

# A New Political Reform: From IFE to INE

Carlos A. González Martínez\*



María José Martínez/Cuartoscuro.com

In recent weeks, Mexico's Chamber of Deputies and Senate have debated the latest details of the electoral reform that would detail the procedures for the political-electoral reform of the Constitution carried out in late 2013. These are neither few in number nor minor issues, since they involve a series of significant changes to the logic and nature of the Mexican electoral system.

In compliance with the transitory articles of the constitutional reform,<sup>1</sup> a new General Law on Electoral Institutions and Procedures to replace the law in force was passed on May 15. Also slated for passage are a Law on Political Parties, the regulatory legislation for Article 134 of the Constitution (dealing with government publicity), and another on electoral criminal offenses.

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\* Former official at the Federal Electoral Institute, the Federal Judiciary's Electoral Tribunal, and the Special Prosecutor's Office for Electoral Offenses. Independent consultant and collaborator with the UN Development Program and the OAS on issues of democratic governance and elections.

It will be well worth taking several looks and making various assessments to discuss and analyze these issues since they will have an unprecedented impact on the electoral system before 2015 federal and local balloting. The legislation will attempt to systematically link up the spheres of federal and state elections for the first time in the country's recent history. In addition, the Federal Electoral Institute (IFE), created in 1990, was replaced by the National Electoral Institute (INE). The change of name refers to a transcendental transformation that will lay the basis for a truly national electoral system if the latter can be materialized in new laws and practices, as is devoutly to be wished.

## THE LOCAL, FEDERAL, AND NATIONAL

The first issue to underline in the new set-up that the electoral reform implies—and this has even been the case since the 2007-2008 constitutional reform—is the relationship

between federal and national aspects of the Mexican electoral regimen. Until now, the organization of federal and local elections has been clearly and emphatically different. There was no basic link between one and the other except the similarity of their procedures and institutions and whatever their respective administrative authorities might agree upon, usually regarding the use of the federal voter registration rolls and other spheres of activity dictated by holding elections at the same time. With the electoral reform, this will change radically: “With this reform, the way is opened up for what in the medium term could be a national electoral *system*,” reads the introduction to the constitutional reform introduced in September 2007.<sup>2</sup> This has an impact on the entire existing *regime*, and is an attempt to make way for a new *system*, as we shall see later.

Since the 2007-2008 reform, a new and radical arrangement was created. Articles 41 and 116 of the Constitution, and Articles 118 and 122 of the Federal Code of Electoral Institutions and Procedures (Cofipe) stipulated that at the request of “the competent state authorities” —later stipulating that these were the “administrative electoral authorities”—, the IFE could take charge of organizing local elections “in the terms established in the applicable legislation.”

From that time on, and in an unprecedented fashion, the federal electoral institution was given the faculty of replacing the state electoral institutions (at the latter’s request) in the task of organizing local elections. This radically changed the distinction between what was federal and what was local. But this never actually happened.

This faculty was deepened in the 2013-2014 reform, by including in Article 41 of the Constitution, Sections B, C, and D. Section B reiterates that “the National Electoral Institute, through an agreement with the competent authorities in the states that so request it, will organize local elections in the terms stipulated by the relevant legislation.” This is in the same sense as the 2007-2008 legislation. However, Section C goes further, indicating that, in accordance with what is stipulated in the law and with the approval of at least eight votes in its General Council, the National Electoral Institute shall be able to

- a) Directly carry out the electoral activities that would usually fall to local electoral bodies;  
[ . . . ]
- b) Review any matter usually under the jurisdiction of local electoral bodies when its importance merits it, or to establish a criterion of interpretation.

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It is the duty of the National Electoral Institute to designate and remove the members of the leading Direction body of state public bodies, in the terms of this Constitution.<sup>3</sup>

Meanwhile, Section D indicates that the IFE’s current Professional Electoral Service will become national with the INE.<sup>4</sup> It will include officials of what were previously local institutes, commissions, or councils, which will now be generically named public local electoral bodies. With all of this, if local state administrative authorities request it or the INE’s General Council decides it, the reforms could represent a severe overhaul of current electoral practices, in which federal and local electoral processes do not yet fully complement each other.

#### FROM THE REGIME OF REDUNDANCY TO THE NATIONAL SYSTEM

Article 40 of the Constitution stipulates that our form of government is a representative, democratic, secular, federal republic made up of free and sovereign states in terms of their internal regime, but united in a federation. That is why, when initially creating the public bodies for elections, a distinction was made between federal and state or local elections.

The president and federal senators and deputies are elected in federal elections. State elections are held for governors, state congressional deputies, and members of city councils. Two kinds of majorities are used in electing representative legislative bodies: a simple majority and proportional representation. In both spheres, organizing the elections has been a state function carried out by autonomous public bodies and ruled over by the principles of certainty, legality, independence, impartiality, the greatest publicity, and objectivity.

In addition, elections in Mexico have three spheres: the administrative, the judicial, and the penal, both on a federal

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level and for each of the 32 federal entities (the 31 states and Mexico City's Federal District).

