issues, etc. Education programs should be developed and updated by professionals in public relations and academic curriculum development. Election authorities, legislators and other government officials should act as content experts -- valuable resource for educators and program facilitators.

For shorter-term programs for adult groups who will need to know about the immediate changes in the procedures, election officials can develop programs and materials with the

assistance of NGOs familiar with the information needs and abilities of their various constituencies.

5. Election-Based Educational Programs

In most countries, there are no specific or comprehensive educational programs or materials that teach citizens why they should participate in the electoral process and the value or benefit of voting. Rather, there are a few education or civic education programs that teach citizens about the importance of voting and then how to become involved in the election process. Election administrative procedures such as voter registration, requirements for voting, residence and domicile issues, etc., are left out of the school-based curriculum. Most citizens do not know what is required in order to participate in local, regional or national elections.

Around the world, there are few specific nation-wide or state-wide voter education programs. This may reflect the fact that few countries mandate voter education courses as a requirement for graduation from school. Students almost always take courses in government or civic education, but curriculum on election process and participation is often left out. Without proper background and educational opportunities, it is difficult to expect that citizens will understand their role in representative government and how they might make an impact on government policy or in the decision making processes.

Most educational opportunities are provided only to young children or high school age citizens, which limits the opportunity to learn about civil society development, representative government, democracy, free market economy, and related topics. In transition governments in countries where citizens have never learned about democracy, innovative programs for adults also have to be developed. In transition situations, government agencies should be encouraged to support the education of all segments of the population, so that these can provide appropriate input, oversight, and support for the new programs and governmental institutions.

Election-related education programs should be developed to enhance voter information programs about election reform issues. The transition process will probably have several phases prior to an actual election, and it is during these initial planning and implementation steps that voter information and education should begin. Educational programs can last from one to several hours in length and contain information on proposed initiatives that are being considered. Explaining the various potential electoral and governmental reforms allows both the transition government and citizens of the country an opportunity to give and get feedback on how different systems might work, what problems might be encountered, and how problems might be resolved.

The new educational curriculum can include information on:

- Proposed constitutional changes that affect government structures, how officials will be elected, and how citizen civil and voting rights will be protected. There should also be explanations as to "why, when and how" the changes will take place. People will want to know not only how things will be different, but why.
- Reforms encompassing election laws and procedures, media laws, administrative laws, and laws that affect the election violation and complaint issue. Potential candidates, parties, and NGO groups will be especially interested in these areas.

- Changes in legislative districts at both the national and local levels, and how representatives from each district will be selected or elected depending on the plans for direct versus indirect elections.

Once the constitutional and legal changes are determined and new documents drafted, there should be educational programs developed to inform people about their content and application. If citizen approval through a referendum is required it will be critical to help people understand all of the procedures contained in the new governing documents.

When new electoral laws are established, there will have to be a comprehensive national information and education effort that explains how citizens can become involved in the process, who can be involved, and where and when they have to go to meet the requirements as stated in law. Once times, dates, places and requirements are established there should be no surprises and, ideally, no changes.

J. Educational Programs for NGOs, Business and Industry

Developing and delivering information and education programs on a nationwide basis to all citizens is a difficult and time-consuming task. It will take a cadre of well-trained and well-informed educators and trainers working with national and local election officers to accomplish this task. Cooperation is required from all media outlets and sources, educational institutions at all levels, and NGOs, as well as business and industry. The new Cuban election authority should consider implementing an advisory group made up of representatives of these groups and organizations who will be responsible for assisting in the development, delivery and evaluation of the first few nationwide educational programs.

The election authorities can be responsible for the curriculum content with input from the government, educators, and citizens' advisory groups, making sure that the content is legally and administratively accurate. The election authority must seek to ensure that the election education program will be taught in a consistent manner throughout the country by well-trained facilitators with the assistance of local election officers. The primary objective is that every potential voting citizen has access to the information and education materials, and can carry out their responsibilities with a minimum of effort and question.

