



**WHITE PAPER:**

**ON PROTECTING THE INTEGRITY OF  
THE VOTE**

Caracas, October 15<sup>th</sup>, 2004



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### INTRODUCTION

Súmate is a public, non-governmental, interest group – an NGO - founded in 2002 to protect and promote the political rights of all Venezuelans; in particular, the right to vote in free and fair elections. Sumate's 45,000 citizen volunteers through out all of Venezuela effectively serve as "catalysts" and "watchdogs" for voter rights.

This white paper describes two fundamental premises and their corresponding principles, which should govern a genuinely transparent electoral process; their application in the Recall Referendum of August 15, 2004; the prospects for their application in the upcoming regional elections in Venezuela; and the consequences for democracy if these premises and principles are not upheld.

### I. TWO FUNDAMENTAL PREMISES

Any democracy is based on the ability of its citizens to exercise control over their own destiny. The electoral process is the means by which this is partly achieved as voters have the chance to select leaders, or propose and approve initiatives, that will have direct and lasting impact on the lives of all citizens indistinctively of their voted preference. A fair and transparent election is one in which all who want to participate can do so, and when it is over, the losers willingly concede to legitimate winners. Two fundamental premises serve as cornerstones of a fair and transparent electoral system: Rigorousness in the Electoral Register and Integrity in the Electoral Process

#### 1. Rigorous Electoral Registry

The first premise deals with the right of all citizens above a pre-established age to participate in the affairs of their government. Perhaps the most fundamental form of participation is the inalienable right to vote. The ability to exercise the democratic right to vote is premised on the existence of a comprehensive and inclusive electoral register (or voters list), which is rigorously maintained and audited to ensure that each eligible citizen is registered to vote once and only once<sup>1</sup>

Two important principles underlie effective voter registration.

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<sup>1</sup> Adapted from: ACE Website [Copyright 1998-2003](http://www.aceproject.org), IFES, UN-DESA, IIDEA, [www.aceproject.org](http://www.aceproject.org) Also: A civil registry makes the election authority dependent on the government for the voter list. If the electorate is sceptical of the government, then that scepticism will be transferred to the voters list. If the ministry responsible for maintaining the civil registry is either unwilling or unable to keep it accurate, current, or complete to acceptable, pre-determined standards, then the election authority is forced to start with poor data in creating the voters list. When the civil registry is used to provide the required identification for voluntary registration in a voter's list or Electoral Registry, there is a need to have these lists maintained either in the same government department or in separate departments with considerable communication between them.



- The first is that the system chosen for voter registration should facilitate the inclusion of all eligible voters in the electoral registry, or voters list. Democratic governance requires the existence of free and fair elections conducted amongst a broadly enfranchised electorate. In order to obtain this precept, then, all eligible electors should be included in the voters list. Their inclusion affirms their right to vote in the election.
- The second key principle of voter registration is the obvious corollary of the first, namely, that it should prevent the exclusion of eligible citizens from the voters list for any reason other than death or prison sentence.

## 2. Integrity in the Electoral Process

The second premise is that of Integrity; which is no less than the recognition by all voters that the voting process and its electoral results fairly and accurately reflect the aggregate will of all of the voters.

Integrity is an ethical code of behavior as well as a system of principles and their guiding practices, adopted to safeguard the honesty and viability of the process. Electoral integrity implies:

- an electoral framework that is *equitable and fair*;
- *fair, transparent* and impartial administration of the elections;
- political freedom to *participate freely and equally in an atmosphere without fear*;
- *monitoring and validation by civil society, independent observers and a free media* of all steps in the voting process;
- *local control* by voting center officials, truly randomly selected from the electoral registry and properly trained, acting together with the competing parties, controlling the activities of their voting center, especially the all important ballot count, with sufficient autonomy and knowledge.

A brief description of each is:

**First**, that an *equitable and fair framework* is provided for the laws, rules and regulations governing the electoral process and the reasonable notice of the election schedule, the assignment of voters to specific voting centers, the election campaign period and the method.

**Second**, that the electoral process is *completely fair and transparent*. The citizens, voters and political parties to the election contest must be fully informed and allowed to participate in all aspects of the electoral process. The electoral authorities must not only be impartial, but also must at all time show that they are impartial. Actually, in electoral issues, the form is the content.

**Third**, the freedom to *participate freely and equally in a safe environment without fear* must be intrinsic to all activities but must be protected by the electoral law and regulations and enforced the military.

- Protection from fear starts by ensuring that the secrecy of the elector's choice will be protected during the process.
- The safeguarding of the voter's physical security from both violent political adversaries as well as common criminals must be enforced.



- The voter's safety requires that the armed forces be fully non-partisan so that they may enjoy the respect and trust of all participants.

