



Electoral Justice System Assessment Guide





Electoral Justice System Assessment Guide

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Preface

The rule of law is an essential element of a democratic society. Ensuring the legitimate expression of the will of the voters calls for a regulatory structure that is fair, clear and applied equally to all in society. A key dimension of rule of law in a democracy is the concept of electoral justice. Electoral justice ensures that elections meet high standards of integrity and guarantees that there are mechanisms in place to restore electoral integrity when it has been violated. With the rise in recent years of potent new threats to electoral integrity—in areas such as political finance and social media—guaranteeing electoral justice through strong laws and institutions has become an even greater priority in many democracies.

United Nations Sustainable Development Goal 16 seeks to ‘. . . provide access to justice for all and build effective, accountable and inclusive institutions at all levels’. The International Institute for Democracy and Electoral Assistance (International IDEA) has played an active role in attaining this goal by supporting electoral justice systems around the world. International IDEA has developed a widely used comparative electoral justice database of key legal provisions covering 178 countries. International IDEA has also developed *Electoral Justice: The International IDEA Handbook* (2010), a comprehensive guide to principles and standards on electoral justice as they are applied around the world. International IDEA is a proud supporter of the Global Network on Electoral Justice, a worldwide network of electoral management bodies, courts and other entities addressing challenges in electoral dispute resolution, as well as of regional networks such as the Ibero-American Conference on Electoral Justice.

The *Electoral Justice System Assessment Guide* (the Assessment Guide) is designed to support users in achieving Goal 16 through the assessment of the strengths and weaknesses of their electoral justice systems. These users might include those operating inside an electoral justice system, such as judges, lawmakers, election officials and others. Users might also include those outside electoral justice systems, such as civil society organization members, researchers and electoral observers, who seek to engage in the fair administration of electoral justice and to advocate for reform.

The questions included in the Assessment Guide are based on international principles of electoral justice as embodied in international conventions such as the International Covenant on Civil and Political Rights, other international and regional standards, and a review of the diverse practices of electoral justice systems throughout the world. In accordance with International IDEA’s mission, the Assessment Guide employs a comparative approach, empowering users by illustrating examples of the wide variety of electoral justice practices in different countries and regions throughout the world.

The Assessment Guide has been designed for ease of use. The user is provided with a brief background relevant to each question as well as a list of resources where information to help answer the question may be found. Each question includes examples that provide insight into how other countries or regions address the same issues posed in the question. A key purpose of the Assessment Guide is to demystify electoral justice and help to explain its common components so that any user may identify areas of strength—and areas for improvement—regarding the administration of electoral justice in their countries and communities.

The *Electoral Justice System Assessment Guide* is an important addition to the resources provided by International IDEA to support efforts to make electoral justice more understandable, more effective and fairer for all.

International IDEA

Acknowledgements

Many International IDEA colleagues contributed to the development of the *Electoral Justice System Assessment Guide*. Frank McLoughlin is the primary developer of the Assessment Guide. Oliver Joseph managed its completion and provided input on the content of different sections and advice on its structure. Special thanks go to Vasil Vashchanka, who initiated the project, and International IDEA Electoral Processes Team head, Therese Pearce Laanela, who has energetically overseen its piloting.

International IDEA offers its deepest gratitude to all who participated in critiquing the Assessment Guide throughout its various stages of development. This includes Ghanaian participants in the electoral justice toolkit question piloting workshop held in Accra in 2016 and all Swedish electoral stakeholders in 2016 who offered their views on the proposed questions. We are also grateful to practitioners on the ACE Electoral Knowledge Network for their helpful comments on a draft of the Assessment Guide that was posted on the ACE website in March 2018. Thanks to Reina Sung and Madeleine Dahlstein who provided support to the piloting of the Assessment Guide questions in Accra and Stockholm in 2016. We would also like to extend our thanks to Lisa Hagman of International IDEA's Publications Team, who provided guidance and support throughout the editing and production process.

We are especially appreciative of the support of Dr Fritz Siregar of the Indonesian Election Supervisory Board (Bawaslu) for his invitation to and leadership in organizing a conference on the finalized prototype Assessment Guide in May 2018, and to the conference participants from Indonesia and across Asia who provided such valuable feedback on the Assessment Guide. Finally, we thank Adhy Aman of International IDEA, for organizing and co-facilitating the conference with Bawaslu, Jayshendra Karunakaren of International IDEA, for supporting this conference, and Carla Luis of the National Electoral Commission of Portugal, for co-facilitating the conference in Jakarta and for her expert input on the Assessment Guide.

1. Electoral Justice Systems

Introduction

Man's capacity for justice makes democracy possible, but man's inclination to injustice makes democracy necessary.

—Reinhold Niebuhr, *The Children of Light and the Children of Darkness* (1944)

The *Electoral Justice System Assessment Guide* (the Assessment Guide) helps users assess the administration of electoral justice in their community or country. The questions contained in the Assessment Guide reflect key electoral justice principles. The Assessment Guide also provides users with background information relevant to each question and potential sources for researching how their electoral justice system performs. Examples from different countries are provided to illustrate other approaches to answering these questions—examples that may be instructive for users seeking new approaches in their own countries or regions.

The Assessment Guide has been designed for use by any individual or organization with an interest in electoral justice. This includes both those who work in the field of electoral justice and dispute resolution and those outside the system who seek to understand and assess how electoral justice is administered. Inclusivity and accessibility are important elements of electoral justice; this Assessment Guide is designed to be used by all those seeking to improve gender balance and enhance diversity in the administration of electoral justice and to promote accessibility to electoral justice for all groups in society.

The Assessment Guide draws on international standards governing the provision of electoral justice as well as more specific international principles such as the 2011 Accra Guiding Principles (*Towards an International Statement of the Principles of Electoral Justice*) developed by Integrity Action and the standards outlined in International IDEA's *Handbook on Electoral Justice*. The Assessment Guide has also been developed through an analysis of diverse electoral justice practices in countries all around the world. These examples are illustrated both through citations of laws and regulations and through citations of reports on the administration of electoral justice in practice from electoral observers, other civil society organizations, academia, media and other sources.

Chapter 1 of the Assessment Guide provides a general overview of the concept of electoral justice and an introduction to the wide variety of laws, institutions and other practices that may comprise an electoral justice system. Chapter 1 also provides a chart to assist users in identifying the components of their electoral justice system, by asking users to indicate the laws and institutions that would govern common types of electoral disputes and irregularities. The chapter concludes with instructions on how to use the Assessment Guide and how its results may be used to benefit an electoral justice system.

The Assessment Guide itself consists of 40 questions covering key organizing principles of an effective electoral justice system. The first 25 questions include those that might be posed from the perspective of users of the system—those who seek electoral justice, those who may be accused of electoral violations, and other system users. The remaining 15 questions include those that might be posed from the perspective of people working within an electoral justice system regarding the quality of laws and institutions.

Each question also includes space for users to record their findings in attempting to answer the questions, and space for actions that they might take to support good practices or address weaknesses in their systems. The Assessment Guide concludes with references, including those related to the examples in the Assessment Guide.

1.1. Defining electoral justice

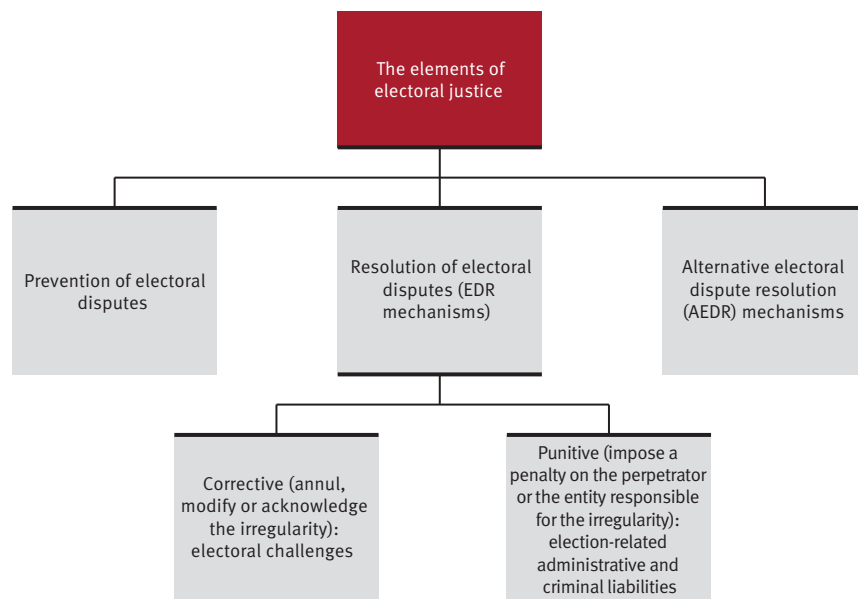
Electoral justice ‘involves the means and mechanisms:

- for ensuring that each action, procedure and decision related to the electoral process is in line with the law (the constitution, statute law, international instruments and treaties, and all other provisions); and
- for protecting or restoring the enjoyment of electoral rights, giving people who believe their electoral rights have been violated the ability to make a complaint, get a hearing and receive an adjudication’ (International IDEA 2010: 1).