The advisory group can act as a "citizen arm" of the election authority and have the additional responsibility of working in an official capacity. The "citizen arm" approach has worked well in many countries, notably the Philippines, where NGOs provide information, education, poll watchers, and other services on behalf of the election commissions. "Citizen arm" groups have to be totally non-partisan and non-political, and can not be seen as a threat to the public. To avoid a perception of government control or intimidation, they should be made up of people who have not formerly been connected with the government.

The advisory group representatives can also encourage the formation of citizen-based groups and new NGOs that can act on form on an as-needed basis as independent resources for candidate and political information and issue development. They can also handle certain social, economic or environmental problems that the government can not. Independent groups like the League of Women Voters in the United States provide a valuable service to both the government and community, as they raise issues and make suggestions without becoming advocates for or against any policy or plan. This is important in the context of civil society development and civic education, as it allows an independent organization to raise the awareness and consciousness of the government and voting public.

K. Resource Organizations that Could Cooperate in the Development and Delivery of Educational Programs

The national ministry of education can be one of the most important and beneficial resources the election office can have. Ministry of education staff are experts in in-school programs, starting at the earliest grades, and have the expertise to assist in the curriculum development. They also have the knowledge of how best to teach the curriculum to students of all ages. Since in Cuba the voting age starts at 16, educating young people will be a critical part of the process. Using schools can also help provide needed facilities to reach parents, family members and other community residents, and the school, like other public institutions, can become the focal point of additional programs as needed.

The programs should reach elementary, high school, trade schools, and religious institutions, as well as colleges and universities. Teachers, professors, educators, and school administrators can be trained as education program providers and facilitators, and can teach or train students or adult populations.

Other groups and organizations that may be able to provide additional resource people include:

- Educational Associations
- Student Government Organizations
- Local Election Offices
- Non-partisan organizations
- Chambers of Commerce
- Business Community
- Media

L. Five Phases in Election Information and Education Program Management

Since program development will probably be taking place at a rapid rate, under great time pressure, the following are suggestions for program development and management. Election officials will want to consider hiring a staff expert or consultant who has experience in program management. Once the content is determined, this manager can quickly and professionally develop an effective program. The appointed election officials will provide management oversight, but will not have to get involved in the day-to-day operations required for successful program development. The stages can be broken down in the following way:

1. ***Initiate the Project:*** This phase requires that there be agreement among the officials that the project is important, worth doing and is designed to reflect this. As the project is being developed, there will have to be thought given to what the general expectations of the various stakeholders are going to be. Only then can the general scope of the project be defined and an appropriate project team can be assembled.
2. ***Plan the Project:*** Refine the scope of the project based on a balance of expected results, time and resources available. Make a list of all tasks and activities that will have to be accomplished in order to achieve the project's goal.

3. **Deliver the Program:** Make sure the program team is ready to deliver the program with all appropriate documentation and materials. Election officials should meet with the project team to make sure they are comfortable delivering the program as planned. The project manager must secure all necessary resources for the project team so they can deliver a successful program.
4. **Control the Program:** Evaluation and oversight of the program as it is being delivered is essential to the success of the program. Corrective action must be taken on an as-needed basis, remembering that the program has to be flexible enough to meet the needs of the stakeholders. Be ready to receive all information and evaluations and adapt resources and materials as needed. It is all right to change the scope of the program if it does not meet popular needs. If this is done, it will require returning to Step 2 (the planning stage), to determine how the program can be altered. Once changes are made to the program the new program should be tested on stakeholders to get their input and approval. Since many of the procedures will be new to the Cuban people, it would be wise to test the program on both people who know and understand the laws and requirements, and those that do not. That way, election officials can make sure they have included all necessary items and be certain that the program is truly reaches those who are not familiar with new laws and procedures.
5. **Evaluate Program Effectiveness and Determine Future Needs:** Learn from program and project experiences and feedback. Review project outcomes with team members and determine what future programs will best serve the stakeholders.