**Fourth, monitoring and validation by civil society, independent observers and a free media** of all steps and components of the voting process is essential. It is the only mechanism by which the electorate will retain trust in the process and will participate actively and willingly not just in the voting act itself, but in these monitoring activities as well.

- The electoral authorities ought to foster this participation in recognition of the value it has in the preservation of the checks and balances that every phase of the electoral process must have.
- The monitoring and validation becomes even more important in the case of the automatic portions of the process: tabulation computers, communication system and voting machines which by their very nature are not "transparent" in the sense that only technically competent personnel are able to determine whether their hardware, processes and software fully comply or not with the mutually agreed standards.
- The counting, tabulation and reporting of the results at the voting centers and the regional and national tabulation centers must also be continuously and completely monitored by the observers, the competing political parties and randomly selected citizens.
- Before, during, and after the elections, electoral material and equipment at every voting center or designated storing places must be safeguarded continuously by electoral officials, competing parties, observers and a reasonable number of citizens.
- The armed forces must act in support of the custody activities, including with the use of their own storage facilities, but ought never to be left alone with the electoral material if only to dispel any suspicion that would surely arise in one or more of the competing parties.

**Fifth, that there be local control and the votes are openly counted.** The randomly selected and properly trained citizens at each election center, who are in effect the electoral authorities and the contesting political parties must have control over the activities related to the Electoral Event and the counting of votes. This provides the checks and balances that insure the rules and regulations are properly followed.

- The process must be streamlined to maximize ease and convenience for citizens to exercise their right to vote.
- Paper ballots must be available for a full count, recount, or partial audit count, as may be needed. Ballots and voting machines must be secured from tampering. Voters who cast votes in an election should be free to participate in the counting and certification, or to observe it.

Of course, underlying these principles are two others: Accountability and Enforcement, which will not be addressed directly in this white paper but are the essential "guardians" that must be called upon as required.

Governments all over the world have to be constantly reminded that elections are processes controlled by the citizens where the government acts only as a facilitating instrument. Venezuela is no exception. The universal electoral principles described above are referenced



in the Constitution of the Bolivarian Republic of Venezuela of 1999 and in the country's suffrage laws<sup>2</sup>.

## **II. APPLICATION OF THE PREMISES AND PRINCIPLES IN THE PRESIDENTIAL RECALL REFERENDUM (RRP) OF AUGUST 15<sup>TH</sup> 2004**

After its proponents collected the requisite number of signatures, the Consejo Nacional Electoral (Venezuela's electoral authority, hereafter CNE) set August 15<sup>th</sup> as the date Venezuelans would have the opportunity to vote on the continuation of the presidential mandate of Lt. Col. Hugo Chavez. Here we shall examine whether this electoral event adhered to the above described concepts and principles.

### **1. Voter Registration**

The Civil Registry authorities implemented a national identification drive in March 2004 with mobile identification centers that issued new Venezuelan ID cards (*cédulas*) to interested citizens.

- The procedures to inspect the proof of citizenship documentation were extremely lax and not up to the usual requirements of the authorities. The mobile centers also contained a station where new or unregistered voters were expeditiously registered. Rigor was not evident.
- By the time the Electoral Registry closed in July 2004 in order to freeze the list of eligible voters for the RRP, voter registration had increased from 12.4 million in March to 14.2 million. This increase exceeded the historical rate of increase of the Electoral Registry. This fact, and the way registration was expedited, sparked suspicion about the increase in new voters. Was it due to a conscious decision of previously disinterested citizens to participate politically? Or was it a ploy by the current government to "pad" the Registry, possibly issuing its supporters additional *cédulas* with which to vote several times? This remains an extremely serious and un-audited issue which may have impacted the process.
- Súmate did audit the validity of a version of the July Electoral Registry, the result showed a relatively acceptable level of errors. It must be said that Súmate did not conduct an audit of the underlying Civil Registry and the validity of its documentation. Unfortunately, in the run-up to the RRP, the CNE issued several versions of the Registry thereby reducing much of the value of the audit, and creating confusion among the electorate. It also contributed greatly to concerns about the right to vote freely. In fact, there are many documented reports of citizens who one day could find their names in the Registry but were not able to do so the following day. The last known version of the Registry was distributed by the CNE on July 30<sup>th</sup>, two weeks before the RRP. This version amended one that had been issued just two weeks previously, on July 15<sup>th</sup>. However, even after July

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<sup>2</sup> *Article 294 of the CBRV*: "The Electoral Power organizations are governed by the principles of: organic independence, functional and budgetary autonomy, non-partisan composition, impartiality and citizen participation; decentralization of the electoral administration, transparency and celerity of the voting and counting acts." *Article 2 (Fundamental Principle) of the Electoral Power Organic Law*: "The Electoral Power, as guarantor of the originating source of the Public Powers by means of the Suffrage, bases its acts in the preservation of the will of the people, expressed by the vote in the exercise of its sovereignty"



30th, the CNE issued daily updates that were published in its web-site. The result was that on Election Day, the electoral lists in each voting center did not coincide with neither of the two registries distributed during the month of July that were studied by Sumate.