This definition illustrates that electoral justice consists of two broad components—(1) guaranteeing that the electoral process operates in accordance with law including international standards; and (2) ensuring that there are fair mechanisms for restoring electoral rights when they may have been violated.

Electoral justice is often equated with electoral dispute resolution; however, the two concepts are not identical. The resolution of disputes involving both criminal and non-criminal electoral violations is central to electoral justice and a key purpose of an electoral justice system (EJS). Electoral justice also encompasses (a) the prevention of electoral injustice before it occurs; and (b) alternative forms of resolving disputes, to ensure a just electoral process and a fair, credible electoral outcome. This Assessment Guide focuses on how electoral crimes, disputes and other irregularities are resolved (see Figure 1.1).

FIGURE 1.1 ELEMENTS OF ELECTORAL JUSTICE



Source: International IDEA, *Electoral Justice: The International IDEA Handbook* (Stockholm: International IDEA, 2010: 10), <<https://www.idea.int/publications/catalogue/electoral-justice-international-idea-handbook>>, accessed 2 May 2019

The prevention of electoral disputes is a key feature of an effective EJS. Minimizing the risk of electoral irregularities, and limiting opportunities for misconduct before it occurs, will result in a less burdened EJS. A predictable set of consequences for electoral violations from one electoral cycle to the next creates a disincentive for similar violations to occur in future elections. Effective education on electoral justice laws and penalties further encourages compliance with laws and regulations.

An EJS can implement these and other positive measures, to preserve electoral integrity and prevent or avoid electoral disputes. Further information on the prevention of electoral disputes is available in the International IDEA *Handbook on Electoral Justice* (2010: 23–36).

Alternative mechanisms of electoral dispute resolution, such as out-of-court conciliation or mediation services, may play an important role in the administration of electoral justice in many countries, at national or sub-national levels and at different phases of the electoral process (International IDEA 2010: 183–93; Kovick, Young and Tohbi 2011: 229–58). Alternative electoral dispute resolution may be used in more formal EJSs to divert eligible cases from a court system that may be financially or time constrained, or to simply clarify issues of dispute. In societies with more traditional methods of dispute resolution, alternative mechanisms may play a more prominent role as ultimate resolvers of claims and complaints.

1.2. The importance of an electoral justice system

Intentionally or unintentionally, electoral norms will be violated by those who design, administer or participate in an electoral process. In these circumstances, a fair, effective electoral justice system is crucial.

The *Electoral Justice System Assessment Guide* (Assessment Guide) is designed to assist users in analysing the strengths and weaknesses of an EJS. An EJS is defined as:

the set of means or mechanisms available in a specific country (sometimes in a specific local community or even in a regional or international context) to ensure and verify that electoral actions, procedures and decisions comply with the legal framework, and to protect and restore the enjoyment of electoral rights. An electoral justice system is a key instrument of the rule of law and the ultimate guarantee of compliance with the democratic principle of holding free, fair and genuine elections.
(International IDEA 2010: 9)

If election results are to be perceived as legitimate and credible, then an effective, trusted electoral justice system is essential. Elections are not synonymous with democracy—many authoritarian and totalitarian states hold elections that fall short of democratic standards. ‘Electoral justice’ in these states is often non-existent or delivered in a manner that reinforces those in power. In states transitioning to democracy, the absence of a trustworthy electoral justice system may lead to political tension, instability or conflict. This may particularly be the case when first elections are perceived to have been manipulated by elites or other powerful interests. Examples include transitional elections in Serbia (2000), Georgia (2003) and Ukraine (2004), and arguably the Kenya presidential election in 2007. The right to report electoral violations freely, to challenge electoral results, and to possess confidence that an EJS will fairly and firmly restore rights and address irregularities are conditions that can restore the perception of legitimacy to a flawed electoral process.

In all democracies, electoral irregularities, electoral violations and attempts to commit election-related crimes are inevitable. The possibility that individuals or organizations may attempt to subvert the electoral process for their own purposes is always a possibility. However, it is far more common for election-related disputes or mistakes in the administration of elections to be committed unintentionally. A strong, credible and fair EJS restores the electoral process by resolving errors, reinstating rights and punishing wrongdoing in a way that builds stakeholder trust in the integrity of the electoral process.

The electoral cycle and electoral justice systems

The electoral cycle (see Figure 1.2) illustrates the different phases of an electoral process in which electoral claims or complaints may be made. A significant number of campaign-related claims or complaints are typically filed with EJS institutions shortly before, on or soon after election day. During the post-voting and early pre-voting periods of the cycle, electoral justice may consist of adjudicating a smaller number of matters, such as disputes involving the constitutional interpretation or an electoral legal framework. Through its various institutions, an effective EJS must have the capacity to adapt to moments of high-volume activity, while also having the ability to dedicate adequate resources to electoral justice matters at all phases of the cycle.

FIGURE 1.2 ELECTORAL CYCLE



Source: International IDEA, *Electoral Management Design: Revised edition* (Stockholm: International IDEA, 2014a: 16), <<https://www.idea.int/publications/catalogue/electoral-management-design-revised-edition>>, accessed 2 May 2019

It is important to recognize that electoral processes for elections to different legislative authorities may be held in the same country or region simultaneously, and moreover that these electoral processes may be at different phases of the electoral cycle. National, regional, local, gubernatorial and in some

cases supranational (e.g. European Parliament) elections may add challenging burdens to an EJS, especially if these elections ultimately rely upon the same EJS institutions. In determining whether EJS institutions are sufficiently strong and effective, it is important to factor into the analysis the possibility of an EJS servicing distinct types or levels of elections, in the same phase or at different phases of the cycle, simultaneously.

New and emerging challenges to electoral justice systems

This Assessment Guide focuses on process and whether EJS processes embodied in laws, practices, procedures and institutions meet certain high standards or organizing principles. It does not focus on specific types of misconduct (e.g. political finance violations, electoral fraud, voter intimidation). It is essential, however, to recognize that new threats to electoral integrity are always emerging, and an EJS must have the capacity and flexibility to address both new and perennial challenges. The adoption of changes in voting procedures (e.g. the institution of postal voting, electronic voting and biometric voter registration) and the multitude of new issues emerging with the rise of the Internet and social media (such as election ‘hacking’, disinformation and the propagation of misinformation or ‘fake news’) are just some of the new challenges facing EJSs in many countries and communities.

EJS institutions must ensure that disputes or violations are resolved in a manner that cultivates trust but that also is realistic in relation to human, logistical and organizational resources. As with justice systems generally, technological innovation and the introduction of modern techniques of case management are some of the approaches taken to maximize EJS institutional efficiency in the context of new and existing challenges. EJS leaders and other stakeholders can contribute to strengthening an EJS by educating other electoral stakeholders on the importance of ensuring that an EJS has adequate resources to fulfil its mandate, particularly in periods of high volumes of complaints and other institutional stresses.

The importance of electoral justice system personnel

Upholding electoral justice, like holding elections, is a human endeavour. The administration of justice requires a wide variety of resources, including financial, organizational and logistical resources. It is most important to have sufficient human resources—the people who will process, investigate, adjudicate and resolve electoral disputes. Well-trained, well-respected, empowered and independent officials and staff are essential for a system that must at times render difficult decisions in tense, politically sensitive contexts. It is therefore important that recruitment, appointment and other procedures for the selection of judges, administrators, investigators, clerks and other EJS personnel meet high standards that guarantee integrity and competence.

This Assessment Guide is designed to assess not only the performance of EJS professionals, EJS leaders and other staff members but also the system in which they work, including whether it empowers them to achieve the organizing principles of an effective and fair EJS. Even if EJS personnel are capable and competent, the system must be configured in such a way that enables personnel to act competently and capably in service of the country or community.

It is also worth emphasizing that the personnel of an effective EJS should reflect the communities they serve. This includes ensuring gender balance and diversity in leadership and staffing, as well as incorporating ethical rules and practices that treat all with dignity, courtesy and respect. Diversity, and respect for diversity, demonstrates that disputes or complaints raised by all individuals will be heard equally before electoral justice institutions and that the rights of all will be equally protected.

1.3. Identifying your electoral justice system

This section has been designed to assist users in identifying EJS laws and institutions in their country or region. For additional details on electoral justice systems in many countries, please refer to International IDEA's Electoral Justice Database at <<https://www.idea.int/data-tools/data/electoral-justice>>.