M. Conclusions

As they move through the transition, Cuban election authorities and other government officials will soon learn that their new tasks will require flexibility in the design and management of new processes and procedures. They will also require sensitivity to current values and mind-sets, issues of change management, and the need for timely and accurate information. This applies to programs as well as to information dissemination techniques and management styles. This is especially true in the field of professional election administration.

Election administration is an ever-changing and fluid process and its programs need to reflect this dynamic. The programs have to keep up with the process. The need for continuous voter information and education is essential and should be planned for in every program budget and staff decision.

Election officials will have to develop comprehensive and viable plans and programs, then work hard to keep them up-to-date. This will require knowing how much work needs to be done, and how much can realistically be done in the time frame allotted for an election cycle. All timetables have to be realistic, given all of the legal, constitutional, and administrative changes that are likely to take place. When developing any kind of election program, the first consideration must focus on the intended target audience and their needs and abilities. It is the people who count, and the programs must be geared to them. Since elections are fluid and flexible the programs should reflect changes as they occur. Popular awareness of these changes is essential if the people are to exercise and maintain their franchise.

Finally--and perhaps most importantly--new realities about democratic institutions, civil society, and civic education program components have to be given life, then nurtured over time. It will serve election officials well to remember that while behavior can be changed quickly, attitudes take time and care to develop. Diamond puts it well in his metaphor concerning cultivation of democratic citizenship:

A garden may survive with neglect, but to thrive it needs regular and faithful attention. Seeds must be watered. Plants must be fertilized. Cultivation is an ongoing obligation with many different tasks. And each task must be renewed with every season. A garden requires vigilance, guidance, balance, devotion, and constant care. And so does democracy. Like a garden, democratic citizenship will not emerge spontaneously. It must be cultivated.¹⁴⁶

Endnotes

¹ Report review and commentary in a letter to IFES, November 2, 1998

² 22 U.S.C. §6021, et seq. (1996); Pub. L. 104-114, Mar. 12, 1996

³ *Id.* at §6022(4).

⁴ *Id.* at §6065(a)(4)(A-C)

⁵ *Id.* at (a)(6)(A,C).

⁶ *Black's Legal Dictionary*, West Publishing Company, 1987.

⁷ De la Cuesta, Leonardo-Antonio. *Constituciones Cubanas*, Ediciones Exilio, 1976, p. 15.

⁸ Sanchez-Roig, Rebecca. *Cuban Constitutionalism and Rights; an Overview of the Constitutions of 1901 and 1940*, 1996.

⁹ Title IV, Section One, *Constitution of Cuba, 1901*.

¹⁰ *Id.* at Article 83.

¹¹ *Id.* at Title XII.

¹² The actual process of amending the constitution was initiated by a two-thirds vote in both the Senate and the House. A Constitutional Convention was then convened, and delegates to the Convention were to be elected in each province. The Convention then voted to adopt or reject each proposed amendment.

¹³ The Platt Amendment, which was attached as an Appendix to the Constitution, provided for certain restrictions on Cuba's sovereignty in the event that actions of the Cuban government might be perceived to be in conflict with U.S. interests. The U.S. Senate finally abrogated the Amendment in 1934.

¹⁴ Sanchez, Ignacio. *Constitutional Protection of Cuban Property Rights*, 1996.

¹⁵ *Id.* at page 399.

¹⁶ Sanchez-Roig, op. cit., p. 400.

¹⁷ *Constitution of 1940*, Articles 164 and 165.

¹⁸ *Id.* at Article 33.

¹⁹ *Id.* at Article 35.

²⁰ *Id.* at Article 37.

²¹ *Id.* at Article 27.

²² *Id.* at Article 24.

²³ *Id.* at Article 87.

²⁴ *Id.* at Article 91.

²⁵ *Id.* at Article 174.

²⁶ *Id.* at Article 132.

²⁷ Sanchez, op. cit., p. 401.

²⁸ *Id.* at p. 401

²⁹ These provisions included the following: Article 22 (retroactive effect of laws); Article (obligations of a civil character); Article 24 (confiscation of property); and Article 87 (ownership of private property).

³⁰ De la Cuesta, op. cit., p. 60.