## 2. Integrity of the Electoral Process

### Comparing against the universal principles we observe the following:

**First**, the CNE unilaterally improvised electoral process, norms, rules and regulations as it went along. Technically, it was permitted to do so when the Supreme Court ruled that the RRP was not an election governed by law, thus allowing the CNE to act arbitrarily, which it clearly did. The electoral law of 1998, *Ley Orgánica del Sufragio y Participación Política* or LOSPP, on which it relied, falls significantly short of the mandate of the 1999 Constitution concerning citizen participation in all electoral bodies. The CNE made no effort to comply with this development.

The CNE introduced fingerprint readers into the electoral process without due warning, credible explanation, public testing or previous regulation. In addition to the evident illegality, the consequence of this last minute decision was an extremely long delay in the voting process that affected the results, since many voters were discouraged to remain to vote, or even to go, by the long lines that formed throughout the day and still existed in the early morning hours of the day following the election.

**Second**, the electoral process of the RRP was not transparent. The political parties and the voters did not fully participate in the process, and were subjected to unilateral, arbitrary decisions made by a blatantly biased CNE. A telling fact of the political imbalance in the CNE is that all of the defining decisions of this RRP were made with a 3-2 vote where the same three directors that have invariably identified themselves with the government's positions always formed the majority. Another indication of the bias was the evident recognition and acceptance of the pro-government party's every objection and request, while completely ignoring formal requests and protests by the opposition.

**Third**, the required freedom to participate without fear was affected by many factors of which the three most important were:

- The defective Electoral Registry did not permit many thousands to vote, since they could not find themselves in the list of their voting center or found themselves suddenly moved to another voting center to which they could not go for reasons of time, distance or expense
- The very long lines caused by a poor design of the voting process acted as a deterrent to the physically handicapped and the elderly. In addition, the existing conditions of personal insecurity in many areas of large cities and other non-guarded sectors, especially at dark, discouraged many from even going to vote.



- The manual, non-automated, centers used numbered ballots, which provide the government the means to target opposition voters for intimidation and retribution as it did, unabated, during the signature collection stage of the RRP.

**Fourth**, the CNE unilaterally improvised the standards for monitoring, audits and observation as it went along. Thus, the recall referendum process was not fully and freely tested, audited or observed.

- The electoral hardware and software used by the CNE was not adequately inspected and audited before the referendum.
- The technical fact that the election machines could be remotely instructed, or commanded by an embedded software routine, to communicate to the Tabulation Center an electronic vote count that was not the result of the actual choices of the voters, was denied by the CNE, the machine vendor Smartmatic, and the international observers (OAS and Carter Center). As it turns out this might have actually occurred.
- An independent, and as of yet undisputed, evaluation by Harvard's Ricardo Hausmann and MIT's Roberto Rigobon concluded that the probability of electoral fraud in the RRP is 99%, a conclusion that evidently shifts the burden of proof to those that insist that the process was "fair, fraud proof and transparent".

**Fifth**, the control point for the counting process shifted from a paper ballot count in the local voting center (the CNE had earlier refused to allow this to happen) to the electronic Tabulation Center in the CNE which was conveniently out-of-bounds for the parties to the election contest, the voters, and the observers alike.

- A first audit (the so-called "hot audit") of a sample of voting centers was a failure. First, the selected sample of centers was not random at all since the CNE unilaterally restricted the States and Municipalities from which the sample was to be drawn; and secondly, only 27 of the 76 centers actually audited (of the 192 that were meant to be audited) were audited in the presence of the interested parties. In all the others, the CNE conducted the audit by itself: a self audit in effect.
- Equally grievous was the fact that, only two days before the elections, many voting centers were stripped by the CNE of their selected and trained members using several means, including outright dismissal. The alleged reason was that they had expressed a political opinion by signing the Recall Referendum petition. Other individuals substituted them but there was no clear explanation or evidence of how and when they were selected and trained. This has naturally raised suspicions regarding the real reasons for the dismissals and substitutions. This is in direct violation of the principle of proper selection and training of the citizens that will exercise direct control of each of the country's voting centers and thus will be accountable to their local peers.

### **III. APPLICATION OF CONCEPTS AND PRINCIPLES IN THE OCTOBER 31<sup>st</sup>. 2004 REGIONAL ELECTIONS**

Almost immediately after the official result of the RRP was announced and in the mist of growing evidence of improprieties, the CNE, acquiescing to the will of President Chavez, announced the actual date for the previously postponed election of regional authorities (State



Governors, mayors and other municipal authorities). In light of the shortcomings of the RRP process described above, it might be useful to look critically at this new electoral event.