Types of EJS laws

Laws that may constitute part of the electoral justice legal framework may include the following:

- constitutions;
- comprehensive electoral laws or codes;
- electoral laws or codes that govern separate or distinct types of elections, such as local or provincial elections;
- international treaties and conventions governing democratic and justice-related obligations;
- penal codes/criminal laws;
- anti-corruption laws;
- laws governing alternative dispute resolution processes;
- civil service laws;
- laws governing citizenship, including how citizenship is acquired, transferred and relinquished;
- laws governing the media, including restrictions on media operations during elections;
- stand-alone laws on activities related to the electoral cycle, such as developing a voter database, conducting voter registration, or voting from a site other than a voter's home electoral district;
- laws governing the conduct of a census or collecting other demographic data;
- laws governing the delimitation of electoral boundaries;
- laws governing political parties, as organizations and as political actors, including all laws ensuring a 'level playing field' among political parties as participants in the electoral process;
- laws governing all civil society organizations;
- laws governing the operations of domestic and foreign election observers; and
- laws governing the activities of police, military and other security forces during the electoral process.

In citing any law, users should try to identify the section, article or other component of the law pertaining to the electoral justice topic at issue.

There are also other types of provisions with the force of law that may govern the electoral justice process, depending on the jurisdiction's legal system. Some of these may include the following:

- electoral regulations;
- decisions issued by administrative agencies;
- administrative or other organizational by-laws or rules of procedure;
- executive branch or ministry orders;

- binding codes of conduct;
- binding, ad hoc agreements between political actors, or between the state and political actors; and
- judicial decisions.

Types of EJS institutions

EJS institutions are entities that contribute to a system that fairly resolves disputes, disciplines offenders and remedies damage done to the integrity of the electoral process. Electoral dispute resolution may involve different types of activities conducted by distinct electoral justice institutions, including the *intake and processing* of complaints or claims, the *investigation* of complaints, the *adjudication* (rendering of decisions) of complaints and, when applicable, the *appellate review* of decisions by a higher entity such as a court.

Electoral justice system institutions that perform some of these functions may include the following:

- electoral management bodies (EMBs) (note that there may be more than one EMB in a country or region);
- ordinary (civil or criminal) courts;
- administrative courts;
- specialized or electoral courts;
- appellate courts;
- constitutional or other high courts;
- constitutional councils (non-judicial);
- electoral complaint boards or commissions (either as part of an EMB or independent);
- specialized, administrative agencies (regulating, for example, political parties or political finance);
- departments within government ministries;
- legislatures or other elected bodies;
- law enforcement agencies (e.g. police, prosecutor);
- subnational governmental bodies;
- regional or international institutions or courts;
- non-state actors such as political parties, and other civil society/non-governmental organizations; and
- alternative dispute resolution mechanisms.

Identifying electoral justice system laws and institutions in your country

The following chart is designed to assist users in identifying the laws and institutions that comprise an EJS in their country or region. For each of the common types of election-related disputes, violations or irregularities listed in the left column, list the law(s) and institution(s) that would normally play a role in addressing or resolving the matter. Please note that laws may include constitutional provisions and international obligations, regulations, judicial decisions, and provisions from other sources besides statutory law. Please note also that in many instances different institutions may handle a complaint at distinct stages of the process (e.g. the police or the EMB may accept the complaint, a lower court or an EMB may resolve the complaint, a higher court may hear appeals). International institutions such as regional rights courts may also play a role in adjudicating election-related claims.

Electoral dispute, violation or irregularity	Law(s)	Institution(s)
Violation of an international legal obligation (e.g. International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), regional conventions)		
Violation of a constitutional civil, political or electoral right (e.g. freedom of speech, freedom from discrimination, the right to vote, the right to due process)		
Dispute over electoral boundaries		
Dispute over census/collection of demographic data		
Dispute over nomination or appointment of EJS officials		
Violations of legal provisions, if any, requiring diversity within EJS institutions		
Violations of legal provisions, if any, requiring gender balance within EJS institutions		
Violations related to the operations of political parties (e.g. messages promoting violence, diversity provisions)		
Excessive restrictions on, or unfair treatment of, political parties by state institutions		
Voter registration-related violations and irregularities		
Violations of candidate nomination process/challenges to candidate eligibility		
Campaign-related violations (e.g. improper use of state resources, campaigning at an inappropriate site, improper use of posters)		
Political finance violations (e.g. funding or reporting violations)		
Violations committed by candidates/ parties involving the media (e.g. advertising during campaign silence period, failure to provide disclaimer)		
Violations committed by the media (e.g. failure to provide balanced coverage, violation of 'equal time' provisions)		
Excessive restrictions on media/illegal or unfair treatment of media by state institutions		
Excessive restrictions on election observation organizations/unfair treatment of election observation organizations by state institutions		

Electoral dispute, violation or irregularity	Law(s)	Institution(s)
Violations committed by election observation organizations		
Election-related violence		
Violations of election day procedures by election officials (e.g. failure to examine voter identification, failure to ink fingers, not requiring voters to use voting booths)		
Violations committed by voters or others on election day (e.g. intimidation, failure to follow identification and inking procedures)		
Violations committed by candidate or party representatives in polling stations on election day		
Inaccessibility of electoral sites to people with disabilities or others		
Violations of counting procedures		
Disputes over ballot validity/determination of voter intent		
Other election day irregularities (e.g. failure of polling sites to open on time)		
Campaign or election day violations by security personnel		
Allegations of electoral fraud (e.g. multiple voting, impersonation fraud)		
Challenges to electoral results		
Other election-related crimes		
Other non-criminal election-related violations		
Lack of transparency in EJS institution proceedings		
Allegations of corruption against EJS officials		
Allegations of conflict of interest against EJS officials		
Allegations of unethical/unprofessional behaviour by EJS officials		

1.4. How to use the Assessment Guide

Following the identification of EJS laws and institutions, the next step is to assess the EJS strengths and weaknesses by completing the *Electoral Justice System Assessment Guide*. Although no two electoral justice systems are identical, every EJS can be analysed on how it embodies certain common organizing principles. The organizing principles considered in this Assessment Guide consist of the following: (a) fairness; (b) lawfulness; (c) professionalism; (d) transparency; (e) accessibility; (f) timeliness; (g) education/awareness-raising; (h) independence; (i) impartiality; (j) efficiency and effectiveness;

(k) accountability; (l) inclusivity; and (m) adaptability. The principles are based on International IDEA's *Handbook on Electoral Justice* (2010) and, in part, on *Towards an International Statement of the Principles of Electoral Justice—The Accra Guiding Principles*, developed by Integrity Action (2011). Further details of the Accra Guiding Principles can be found at <<https://integrityaction.org/sites/default/files/publication/files/Accra%20Guiding%20Principles.pdf>>.

The Assessment Guide consists of 40 questions posed from the following two sets of perspectives:

1. from the *complainant* (the individual or group that initiates an electoral complaint or challenge) and/or the *respondent perspective(s)* (the individual or group challenged or complained against) [25 questions];
2. from the EJS *institutional perspective* (the courts and other tribunals, EMBs, investigative bodies and other entities responsible for ensuring electoral justice) [15 questions].

Each question includes additional *background* on the purpose of the question. The background offers information that helps to clarify the question and why it is being asked. Following each question in the Assessment Guide are references to *examples* of how a component of an EJS in other countries has addressed similar issues. Examples from other countries do not always represent best practices—some examples may instead demonstrate the ongoing challenges that other countries face in answering these questions.

Different questions have more, less or no relevance in different phases of the electoral cycle. As indicated in Figure 1.2 in Section 1.2, the electoral cycle is divided into eight phases:

Pre-voting period:

1. legal framework;
2. planning and implementation;
3. training and education;
4. voter registration;
5. electoral campaign;

Voting period:

6. voting operations and election day;
7. verification of results;

Post-voting period:

8. post-election phase.

At the end of each question, there are boxes where the user can record *findings* and potential *actions* to address these challenges in their own region or country. In the findings section the user may record how the user's EJS attempts to address the Assessment Guide question. The actions section is for noting particular steps the user might take to improve EJS laws, regulations and practices in the area in question. Depending on whether the Assessment Guide user is someone who works within an EJS (such as an electoral official or judge) or someone who works outside the EJS (such as a member of a civil society organization or an academic researcher), there may be unique actions that a user may take to promote EJS improvements. Following the Assessment Guide is a list of *references* that provides more information on topics covered and the examples included in the Assessment Guide.