³¹ *Constitution of 1940*, article 97.

³² *Id.* at Article 123.

³³ *Id.* at Article 140.

³⁴ *Id.* at Article 97.

³⁵ *Id.* at Article 185.

³⁶ *Id.* at Article 186.

³⁷ *Id.* at Article 187.

³⁸ *Cuba, a Country Study*, American University, 1992.

³⁹ Sanchez, op. cit., 398.

⁴⁰ A significant number of Cuban organizations have become signatories to The Agreement for Democracy. Among other things, the Agreement calls for a provisional or transition government in Cuba to return sovereignty to the Cuban people by referring to the Constitution of 1940, when applicable, during any transitional period. A copy of The Agreement for Democracy is attached hereto.

⁴¹ International Commission of Jurists, *Cuba and the Rule of Law*, Geneva 1962, p. 78.

⁴² *Cuba, A Country Study*, at page 161.

⁴³ Id.

⁴⁴ This change in power was the result of the adoption of the current constitution of Cuba.

⁴⁵ *Constitution of Cuba of 1976*, Article 53.

⁴⁶ Id. at Article 54.

⁴⁷ Id. at Article 74.

⁴⁸ Id. at Article 69.

⁴⁹ Id. at Article 90.

⁵⁰ Id. at Article 1.

⁵¹ Mesa-Lago, Carmelo and H. Fabian, *Analogies Between East European Socialist Regimes and Cuba: Scenarios for the Future*, University of Pittsburgh Press, 1993.

⁵² Futey, Bohdan, *Upholding the Rule of Law in Ukraine*, University of Ottawa Press, 1998.

⁵³ Id. at p. 3.

⁵⁴ Futey, Bohdan, *Ukraine's New Constitution*, East European Constitutional Review, 1996.

⁵⁵ Travieso-Díaz, Matias F., Steven R. Escobar. *Cuba's Transition to Free-Market Democracy*, 1995.

⁵⁶ Costa Rica had specialized courts mandated to supervise the electoral process.

⁵⁷ This approach was utilized in the countries of Poland and Ukraine during their respective transitions.

⁵⁸ *Constitution of 1940*, Article 286.

⁵⁹ Perez, Luis. *Cuba Between Empires*, University of Pittsburgh Press, 1983.

⁶⁰ *Cuba, A Country Study*, American University, 1985.

⁶¹ Id.

⁶² *Cuban Constitution of 1940*, Article 102.

⁶³ *Electoral Code of Cuba (Law No. 17)* May 17, 1943.

⁶⁴ *Law of Associations, Law No. 54*, December, 1985.

⁶⁵ *Amnesty International Report, Cuba 1996*.

⁶⁶ Goodwin Gill, Guy S., *Free and Fair Elections: International Law and Practice*. Inter-Parliamentary Union: Geneva, 1994, page 52.

⁶⁷ Recommendations adapted from the Copenhagen Meeting of the Conference on the Human Dimension from the Conference on Human Security and Co-operation in Europe (CSCE).

⁶⁸ Recommendations adapted from the Moscow Meeting of the Conference on the Human Dimension of the CSCE.

⁶⁹ Information for this section is taken largely from a February 1995 paper by Dr. Gillian Gunn, "Cuba's NGOs: Government Puppets or Seeds of Civil Society," found on the Internet at hyperlink <http://www.georgetown.edu/sfs/programs/clas/Caribe/bp7.htm>, as well as from several recent State Department reports on human rights in Cuba.

⁷⁰ *Journal of Democracy* 1 [Winter 1990]: pp.51-69.

⁷¹ "Comparing Democratic Systems," *Journal of Democracy*, 1:4 [Fall 1990]: pp. 73-79.

⁷² "The Centrality of Political Culture," *Journal of Democracy*, 1:4 [Fall 1990]: pp. 80-83.

⁷³ *Strong Democracy: Participatory Politics for a New Age*. Berkeley: University of California Press, 1984, p. 235.