**The administrative sphere** covers the organization and management of electoral processes: preparations, election day itself, and post-electoral activities. This sphere has its own law whose compliance is fundamentally an attribution of the electoral institutes, which are the administrative authorities both in the states and federally. This law is often a code of fully comprehensive aspirations that sets forth the norms for the citizenry's political-electoral rights; regulates the operation of electoral principles for making up the branches of government; establishes the functions, attributions, and structure of the electoral authority; defines the functioning and prerogatives of political parties, and any fronts, coalitions, or mergers they may initiate; details the procedures for acquiring registration as a political party or group; and establishes the entire administrative regime of sanctions. At the federal level, the law that has been in force has been the *Cofipe*, and the maximum authority has been the IFE. Until the 2013 constitutional reform and the regulations that will be in force in 2014, this same set-up had been reproduced in each of the 32 federal entities, which has meant that the country has had 33 electoral laws and the same number of administrative authorities.

**The judicial sphere** is for resolving litigation resulting from the different forms of challenges that can be brought at any time, particularly during the elections themselves. To regulate this sphere, laws are passed involving the means for challenging different aspects or demanding electoral justice to be dealt with by tribunals recognized as the maximum constitutional authorities on the matter. Federally, the law in force is the General Law on the System of Means for Bringing Electoral Challenges (LGSMIME), among which are trials for protecting citizens' political-electoral rights and the constitutional review. The maximum authority in this sphere is the Federal Judiciary's Electoral Tribunal (TEPJF).

This set-up is used on a federal level and in each of the states and the capital city. This means that the country has 33 laws and 33 electoral judicial bodies, including tribunals and specialized chambers of the state supreme courts. Except for a pair of more or less administrative changes, the 2013 left the TEPJF and the national electoral judiciary untouched. Further down, we will see if the reforms to the law really added any changes.

**The penal sphere** refers to specifying what actions are considered electoral crimes against the guaranteed right to a free and secret vote. At the federal level, these offenses have been specified in Title 24 of the Federal Criminal Code, and basically are defined as conduct that can be engaged in by any individual, electoral official, party official, organizer of campaign activities and candidates, deputies or senators elect, public servants, and members of the clergy. The authority responsible for prosecuting these crimes is the Special Prosecutor for Electoral Crimes (FEPADE), which is part of the Attorney General's Office (PGR), ranking as an autonomous Assistant Attorney General's Office. Although not all the states have prosecutors similar to the federal one, all of them do include electoral crimes in their local criminal codes or an applicable set of legal norms. The 2013 constitutional reform will change the PGR into the General Prosecutor's Office, and that will change the nature of the FEPADE as well as the way its head is designated.

In general, as already mentioned, this legal framework and institutional set-up is reproduced in each of the 31 states and Mexico City's Federal District, creating a regime that, in the long run, is inefficient: redundancy, which supposes that in the country there are 33 electoral administrative authorities (as well as potentially 33 jurisdictional and penal authorities) that all do practically the same thing, sometimes at different moments and in different ways, but always with different human, material, financial, and political institutional resources.

No coherent institutional system could withstand this; no society could, in the long run, justify it; nor could any public budget afford it without seriously breaking down. This is why it has been subjected to a broad, profound review that revealed the need to advance toward creating a true, effective national electoral system in Mexico. That is why I began by making a clear differentiation between the current *regime* of redundancy and the desirable comprehensive national electoral *system*.

The Spanish Royal Academy of Language dictionary defines a “regime” as “a series of norms that govern or rule a thing or an activity” and a “regular or habitual mode of producing something.” A “system,” on the other hand, is “a series of rules or principles about a matter or field that are rationally linked together” and a “series of things that, related to each other in an orderly fashion, contribute to a specific object.” This means that, when both things refer to the way in which processes are organized and managed, a system is distinguished from a regime because of its rationality, versus its habitual nature.

Thus, the existence of the Mexican electoral regime supposes a state of things based essentially on redundancy, while the creation of a national electoral system supposes a rational ordering to organize and interlink federal and local elections, and, with that, their premeditated —and therefore, pre-defined— articulation. In all of this, the INE is called upon to play a fundamental and foundational role.

#### TOWARD A NEW NATIONAL ELECTORAL SYSTEM

Now, what should the coordinates of the new system be? At least two premises should be considered, and we should always keep in mind that, for the moment, we are only talking about the administrative sphere of Mexico’s elections. First, the national system must be *built* on the constitutional bases of our republican, representative, federal democracy, and must be *defined* by its attributions. Secondly, its character, functions, and attributions must involve the systematic articulation of the current redundancy regime.

This presupposes, above all, recognizing that the system will have to be defined and built for what is required: harmoniously and efficiently organizing Mexico’s federal and local elections.

Consequently, we can say that our national electoral system should be planned taking into account the need to ensure it has attributions to deal with at least the following moments and items:

1. Electoral processes (preparation, voting day, and post-election activities);
2. Periods between electoral processes;
3. Educating the citizenry; and
4. Institutional development and management of the party and equity regime.