Notes on the Assessment Guide methodology

The Assessment Guide is designed primarily for use as a self-assessment tool by EJS officials or other leaders, or as an external assessment tool for use by civil society, researchers and others. As the Assessment Guide is designed to be broad, providing examples from different countries around the world, users are encouraged to modify the Assessment Guide to fit their context, assessing how local norms, laws and practices reflect the key EJS organizing principles on which the Assessment Guide is based. In focusing on local or national laws and case examples of electoral justice in action at the local or national level, some Assessment Guide questions may therefore not be relevant. In addition, as Assessment Guide users within the EJS and outside the EJS may have different resources available, different experiences and different perspectives, some questions in the Guide may be difficult to answer for some users.

Organizing principles

The organizing principles of electoral justice discussed in this Assessment Guide may in some cases appear to be in conflict with one another. This does not diminish the importance of each organizing principle on its own. It is instead an acknowledgment that electoral justice often places unique pressures on laws and institutions. A common example is the frequent tension between the need to ensure fairness and lawfulness in adjudicating electoral justice proceedings and the importance of timeliness in resolving disputes when electoral legitimacy and possibly even political stability are at stake. Ultimately, perceived tensions like these may be best addressed through education, instilling confidence and acceptance of the EJS and its decision-making processes, although this remains a perpetual challenge in most countries.

Qualitative (not quantitative) approach to assessment

This Assessment Guide has been developed to assist users in making a qualitative assessment of whether an EJS fulfils certain key organizing principles. The Assessment Guide does not contemplate a set of numerical scores in measuring answers to questions for several reasons, including the inexactness of assigning a score to some concepts and the impossibility of numerically comparing different organizing principles, especially given the different priorities that systems may assign to fulfilling distinct organizing principles.

Promoting further discussion

Different users may arrive at different answers depending on their distinct perspectives on electoral justice. For example, users operating inside an EJS may have different views from those in civil society regarding how fully an EJS embodies key organizing principles. In these instances, this Assessment Guide ideally might be used as the basis for healthy discussion or debate among stakeholders about why findings on certain issues might diverge and whether it is possible to address these diverging viewpoints.

1.5. Using the assessment results

The results of the Assessment Guide may be used in a number of ways to support efforts at improving the provision of electoral justice. The findings produced from the Assessment Guide may include, but not be limited to, the following:

- assessment of supranational, national, regional and local EJS laws and institutions, practices and procedures;
- assessment of the environment in which an EJS operates, including the existence of necessary rights and freedoms, the availability of human and other resources and the degree of public awareness;
- comparison of the operation of EJS institutions within a country or other jurisdiction;
- comparison of distinct EJS-related laws;
- comparison of EJSs serving different levels or types of elections (local vs national, for example);
- comparison of EJSs in different regions or localities within a country;
- comparison of components of an EJS over time, including the consistency of laws and institutions from electoral cycle to electoral cycle or changes in laws and institutions; and
- comparison of the conduct of incumbent elected leaders over several electoral cycles to ensure that incumbent leaders, regardless of party or affiliation, have not unduly benefited from or pressurized an EJS.

Having achieved one or more of these objectives, the assessment findings and conclusions might then be used in support of some of the following efforts depending on the objectives of the user:

- *Awareness-raising*: providing the public and other electoral stakeholders with information about the availability of an EJS and the importance of turning to it if one's election-related rights have been violated.
- *Education*: providing information to all stakeholders on the important organizing principles underpinning an EJS and an assessment of the strengths and weaknesses of a specific EJS in meeting these objectives.
- *Reporting*: facilitating reporting on the performance of and at times the complex workings of an EJS during the electoral cycle by media and others.
- *Electoral observation*: serving as a structured guide to observing an EJS and on how to analyse components of an EJS as part of a more comprehensive electoral observation process.
- *Reform*: using the findings of the Assessment Guide to support efforts designed to improve components of the EJS, including laws and institutions.
- *Internal improvement*: EJS leaders, lawmakers and other key decision makers may use the findings derived from the assessment to institute internal improvements to laws and institutions.

Electoral Justice System Assessment Guide questions

Question (Complainant and respondent perspective)		Page
	Fairness	
1	Are electoral disputants treated fairly by electoral justice system (EJS) institutions?	23
	Lawfulness	
2	Are international obligations regarding electoral justice given force in national law?	26
3	Do key rights and protections related to electoral justice exist and are they enforced in national law?	29

Question		Page
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2. The Electoral Justice System Assessment Guide

Fairness

Question 1

Fairness

1

Are electoral disputants treated fairly by electoral justice system (EJS) institutions?

BACKGROUND

‘Fair treatment’ in EJS proceedings is a broad concept. Some aspects to consider when assessing fairness include the following:

Access to information. Each disputant in an electoral dispute should be made aware of key information, such as her or his rights and responsibilities, the dates and times of relevant proceedings and what to expect from the EJS institution regarding the decision-making process.

Treatment of the inexperienced. To help ensure equality before the law, EJS institutions may have to treat unrepresented or inexperienced disputants with extra consideration, particularly if they are disputing a matter with a person or entity represented by counsel or with a person or entity possessing more experience with EJS institutions.

Perception of fairness. ‘Fairness’ is also a question of perception. When participants in a court or other adjudicatory proceeding believe that they were fairly heard, they are more likely to accept the result of the proceeding, even if they are on the losing side (Tyler 2007: 26–27). Whether what is known as ‘procedural justice’ takes place can be determined in part through considering whether disputants believe that they have had an opportunity to be heard in proceedings before impartial officials, whether they believe they have been treated respectfully and whether the relevant judge(s) or other election official(s) demonstrate that they are listening actively to all disputants in a matter (Tyler 2007: 30–31).

EXAMPLES

<p>Australia (Western Australia)</p>	<p>Supreme Court of Western Australia, <i>Equality before the Law</i>, 1st edn (2009), Section 1.3, p. 1.3.1</p>	<p>Noting that sometimes it is necessary for judicial officers to treat people differently to ensure equality before the law.</p> <p>[‘]Judicial officers cannot treat everyone the same way if they wish to ensure equality before the law, as to do so could lead to a perception of unfairness and in some cases a legally wrong outcome. Rather, judicial officers may need to adapt the conduct of court proceedings to ensure that individuals can give their evidence as effectively as possible, receive a fair hearing and obtain an appropriate outcome, bearing in mind the particular individual’s background and circumstances.’]</p>
<p>Canada</p>	<p>National Judicial Institute, <i>Problem-Solving in Canada’s Courtrooms: A Guide to Therapeutic Justice</i>, 2nd edn (2011), Chapter V, ‘Communicating effectively’, pp. 29–41</p>	<p>Describing how to conduct effective interactions between a judge and a participant, including by demonstrating empathy, respect and active listening.</p>
<p>Indonesia</p>	<p>The Constitutional Court of the Republic of Indonesia, Regulation of the Constitutional Court—Number 15 Year 2008, Regarding Guidelines on the Judicial Procedure in Cases of Dispute Over the Results of Regional Head Election, Chapter IV, ‘Case Registration and Setting of Hearing Schedule’, and Chapter V, ‘Hearing’, arts. 7–8</p>	<p>Outlining election petition registration process and stages of hearings on electoral petitions.</p>

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Lawfulness

Questions 2–8

Lawfulness

2

Are international obligations regarding electoral justice given force in national law?

BACKGROUND

There is a range of international standards that countries may adopt as legal obligations related to electoral justice. Primary United Nations conventions governing electoral justice and electoral offences include the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention Against Corruption (UNCAC). As noted by International IDEA in *International Obligations for Elections: Guidelines for Legal Frameworks* (2014b), these conventions address rights essential to the operation of an EJS, including the following:

- existence of a forum for electoral grievances (ICCPR 2.3);
- judicial review of administrative decisions related to elections (ICCPR 2.3, 14.1);
- ability of EJS to provide effective remedies (ICCPR 2.3);
- EJS independence and impartiality (ICCPR 14);
- legally reasoned and published decisions (ICCPR 14, 19.2; UNCAC 13.1);
- public hearings or proceedings (ICCPR 14; UNCAC 10, 13.1);
- accessibility to the EJS for all electoral stakeholders (ICCPR 2.3, 26);
- no unreasonable fees for filing complaints (ICCPR 26);
- protection against reprisals for testifying in disputes (ICCPR 9; UNCAC 32);
- proportionate, effective sanctions for electoral offences (ICCPR 2.2);
- prevention of the executive branch from intervening in the prosecution of electoral offences (ICCPR 26);
- due process and fair trial rights for those charged with electoral offences (ICCPR 14);
- prohibition of trial by military tribunal of civilian electoral stakeholders (ICCPR 14.1);
- maintenance of the presumption of innocence (ICCPR 14); and
- effective enforcement of electoral sanctions (ICCPR 2.2, 2.3).

There are other international conventions that pertain to the equal treatment of people within an EJS, including the Convention on the Rights of Persons with Disabilities (CRPD), the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). There may also be regional conventions that impose obligations in these matters on a particular country, such as the Inter-American Convention on Human Rights and the European Convention on Human Rights.