⁷⁴ Herbert Agar, *The Price of Union*, (Boston: Houghton Mifflin Company, 1966), p.596.

⁷⁵ Agar, op. cit., p. 645

⁷⁶ Butler and Ranney (eds.), *Referenda around the World, The Growing Use of Direct Democracy*. Washington, D.C.: AEI Press, 1994.

⁷⁷ David B. Magleby, *Direct Legislation: Voting on Ballot Propositions in the United States*. Baltimore, Md: Johns Hopkins University Press, 1984), pp.7-20.

⁷⁸ Magleby, op. cit.

⁷⁹ Butler and Ranney, op. cit., pp. 17-18

⁸⁰ Butler and Ranney, op. cit, p. 17.

⁸¹ Information for this section came largely from the Inter-American Development Bank website: www.iadb.org

⁸² Luis Aguilar, *Cuba 1933; Prologue to Revolution*, (New York: W.W. Norton & Company, Inc., 1972) pp. 61-67.

⁸³ In a letter providing feedback on the first draft of this document, November 2, 1998.

⁸⁴ Rebeca Sanchez-Roig, "Cuban Constitutionalism and Rights: An Overview of the Constitutions of 1901 and 1940," *Cuba in Transition/ASCE 1996*, p. 396.

⁸⁵ Thomas G. Paterson, *Contesting Castro, the United States and the Triumph of The Cuban Revolution*, (New York: Oxford University Press, 1994); p. 26.

⁸⁶ Hugh Thomas, "Cuba: The United States and Batista, 1952-1958," in *Cuban Communism*, 6th edition; Irving Louis Horowitz, ed. New Brunswick, N.J.: Transaction Books, 1984, pp. 4-5.

⁸⁷ Paterson, op. cit., pp. 26-27.

⁸⁸ Paterson, op. cit., p. 65.

⁸⁹ Paterson, op. cit., p. 72.

⁹⁰ Paterson, op. cit., p. 31.

⁹¹ *Fast Forward; Latin America on the Edge of the 21st Century*. New Brunswick: Transaction Publishers, 1997, p. 233.

⁹² Guy S. Goodwin-Gill, *Free and Fair Elections, International Law and Practice*, Geneva: Inter-Parliamentary Union, 1994.

⁹³ Goodwin-Gill, op. cit., p. 43.

⁹⁴ Goodwin-Gill, op. cit., p. 46.

⁹⁵ These figures are based upon the official turnout reports from the Cuban National Election Commission of for the 1992 and 1998 elections, respectively.

⁹⁶ Ukraine and Russia both adopted new election laws, but have basically left their respective administrative systems intact. See Law on the Election of People's Deputies of Ukraine, Articles 9 and 10, 1997.

⁹⁷ For further information, see Madam, Nora et al., "Lo Extraordinario Une a los Hombres (Proceso Electoral Cubano de 1992-1993)." Cd. de la Habana, Ed. PolÁtica, 1993 p. 10.59.

⁹⁸ The Electoral Law sets forth in Titles IV and V that up to 50% of the candidates may come from the grass roots and the remaining members may be integrated by provincial personalities and personalities who have excelled in their activities throughout the country (students, workers, scientists, intellectuals, etc.)

⁹⁹ Guy S. Goodwin-Gill, *Free and Fair Elections, International Law and Practice*, Geneva: Inter-Parliamentary Union, 1994, p. 42.

¹⁰⁰ Goodwin-Gill, op. cit., p 43

¹⁰¹ Cuban Constitution of 1901, Title II, et al.

¹⁰² Id. at Article 7.

¹⁰³ Constitution of 1940, Articles 11, 12, 13

¹⁰⁴ Fundamental Law of Cuba, Article 15.

¹⁰⁵ Constitution de la Republica de Cuba, Capitulo II.

¹⁰⁶ Electoral Law of the Republic of Cuba, (Law No. 73), Article 6, 1992.