Thus, and derived from the attributions legislators decide to bestow on the system with the 2014 reform, its new specific functions could be categorized as follows:

1. *National/federal functions*, such as those involving putting together, updating, and checking the voters’ rolls; issuing voters’ photo-IDs; producing, storing, and distributing electoral materials; managing the electoral civil service; and monitoring day-to-day administrative sanctions, among others;
2. *Local or state functions*, such as those involving the direct administration of elections: ensuring the naming and operation of electoral councils; setting up polling place officials’ committees; carrying out municipal, district, and state vote counts; issuing the respective certificates of vote-count validity; and in general, operational coordination of election organization and training, as well as the program for preliminary electoral results, among others; and
3. *Combined functions*, such as those involving electoral statistics and geography; financing and monitoring of political parties’ resources; programs for public education and participation; electoral training as such; monitoring the sanction special process; and the operation of the new communications model, basically referring to equitable access to radio and TV time slots, among many others.

We can begin discussing the need and historic timeliness of moving forward to create a real national election system in Mexico by first defining its nature, attributions, and functions. We can then go on to consider its institutional architecture and the way current assets and human, material, and financial resources of the 33 existing administrative authorities can be melded into one.

Naturally, in all of this, the points of departure must be the constitutional bases in the reform published in the *Diario Oficial de la Federación* (Official Gazette) last February 10,

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2014. It identifies the two new electoral bodies (the INE and the local public electoral bodies), and mandates the development of new legislation, particularly the aforementioned general law that regulates electoral procedures. All of this, and specifically what has been called the “nationalization” of the Professional Electoral Service, will be the basis for creating the national electoral system I am arguing for here.

More specifically, there must be a legal mandate to change the institutional design of both the INE and the local public bodies, in order to make them responsive and efficient. The regulations must also include the appropriate articulation of the functions of the INE and the local public bodies, set out in the article’s Sections A and B for all actions involved in federal and state processes.

A good re-design of the former IFE’s semi-autonomous bodies and the new local bodies will be key for achieving the new link between the local and the national. Specifically, the role and functions of the local executive boards will have to be reviewed, as will the creation or not of local and even district councils that corresponded to the old IFE. Another central issue will be the appropriate design of the National Professional Electoral Service, which not only must deal with the functions assigned to it in Section D of the new Article 41 of the Constitution (the selection, hiring, training, professionalization, promotion, evaluation, rotation, tenure, and discipline of employees), but also the creation of the catalogue of positions, posts, and profiles of the national professional electoral employees, all of which will be key for the appropriate set-up of the new system. **MM**

#### NOTES

<sup>1</sup> “Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la *Constitución Política de los Estados Unidos Mexicanos* en materia político-electoral,” *Diario Oficial de la Federación* (Mexico City), February 10, 2014.

<sup>2</sup> Cámara de Diputados, “Dictamen de las Comisiones Unidas de Puntos Constitucionales y Gobernación con proyecto de decreto que reforma los artículos 6, 41, 85, 99, 108, 116 y 122; adiciona el artículo 134 y se deroga un párrafo al artículo 97 de la Constitución Política de los Estados Unidos Mexicanos,” *Gaceta parlamentaria* no. 2341-I, September 14, 2007. The emphasis in the quote is mine.

<sup>3</sup> “Decreto por el que se reforman, adicionan y derogan...”, op. cit.

<sup>4</sup> The Professional Electoral Service is a civil service regime created for the IFE since its inception and which has been consolidated with the reforms to its charter since 1996.



# CISAN

p u b l i c a t i o n s



### *El papel de México en la integración y seguridad energética de Norteamérica*

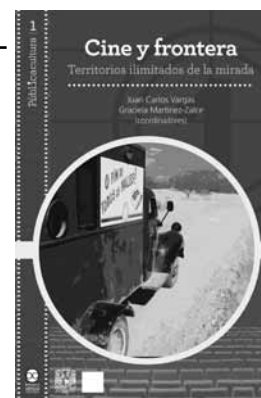
Rosío Vargas

The study of oil in Mexico has centered on the national, when actually, the vectors of the most important policies originate abroad, mainly in the United States, the region’s most powerful country and also the one with the greatest energy requirements. From that perspective, Mexico and Canada’s oil policies are not gauged to their internal priorities and needs, but to those of the U.S. The author looks at this relationship through the prism of the concept of energy security.

### *Cien y frontera. Territorios ilimitados de la mirada*

Juan Carlos Vargas and Graciela Martínez Zalce, coords.

Border studies were revamped in the 1990s, partially because of the transnational circulation of cultural products and globalization. In the field of cinema research, the concept of the border has also become very important. This book offers different fertile and heterogeneous visions of the field, opening the way for later incursions in the topic.



#### For further information contact

Centro de Investigaciones sobre América del Norte, CISAN  
 Universidad Nacional Autónoma de México, Torre de Humanidades II,  
 piso 9, Ciudad Universitaria, 04510  
 México, D. F. Tels. (011 5255) 5623 0308 y 5623 0281  
 e-mail: voicesmx@unam.mx  
[www.cisan.unam.mx](http://www.cisan.unam.mx)