Some countries may choose not to accept full international obligations contained in a treaty or convention. Countries may choose to limit their acceptance of convention or treaty requirements through reservations, declarations or other statements meant to provide a certain interpretation of the convention's applicability. There are different ways in which a national legal system may fail to fulfil international obligations, even if they have been incorporated into national law. These include the following:

- by too narrowly interpreting the terms of binding international conventions;
- by imposing legal restrictions that make full exercise of rights impossible; or
- by simply failing to enforce international obligations.

EXAMPLES

<p>Ghana</p>	<p>Constitution of 1992 with Amendments through 1996, art. 75</p>	<p>Treaties gain force after ratification by Parliament.</p> <p>['75. Execution of treaties</p> <ol style="list-style-type: none"> 1. The President may execute or cause to be executed treaties, agreements or conventions in the name of Ghana. 2. A treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by . . . <ol style="list-style-type: none"> c. Act of Parliament; or d. a resolution of Parliament supported by the votes of more than one-half of all the members of Parliament.']
<p>Mexico</p>	<p>Constitution of 1917 with Amendments through 2015, art. 133</p>	<p>Laws executed by the president and approved by the senate are the supreme law of the country.</p> <p>['This Constitution, the laws derived from and enacted by the Congress of the Union, and all the treaties made and executed by the President of the Republic, with the approval of the Senate, shall be the supreme law of the country. The judges of each state shall observe the Constitution, the laws derived from it and the treaties, despite any contradictory provision that may appear in the constitutions or laws of the states.']</p>
<p>Switzerland</p>	<p>United Nation Treaty Collection, Chapter IV, Human Rights, Status of Treaties, International Covenant on Civil and Political Rights, New York, 16 December 1966 [Switzerland acceded to ICCPR 18 June 1992]</p>	<p>Reservation concerning application of ICCPR article 25, subparagraph (b) (guaranteeing the secret ballot) to cantonal and communal elections within assemblies.</p> <p>['The present provision shall be applied without prejudice to the cantonal and communal laws, which provide for or permit elections within assemblies to be held by a means other than secret ballot.']</p>

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Lawfulness

3

Do key rights and protections related to electoral justice exist and are they enforced in national law?

BACKGROUND

Whether they are derived from international sources or they originate in a national constitution, the enforcement of key rights is essential to ensure a fair, effective electoral justice system.

These rights include, but are not limited to, the following:

- right to notice of hearing;
- right to counsel and, when in the interests of justice, to have counsel provided for defendants who cannot afford counsel;
- privilege against self-incrimination;
- right to seek and receive information, with limited exceptions (e.g. national security exceptions);
- right of persons with disabilities to access information without additional cost;
- right to public judicial decisions that include the legal reasoning behind decisions;
- right to liberty and security without arbitrary arrest;
- right to equality before the law;
- freedom from discrimination;
- right to equal access to EJS institutions;
- right to a fair, public hearing by a competent, independent, impartial judge or arbitrator in determination of a disputant's electoral rights;
- duty of state to enforce a remedy or other decision when issued; and
- right to effective redress for violations of electoral rights in a timely manner.

When examining the structure of rights and protections related to an EJS, users should consider more than whether the rights exist in law. Users should also consider the extent or degree to which stated rights and protections are meaningfully guaranteed. If, for example, obtaining counsel is difficult for criminal defendants who cannot afford representation because of a lack of available attorneys, then the right to counsel is not being fully protected.

EXAMPLES

Japan	Constitution effective 3 May 1947, arts. 32–34	Constitutional guarantees to access to courts; no apprehension except upon warrant issued by a judicial officer; right to be informed of charges and privilege of counsel.
Nigeria	Centre for Laws of the Federation of Nigeria, Electoral Act, 2010, First Schedule, Rule of Procedure for Election Petitions, art. 19	Legal provision guaranteeing that all electoral petitions be heard in open court. [‘Every election petition shall be heard and determined in an open tribunal or court.’]

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Lawfulness

4

Do alternative electoral dispute resolution mechanisms exist, and, if so, do they operate in a fair manner?

BACKGROUND

Alternative electoral dispute resolution (AEDR) mechanisms are designed to help disputants reach a resolution of an electoral dispute without resorting to a formal decision-making body such as a court. These mechanisms may include bilateral negotiation between stakeholders, or mediation or conciliation efforts involving a third party who is charged with helping disputants reach a resolution. In some countries, committees of representatives of different political parties, civil society organizations or committees of esteemed private citizens may play a role in resolving disputes between electoral disputants informally.

Not every country employs alternative dispute resolution mechanisms to resolve electoral disputes. As with formal EJS institutions, it is important that AEDR mechanisms are perceived as fair by a critical mass of electoral stakeholders for the results of the AEDR process to be accepted as legitimate.

EXAMPLES

Cambodia	International IDEA, <i>Handbook on Electoral Justice</i> , 2010, pp. 188–89	Most electoral disputes are disposed of outside the formal court system. [‘The cultural tradition of extrajudicial mediation and conciliation makes AEDR mechanisms a powerful dispute resolution tool.’]
South Africa	International IDEA, <i>Handbook on Electoral Justice</i> , 2010, pp. 184–85	Describing South Africa’s Independent Electoral Commission conflict management programme. Experts in conflict resolution hired shortly before elections to mediate and propose resolutions to disputes to the electoral management body (EMB), therefore reducing the number of formal disputes.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Lawfulness

5

Are electoral laws and rules governing the EJS easy to understand and consistently applied?

BACKGROUND

‘For a legal framework to be appropriate, the EJS needs to be designed in simple, clear and consistent terms that make it easy to understand and ensure complete and effective access to electoral justice’ (International IDEA 2010: 25).

Clarity of legal language can be enhanced in a number of ways, including by ensuring that paragraphs are well organized and concisely written and that useful headings are added. Public or civil society organization assessments of the clarity of legal language may be useful resources.

The consistency of application of laws and regulations governing the EJS may be difficult to determine without conducting original research, such as comparing the treatment of disputants in similar cases. Inconsistency in the application of the law may be the product of ‘gaps’ in legal language—areas where the law is silent on certain electoral procedures.

In instances where laws change frequently or automatically from election to election, users may also wish to consider the consistency of changing laws. Dramatic legal changes from election to election may create confusion and inconsistent application of new laws, particularly if there is inadequate education regarding changes.

EXAMPLES

Germany	Wieners-Horst, B., ‘Germany – editing in the German Parliament, a movement to simplify legal language’, <i>Clarity</i> , No. 47, May 2002 [translated and adapted by E. Wagner], p. 12, citing paragraph 42(5) of the Common Rules of Procedure of German National Ministries	Describing the process of ensuring that proposed German legislation is written in a clear, understandable manner. [‘The language of proposed legislation must be correct and if possible understandable by all readers. The language of proposed legislation must reflect the equal rights of women and men. Proposed legislation should be forwarded to the German Language Society’s editing service in the German Parliament so that the draft can be checked for correctness and understandability.’]
Nicaragua	Birch, S., <i>Electoral Malpractice</i> (Oxford: Oxford University Press, 2011), p. 82	Gaps in language governing procedure contributed to manipulation of electoral process by electoral officials during the 2000s.
Somaliland	Owens, J., Tesfaye, B. and Yi, E., ‘Case one: Somaliland’ in <i>Elections and Conflict in Sub-Saharan Africa 2013</i> (Princeton University, 2013), pp. 6–19	Discussing ambiguities and inconsistencies in Somaliland’s 2012 election and political party laws.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Lawfulness

6

Are the jurisdictions and responsibilities of all EJS institutions clear and understandable?

BACKGROUND

When more than one EJS has jurisdiction over an electoral claim or complaint, this may create confusion for EJS users and other stakeholders. Ensuring that there is clear, accessible information and education on how and where to present all types of electoral claims and complaints can eliminate any confusion. It may also prevent stakeholders from attempting to manipulate the system by choosing to present claims before institutions that they believe may offer more favourable results.

Jurisdiction over certain complaints or challenges may be handled by different institutions under different laws, depending on when during the electoral cycle the alleged incident leading to the complaint or challenge has taken place, or on the subject matter of the complaint. For example, it is common for an EJS to have different rules or procedures for challenges to electoral results versus other types of electoral complaints (International IDEA 2010: 60–61). Criminal matters related to elections may be considered and adjudicated under a national penal code or other criminal laws and before institutions such as criminal courts. Constitutional cases affecting political and civil rights necessary for a fair, effective EJS may be heard by constitutional or other special courts or councils. In some instances, and if certain pre-conditions are met, matters related to election-related rights may be heard by international rights courts.