¹⁰⁷ *Free and Fair Elections, International law and Practice*, Guy Goodwin Gill, 1994

¹⁰⁸ Report of the European Commission on Human Rights, 1994

¹⁰⁹ Austria's electoral law provides that any citizen living abroad may vote, regardless of where he maintains a residence in the country. See Inter Parliamentary Union, *Chronicle or Parliamentary Elections and Developments, 1990-1991*.

¹¹⁰ Baxter, Joe op. cit. Memorandum: Comments on Cuba Transitional Election Planning Manual. November 8, 1998.

¹¹¹ These figures are based upon the official turnout reports from the Cuban National Election Commission of for the 1992 and 1998 elections, respectively.

¹¹² Ukraine and Russia both adopted new election laws, but have basically left their respective administrative systems intact. See Law on the Election of People's Deputies of Ukraine, Articles 9 and 10, 1997.

¹¹³ Ukraine made several fundamental changes, including the introduction of proportional representation, positive voting and the elimination of runoff elections.

¹¹⁴ Baxter, Op. Cit

¹¹⁵ Baxter, Op. Cit.

¹¹⁶ Goodwin-Gill, p. 42.

¹¹⁷ Electoral stain is generally no longer considered indelible or a means of preventing double voting in and of itself. However, when combined with a series of other security measures, it provides a degree of deterrence.

¹¹⁸ *Infocuba*, 1997.

¹¹⁹ Clark, *Religion in Cuba*. Cuban American Foundation Series.

¹²⁰ Wagner, Steven. *Public Opinion in Uzbekistan 1996*. International Foundation for Election Systems (IFES): Washington, D.C.

¹²¹ Charney, Craig. *Public Opinion in Kazakstan 1996*. IFES: Washington, D.C.

¹²² Olds, Hugh W. *Public Opinion in Kyrgyzstan 1996*. IFES: Washington, D.C.

¹²³ Gish, Debra L., Karen E. Seiger, Maria Elena Paz Manzano. *Citizen Participation in Salvadoran Society with Special Emphasis on Gender--Executive Summary*. San Salvador, El Salvador: IFES (1997)

¹²⁴ Kotter, John P. *Leading Change*. Harvard Business School; Boston (1996), p. 4.

- ¹²⁵ Goodwin-Gill, Guy S. Free and Fair Elections. Inter Parliamentary Union (1994), p. 51.
- ¹²⁶ Ibid., p. 51
- ¹²⁷ Kotter, op. cit., p. 17
- ¹²⁸ Kotter, ibid., p. 21
- ¹²⁹ Program and Operations Assessment No. 12. American Society for Training and Development, USAID Publication (1998)
- ¹³⁰ National Standards for Civics and Government, Center for Civic Education
- ¹³¹ IFES Survey in Central Asian States - data from 1997 - 1998
- ¹³² Rossi, Peter H. and Howard E. Freeman. Evaluation A Systematic Approach, fourth edition. Newburg Park, CA: Sage Publishing (1989).
- ¹³³ Blanchard, Ken, John. P. Carlos, Alan Randolph. Empowerment Takes More Than a Minute. San Francisco: Berrett Koehler Publishing (1988).
- ¹³⁴ Olds, op. cit.
- ¹³⁵ National Standards for Civics and Government, Center for Civic Education Publication
- ¹³⁶ Diamond, Larry. Cultivating Democratic Citizenship: Education for a New Century of Democracy in the Americas, 1996, p. 3.
- ¹³⁷ Diamond, op. cit., p. 3.
- ¹³⁸ National Standards for Civics and Government, op. cit.
- ¹³⁹ Kotter, op. cit., p. 156.
- ¹⁴⁰ Kotter, op. cit., p. 156.
- ¹⁴¹ Kotter, op. cit., p. 156
- ¹⁴² Diamond, op.cit., p. 5.
- ¹⁴³ Diamond, op. cit.
- ¹⁴⁴ Diamond, op. cit., p. 10.
- ¹⁴⁵ Nadler, Leonard and Zeace Nadler. Designing Training Programs: The Critical Events Model. Houston: Gulf Publishing Company, (1994).
- ¹⁴⁶ Diamond, op. cit., p. 18.