## 1. Voter Registration

Uncertainty on the validity and rigor of the Electoral Registry persists.

- Contrary to law<sup>3</sup>, it was opened after the RRP and closed on September 8<sup>th</sup>, purportedly to give electors the chance to update information or to register.
- To date, the updated Registry has not been distributed by CNE to the interested parties as is required by law.
- There will be no time for a comprehensive independent audit of the Electoral and Civil Registers.
- The non-validation of the Registers is a restriction of the political freedom of the electors since there will be no confirmation of the validity of the two registers.

## 2. Integrity of the Electoral Process

**First**, the CNE is ignoring the Venezuelan election laws governing the regional elections in favor of improvising norms, rules and regulations arbitrarily, as it did in the RRP. The election schedule, periods and dates for the Regional Elections announced by the CNE are patently illegal.<sup>4</sup>

If the CNE insists on the date of October 31<sup>st</sup>, for the Regional Elections there will be, once again, all of the defects and illegalities that were present in the RRP. There is simply not enough time to correct them all.

**Second**, the CNE has not announced nor evidenced changes in its biased conduct nor in its haphazard electoral process, so any future election appears likely to be as murky, and end up as challenged, as the RRP.

**Third**, The defective design of the voting process that extends into very late at night (indeed, into the early morning hours) the closing time of the voting centers increases the risk of personal attacks, which is also a limitation of the political right to vote without fear.

**Fourth**, the CNE has not implemented any norm or standard nor has even expressed its intent to include citizen participation in all the electoral processes before, during and after voting day. The CNE has not invited international observers for the regional elections, nor have any standards for observation been declared that would allow observation of the elections or full audits in the central facilities of the CNE should such observation be granted.

<sup>3</sup> Art. 119 of the Organic Law of Suffrage and Political Participation specifies that the registry should be closed 90 days prior to the election

<sup>4</sup> Article 152 of the Organic Law of Suffrage and Political Participation requires that there be a period of 180 days between the official publication of the date of the election and the elections itself.

Article 153 of the same law requires that the regulation governing an election be approved or modified at least 90 days before the election. The regulation for the RE does not yet exist.

Article 155 of the same law requires that the voting machines be tested, sealed, stored and guarded in the respective voting districts at least 30 days prior to the election. This has not been done yet.

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**Fifth**, there has been no plan announced by the CNE to implement local control of the electoral process, which is required by law; but rather to process the official count and audits in the central facilities of the CNE in secret. In particular, there has been no plan announced by the CNE to count or certify ballots that differs from the counting process in the recall referendum, which was wide open to the possibility of fraud.

## **V. CONSEQUENCES FOR DEMOCRACY**

If the Premises and their Principles are not upheld, the consequences are ominous for the nation:

- The elections will not have integrity.
- Citizen cynicism will rise, and voter participation will fall.
- The belief in democracy as a means for self-government will diminish.
- The elected officials will not be truly legitimate.
- The government will proceed unilaterally without the true consent of the governed.
- Autocracy will progressively replace democracy.

## **VI. SÚMATE'S ROLE AND RESPONSIBILITY**

Súmate is dedicated to the preservation of Venezuela's democratic institutions and practices. In order to do this, we seek to promote and protect voting rights.

Súmate has every intention to honor the trust millions of citizens have deposited in us as "watchdogs" for their rights as voters.

Súmate is committed to the ongoing search for truth concerning the RRP

Súmate is working to ensure a transparent electoral process in future elections.

Súmate will continue to interact with diverse actors in the international arena that share our concern for the state of democracy in Venezuela. From shared experience, we will not only learn to do our job better, but we will develop even more effective mechanisms to monitor and counteract threats to our rights and to our way of life. .

With all the above in mind, Súmate wishes to conclude this brief by stating three concrete activities it is currently undertaking that should enhance our rights, as citizens, to exercise control over our own destiny.

- An investigation and discussion of the best practices and standards for
  - voter registration
  - electronic voting
  - citizen monitoring and observation of the public powers
  - international observation
- An audit process that is already in place to execute the evaluation of the validity of the new Electoral Register as soon as it is distributed by the CNE



- Workshops for its volunteers and other interested citizens so that they may deepen their understanding of the 1999 constitution, the concept of citizen participation, and the electoral systems.

Venezuela will continue to be a democracy because that is the will of its people, Súmate will not cease in its struggle to confront any force that seeks to deny Venezuelans their hard earned right to be counted among the free citizens of the world.

[www.sumate.org](http://www.sumate.org)

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