EXAMPLES

Kenya	The Judiciary (Kenya), <i>Bench Book on Electoral Disputes Resolution</i> (Nairobi: The Judiciary, 2017), section 2.4.4.4, p. 22	Describing a limit to the EMB’s jurisdiction over some disputes. [‘IEBC’s jurisdiction to settle disputes under Article 88 (4) i of the Constitution does not extend to the adjudication of the nomination process of a political party.’]
Mongolia	Organization for Security and Co-operation in Europe–Office for Democratic Institutions and Human Rights (OSCE–ODIHR), <i>Mongolia Presidential Election 26 June 2017, OSCE/ODIHR Needs Assessment Mission Report</i> , 21–24 February 2017, p. 9	Noting overlapping jurisdictions between EJS institutions regarding some disputes, including over media compliance during the campaign period.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Lawfulness

7

Are EJS institution decisions accepted by disputants who are adversely affected (electoral case ‘losers’), as well as by the wider public?

BACKGROUND

A key test of the rule of law is whether electoral stakeholders tend to accept the decisions of EJS institutions, regardless of whether they have ‘won’ or ‘lost’ a particular case. Acceptance includes adhering to all terms of an enforced final judgment, including conditions that may apply to a disputant for months or years, such as a decision prohibiting a disputant from participating in the electoral process for a period of time.

To promote acceptance, legal provisions requiring adherence to decisions may assess additional penalties for failure to fulfil the terms of an EJS institution decision. These penalties may include additional fines or charges of criminal or civil contempt.

EXAMPLES

Austria	Oltermann, P., ‘Austrian presidential election result overturned and must be held again’, <i>The Guardian</i> , 1 July 2016	The presidential candidate with the highest number of votes accepts the court decision overturning the result and ordering re-run of election. [‘When the 2016 election was overturned by the highest court, the highest vote getter, Alexander van der Bellen, said he accepted the decision. “I will stand again in this run-off election, and I intend to win again—don’t let that be misunderstood. If I managed to win under adverse circumstances once, then I can do it again.”’]
United Kingdom	The Electoral Commission website, Roles and Responsibilities, Our Role as Regulator of Political Party Finances, Enforcement Sanctions, ‘Compliance notice (discretionary requirement), [n.d.]	Stating that the EMB may assess fines on people or organizations failing to comply with a prior EMB order, website available at: < https://www.electoralcommission.org.uk/our-work/roles-and-responsibilities/our-role-as-regulator-of-political-party-finances/sanctions > [‘A notice setting out action that must be taken by the person or organisation that has broken the rules to make sure they follow the rules in future. We can fine the person or organisation if they do not do what we have asked.’]
Uruguay	ACE Electoral Knowledge Network, ‘Uruguay: the electoral court – a fourth branch of government?’, in <i>Electoral Management</i> (ACE Electoral Knowledge Network, 2014)	Example of Uruguayans holding the Electoral Court in high regard, including the military in 1980 accepting the court’s ruling against it.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Lawfulness

8

Are election-related civil and criminal sanctions proportionate to the severity of the offence or violation?

BACKGROUND

It may be difficult to arrive at an agreed upon definition of ‘proportionate’ electoral penalties. Proportionality is often a matter of individual judgement—citizens of a country may reasonably differ on what constitutes a ‘fair’ sanction or sentence for electoral crimes and violations. Because norms may vary from country to country, it may not always be particularly useful to look to the practices of other countries in establishing nationally appropriate penalties as a part of a particular country’s legal framework, although it may be instructive to know whether penalties are on the high end or low end of penalties issued by all democracies.

Large penalties or lengthy sentences for electoral violations or crimes may violate international or national norms against excessive punishment. They may also result in greater costs to an EJS. For example, a tendency to criminalize minor electoral violations will result in proceedings that require more elaborate, and expensive, due process safeguards than would non-criminal proceedings. Extreme penalties might also make EJS institutions less willing to charge stakeholders with certain crimes, and less willing to impose them (Vickery 2011: 75–76). Penalties or sentences that are too lenient, on the other hand, may create an incentive for some stakeholders to commit violations.

EXAMPLES

<p>Kosovo</p>	<p>Democracy for Development (D4D) Institute, <i>Bringing Justice to Elections: Review of Dispute Resolution and Roadmap for Institutional Coordination</i> (Prishtina, Kosovo: D4D, July 2015), pp. 27–28</p>	<p>Report raising question as to whether ‘conditional sentencing’ of those who are convicted of electoral crimes is proportionate.</p> <p>[‘The conditional sentence usually involves imprisonment and/or a fine, however the perpetrator does not have to suffer the sentence as long as he or she respects a specific condition set by the court. A condition may be, for example, the perpetrator should not commit another crime for a specified period of time.’]</p>
<p>Philippines</p>	<p>Vickery, C., ‘International standards,’ in C. Vickery (ed.), <i>Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections (GUARDE)</i> (Washington, DC: International Foundation for Electoral Systems (IFES), 2011), p. 76</p>	<p>Discussing IFES’s recommendations to delink electoral and criminal law in the Philippines in 2004, since harsh criminal penalties for some electoral violations would discourage people from reporting these violations.</p>

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Professionalism

Questions 9–10

Professionalism

9

Do mechanisms exist to ensure the integrity of EJS officials?

BACKGROUND

For EJS officials, including not only judges and EMB officials but also clerks, investigators and other EJS employees, an enforceable internal code of conduct helps ensure that all are held accountable for violations of legal and professional standards. It can also serve as an educational tool for EJS officials and other employees, regarding ethical and professional obligations. Mechanisms such as codes of conduct can also provide the public, many of whom may have never attempted to access an EJS institution before, with a clear expectation of what to expect as participants in the electoral justice process.

Codes of conduct or other mechanisms assuring integrity may cover the following areas:

- personal and institutional independence;
- impartiality;
- propriety or treating others with dignity;
- confidentiality;
- transparency;
- equality of treatment for all;
- competence and diligence;
- reporting of conflicts of interest or potential conflicts of interest;
- establishing positive working relationships with political parties, civil society organizations and other stakeholders;
- ensuring accessibility and user-friendliness; and
- promoting awareness.

This list was derived in part from the Judicial Group on Strengthening Judicial Integrity’s *Bangalore Principles of Judicial Conduct* (2002).

Non-binding codes, although not directly enforceable against EJS officials or employees, can also serve as useful guidance on norms regarding how EJS personnel should conduct themselves as well as a measuring stick for others wishing to assess the quality of an EJS.

EXAMPLES

India (Gujarat)	High Court of Gujarat, 2011	‘(Conduct, Discipline, and Appeal) Rules, 2011.’
Liberia	National Election Commission, 2010	‘Code of Conduct for NEC Personnel.’
Mexico	International IDEA, <i>Handbook on Electoral Justice</i> , 2010, p. 31	‘Code of Ethics of the Judicial Branch of the Federation of Mexico.’

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Professionalism

10

Do EJS officials and staff treat people (regardless of economic resources, gender, race and membership of other groups) with courtesy, dignity and respect?

BACKGROUND

How EJS personnel treat the public is a key factor in creating trust in these institutions. A failure to treat users with respect, courtesy and dignity may damage the perception that EJS institutions are equally accessible to all. Such a failure may cast doubts on whether these institutions operate fairly and render justice equally to all. This is especially true if institutions treat different groups of citizens differently, based on economic resources, gender, race, religion and membership of other groups that may face discrimination in society. For this reason, EJS institutions are increasingly adopting requirements that all EJS officials and other employees treat people involved with the electoral justice process appropriately.

EXAMPLES

<p>Angola</p>	<p>Electoral Institute for Sustainable Development in Africa, African Democracy Encyclopaedia Project, Angola: Code of Conduct, updated May 2006</p>	<p>Code providing for non-discrimination and gender balance.</p> <p>The Code of Conduct is applicable to all actors in the electoral process and promotes ‘equal rights and non-discrimination on the basis of location of residence, economic or social status or the political, philosophical and religious preferences of citizens or candidates, without prejudice to the effort to achieve the minimum goal of 30% gender representation’.</p>
<p>Seychelles</p>	<p>Office of the Electoral Commission, Republic of Seychelles, ‘Code of Conduct for Election Officials’ in <i>Code of Conduct for Stakeholders</i>, November 2015, pp. 4–5</p>	<p>The code sets out expectations for provisions governing treatment of members of certain groups by election officials.</p> <p>[‘Election Officials shall . . . (10) treat with compassion, but in accordance with established procedures, elderly persons, persons with disabilities and pregnant women and provide the assistance that the regulations prescribe . . .’]</p>

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Transparency

Questions 11–13

Transparency

11

Are EJS judicial proceedings open to the public, observers and the media?

BACKGROUND

Transparency in the operations of EJS institutions is essential for promoting trust among citizens in the fairness of their EJS. Open judicial proceedings can also educate stakeholders about what to expect from EJS institutions when accessing the electoral justice process.

Transparency begins with the accessibility of the physical space where proceedings take place. To build trust in the proceeding and the process generally, some space in the room where the proceeding takes place should be reserved for non-participants in the proceeding, including members of the public. In addition to providing space in the room in which a proceeding is to take place, EJS institutions should ensure that electoral observers and the media are able to attend and report on proceedings. EJS institutions can enhance transparency further by ensuring that the time and place of scheduled proceedings are publicized.

EXAMPLES

Mexico	Constitution of 1917 with Amendments through 2015, art. 99, para. 2	Public sessions in accordance with the constitution. [‘Resolving sessions of the Electoral Court shall be public in accordance with the law. . .’]
Nigeria	Centre for Laws of the Federation of Nigeria, Electoral Act, 2010, First Schedule, Rule of Procedure for Election Petitions, art. 19	Open proceedings in accordance with law. [‘Every election petition shall be heard and determined in an open tribunal or court.’]

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Transparency

12

Do EJS case decisions include a clear, publicly available rationale for the decision taken?

BACKGROUND

Accountability and transparency are enhanced by ensuring that EJS institutions include a clear, publicly disseminated rationale explaining decisions, including what steps were taken by EJS institutions in reaching a decision. A thoroughly explained decision-making process and decision is more likely to engender confidence in the electoral justice process, including among stakeholders that have lost a particular case (Tyler 2007: 31).

EXAMPLES

Kenya	Supreme Court, (Presidential Election Petition) Rules, 2017, Rule 23(1), pp. S25–55	<p>Allowing for a period, not to exceed 21 days, following the issuance of an order on a presidential election petition for the publication of reasons supporting the order.</p> <p>['(1) Within fourteen days after filing of a petition, the Court shall determine the petition but may reserve its reasons to a date not later than twenty-one days from the date the Court determines the petition.']</p>
South Africa	Southern African Legal Information Institute (SAFLII)	<p>South Africa's Electoral Court enables its decisions to be published online. The Southern African Legal Information Institute (SAFLII) website includes information on when it has been last updated and the date of issuance of the most recent decision on the website, available at <http://www.saflii.org/za/cases/ZAEC/>.</p>

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Transparency

13

Are laws and rules governing the EJS accessible to the public?

BACKGROUND

Ensuring accessibility of the laws governing EJS institutions helps citizens hold these institutions accountable. It also promotes efficiency—disputants who understand the rules are less likely to violate them, minimizing the risk of unnecessary litigation or time-consuming errors. Accessibility of the laws and rules of procedure also promotes the accessibility of institutions overall. EJS institutions such as courts and EMBs can be daunting, particularly to people who may be unaccustomed to interacting with legal institutions.

The availability of clearly written laws and rules of procedures, in print and online, is an important practice. Another good practice is to develop manuals, brochures or information in other user-friendly formats to ensure that frequently asked questions regarding EJS-institution-related laws and rules of procedures are addressed in clear, concise language.

Finally, it is important that EJS users know where to look to find laws and rules of procedure. A good practice in this area is to include copies of the laws and rules online and in annual or other periodic reports of an EJS institution.

EXAMPLES

Costa Rica	Supreme Election Tribunal website [n.d.] [in Spanish]	Website includes comprehensive collection of laws and rules pertaining to the Tribunal, available at http://www.tse.go.cr/el_tse.htm .
India (Gujarat)	High Court of Gujarat website, The Gujarat High Court Rules of 1993 as amended, The Election Petition, sections 272–313	Available at: http://gujarathighcourt.nic.in/hccms/sites/default/files/rules_files/GUJ_High_Court_Rules_28_12_2017_27481.pdf

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Accessibility

Questions 14–22

Accessibility

14

Do legal standing requirements provide individuals and other entities whose rights have been injured with the ability to file electoral complaints or challenges?

BACKGROUND

‘Legal standing’ refers to the right of an individual or other entity to bring an electoral challenge or to complain about a particular matter.

It is important for the [electoral dispute resolution] system to establish the fundamental right of every person to challenge any electoral action or decision he or she considers harms him or her before the [electoral dispute resolution body]. This is part of the human right to access to electoral justice, which is enshrined in several international human rights instruments. If a person who is negatively affected by an electoral action is denied this entitlement in a country that is a party to any of those international or regional instruments, the international or regional mechanisms for protecting rights will have jurisdiction. . .

(International IDEA 2010: 160–61)

With this principle in mind, there still may be debate about how broad or narrow ‘legal standing’ should be in certain cases. Overbroad standing requirements can result in a flood of complaints, burdening EJS institutions. Excessively narrow rules of standing may prevent individuals or groups that have been injured by electoral misconduct, or that have a valid interest in seeing that misconduct is addressed, from obtaining justice.

EXAMPLES

<p>Colombia</p>	<p>International IDEA, <i>Handbook on Electoral Justice</i>, 2010, p. 161</p>	<p>More liberal application of legal standing to bring challenges to political parties’ internal statutes.</p> <p>[‘Although the standing to challenge political parties’ internal statutes is usually vested in the members of that party or the other political parties (when the EMB approves or validates such statutes), in Colombia any citizen may bring a challenge before the National Electoral Council against those clauses of a party’s statutes that are at odds with the constitution or the law.’]</p>
<p>Costa Rica</p>	<p>Electoral Act of 2009, Law Number 8765</p>	<p>Legal standing granted for those who believe that their ‘fundamental right of a politico-electoral nature’ pertaining to them has been violated.</p> <p>[Legal standing is granted for plaintiffs ‘when they consider themselves aggrieved, or on behalf of another person, provided that it is based on the violation of a fundamental right of a politico-electoral nature’.]</p>

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Accessibility

15

Are there financial costs associated with filing or responding to a complaint?

BACKGROUND

The cost of bringing an electoral complaint or challenge is an important measure of accessibility. Excessive fees or the requirement for large deposits may result in an EJS that serves only wealthy individuals and institutional electoral stakeholders such as political parties. ‘Cost’ in this case may include other sacrifices that an individual must make to access the EJS, such as travelling a long distance to participate in the process or having to devote an inordinate amount of time to preparing a complaint or other legal submission’.

To enhance accessibility, one practice is to limit or eliminate costs for people on lower incomes in particular, including by requiring no payment to file any form of complaint or a refundable or waivable fee for certain types of actions (candidate challenges, post-electoral challenges of results), depending on the complainant’s economic resources or income level. Particularly in large geographic areas, institutions should ensure that people in rural or remote areas of the region or country have a reasonable opportunity to access the electoral justice process. Attempts to ensure that the electoral justice process is decentralized, and not located only in major or capital cities, promote lower cost EJS accessibility for users.

A distinction may be made here between complaints to investigative bodies and formal, legal complaints filed by a petitioner before a court or other adjudicative body. In the former case, the assessment of a fee of any type would be unusual. In the latter case, fees or assessments for court costs are typically charged to any filing party, although to promote accessibility many court systems allow parties to waive or defer paying fees in cases of indigence.

EXAMPLES

Japan	Supreme Court of Japan, <i>Outline of Civil Procedure in Japan</i> , 2014, p. 24	Describing procedures for obtaining a grace period for the payment of court costs if a party can demonstrate that the payment of court costs at the time of filing would constitute a substantial financial hardship (and the party can demonstrate a substantial chance of winning the case).
United States	Department of Justice, Civil Rights Division, ‘Election Complaint Report’ on website [n.d.]	Provides for free filing of complaints reporting violations of voting rights, available at < https://www.justice.gov/crt/complaint/votintake/index.php >.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Accessibility

16

Can people with disabilities meaningfully access electoral justice institutions?

BACKGROUND

The ability of people with disabilities to access EJS institutions is an important indicator of how seriously an EJS takes the issue of accessibility generally. In more and more countries, laws governing public institutions now mandate minimal standards of accessibility for people with disabilities. In the case of EJS institutions, where users with disabilities may need assistance to access written forms and oral proceedings and to communicate with EJS officials or employees and other people involved in proceedings, reasonable accommodations should be made to ensure accessibility and fair treatment (IFES and NDI 2014: 56–57).

The following is a non-exhaustive list of examples of assistive measures that aid people with disabilities:

- ramps and other structural improvements enabling people with disabilities involving mobility to access the EJS;
- employing sign language interpreters to assist people with hearing disabilities; and
- the use of Braille or technologies such as screen-reading software for people with visual disabilities.

An EJS also has an obligation to ensure that there are appropriate assistive measures for people with intellectual disabilities, depending on the nature of the disability (IFES and NDI 2014: 56–57; Inclusion International 2015: 16).

It is important to stress that the items in the above list are only technical approaches to ensuring equal and fair treatment for people with disabilities in the electoral justice process. EJS officials and employees must also work to ensure that people with disabilities are not treated unfairly or stigmatized because of their disabilities. Training on disability issues, and the forging of positive relationships between EJS institutions and civil society organizations addressing disability issues, can be helpful in ensuring that EJS officials and employees treat people with disabilities with fairness and respect (Inclusion International 2015: 9). To promote accessibility, it is a good practice for EJS institutions to promote awareness of the existence of special measures designed to assist people with disabilities.

EXAMPLES

Australia (New South Wales)	New South Wales Department of Justice, <i>Disability Inclusion Action Plan 2015–18</i>	Includes section on training and addressing ‘attitudes and behaviours’ of court and justice staff towards people with disabilities.
Ireland	Courts Service website, ‘Accessibility’ [n.d.]	Description of steps taken by Ireland’s courts to enhance access to justice for people with disabilities, available at http://www.courts.ie/Courts.ie/Library3.nsf/PageCurrent/1C65B6A925A43A4A80257FB8004AEFDB?opendocument [‘Everyone who attends courts presents with a different set of circumstances, a varying degree of understanding and a personalised set of needs. We recognise that access does not stop at the level of physical access to and within buildings. We are conscious that access to information, the understanding of court processes and inclusion in court proceedings need to be provided in an atmosphere of equality. We are engaged in a major programme of improvements and enhancements to improve facilities across a wide variety of areas including court buildings, publications and our website.’]

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Accessibility

17

Do people who speak languages other than the major/official language(s) of their country or region have the ability to access the electoral justice system?

BACKGROUND

In linguistically diverse societies, language barriers can result in denial of access to an EJS. At a minimum, accommodation should be made for minority languages if spoken by a significant number of speakers in a region or nation, even if it is not an official language. Examples of these measures may include the following:

- accessible translations of EJS-related laws, rules of procedures and other materials into key languages;
- interpretation services, at a minimum for respondents in criminal matters but preferably also for complainants, respondents, and/or witnesses in criminal and non-criminal electoral matters;
- training of EJS personnel on treating people who speak different languages fairly and sensitively;
- hiring EJS employees who are fluent in secondary languages of the country or region to assist EJS users who speak that language; and
- forging positive stakeholder relationships with civil society organizations that represent linguistic minorities at the national or regional levels.

As with all groups that might face challenges accessing the EJS and to encourage EJS use, it is a good practice to ensure that people who speak other languages are made aware of the existence of services available in their languages to assist them in accessing the electoral justice process.

EXAMPLES

Europe	European Convention on Human Rights, presented as amended as of 1 June 2010, Right to a fair trial, art. 6.3(e)	Guaranteeing free access to an interpreter to people charged with a criminal offence if they cannot speak or understand the language used in court.
United States (California)	Schauffler, R., <i>The Provision of Court Interpreter Services in Civil Cases in California: An Exploratory Study, Final Report</i> , 31 January 2008 (Williamsburg, VA: National Center for State Courts), p. 4 ('Design self-help programs and promote access to language services')	Study addressing the need for interpretation services in non-criminal matters. ['The [California Administrative Office of the Courts] should consider a program through which it could systematically gather information on effective practices and disseminate it to provide a more consistent and comprehensive approach to language services, especially with regard to self-help centres. A statewide review of effective practices would explore how to move beyond mere translation of forms and instructions into the provision of assistance that guides litigants through the legal process and acknowledges their level of literacy in their native language as well as the limited experience in obtaining services from local government of any kind.']

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Accessibility

18

Do women and men have equal ability to access EJS institutions?

BACKGROUND

Women in many countries may face special challenges in accessing EJS institutions. There are many measures that EJS institutions can undertake to address gender inequality with regard to access to electoral justice. Based on recommendations of the Committee on the Elimination of Discrimination Against Women’s (2015) *General Recommendation on Women’s Access to Justice*, some examples of these measures that pertain to women’s access to electoral justice include the following:

- ensure EJS officials and employees handle cases in a gender-sensitive manner;
- confront and remove barriers to women’s participation at all levels of an EJS, including as judges, clerks, administrators, investigators, prosecutors, law enforcement professionals, AEDR professionals and lawyers;
- build positive relationships with civil society organizations (CSOs) for developing sustainable mechanisms to support women’s access to an EJS;
- consider establishing EJS sites in rural and remote areas, which make accessing an EJS easier;
- reinforce the understanding of discrimination against women as a disciplinary offence for EJS officials and employees;
- develop targeted outreach activities regarding available electoral justice mechanisms in conjunction with gender-focused and other relevant CSOs;
- enhance information and communication technologies (ICTs) to facilitate the remote accessing of EJS institutions by women;
- ensure that the physical environment and location of EJS institutions are secure, welcoming and accessible to women;
- create gender units designed to support women’s access to EJS institutions;
- protect female complainants and other users of an EJS from threats, harassment and other harm in the time before, during and after EJS proceedings; and
- measure and assess the accessibility of EJS institutions by women.

EXAMPLES

Mexico	United Nations Development Programme (UNDP) and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), <i>Inclusive Electoral Processes: A Guide for Electoral Management Bodies on Promoting Gender Equality and Women’s Participation</i> (New York: UNDP–UN Women, 2015), p. 42	Electoral tribunal judges trained on incorporating a gender perspective into their work, resulting in progressive rulings on issues such as legislative quotas.
Nepal	Election Commission, <i>Gender and Inclusion Policy 2013/ Gender and Inclusion Strategy 2015–2020</i> , p. 14, found on the ACE Electoral Knowledge Network	Describing planned formation of a gender and inclusion unit to address complaints related to gender during the course of elections.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Accessibility

19

Do members of marginalized groups have the ability to access EJS institutions?

BACKGROUND

What constitutes a ‘marginalized group’ may vary from country to country, or region to region. As noted in the preamble of the Inter-American Convention against All Forms of Discrimination and Intolerance (2013), marginalized groups may be marginalized based on ‘gender; age; sexual orientation; language; religion; political or other opinion; social origin; economic status; migrant, refugee or displaced status; birth, stigmatized infectious-contagious condition; genetic trait; disability; debilitating psychological distress or other social condition; as well as others recognized in international instruments’.

Because the nature of marginalized groups, and the reason why they may be marginalized, varies so widely from country to country, effective measures to promote accessibility may also vary widely. Some common features of these measures may include the following:

- EJS institutions will develop a positive relationship with CSOs serving marginalized communities. CSOs might assist individuals from these groups seeking to access EJS institutions in a variety of ways.
- Members of marginalized groups are hired at all levels and positions of an EJS.
- Outreach and education on the role and functions of the EJS are conducted, targeting marginalized groups.
- The quality of the provision of justice provided to marginalized groups is measured and assessed, with the goal of seeking improvement in quality.

Some individuals may be members of multiple marginalized groups and may face additional barriers in accessing EJS institutions. EJS planners should keep this in mind when designing programmes to support access to institutions by marginalized groups.

As with all groups that might face challenges accessing the EJS, and to encourage EJS use, it is a good practice to ensure that members of marginalized groups are made aware of the existence of services designed to assist them in accessing the electoral justice process.

EXAMPLES

Australia	Australian Electoral Commission (AEC), <i>AEC Indigenous Electoral Participation Program</i> , website updated 6 March 2017	Includes voter education information geared towards indigenous Australians and establishes AEC Community Engagement Officers to serve the indigenous Australian community in different states, available at < http://www.aec.gov.au/Indigenous/ >.
Guyana	Amerindian Act 2006 (Act No. 6 of 2006), sections 65–77	Governing elections of leaders in Amerindian villages and communities, including provisions for the filing and adjudication of complaints related to allegations of electoral irregularities. Articles 75–77 govern the electoral complaint process, available at < http://parliament.gov.gy/documents/acts/4680-act_no_6_of_2006.pdf >.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Accessibility

20

Can people who vote out of country access EJS institutions?

BACKGROUND

Out-of-country voters are typically located far away from EJS institutions such as national courts, law enforcement agencies and EMBs. Voting often takes place in embassies or consulates, or in other special sites where officials present may have little to no experience conducting intake of electoral complaints. Furthermore, investigating certain complaints may be difficult, as EJS officials may not have the authority or capacity to conduct an intensive investigation on foreign soil.

The steps that EMBs and other EJS institutions might take to facilitate the intake, investigation and adjudication of allegations of electoral misconduct related to the out-of-country voting process are:

- developing clear rules and procedures for complaint intake and the collection and transmission of evidence to the home country EJS;
- designating and training officials to accept complaints, or sending EMB/EJS officials to foreign voting sites to serve as complaint officers; and
- use of ICT to facilitate remote live testimony and other measures for EJS users unable to travel to their home country for proceedings.

As with all groups that might face challenges accessing the EJS, it is a good practice to ensure that out-of-country voters are made aware of the existence of mechanisms to report electoral misconduct overseas.

EXAMPLES

Egypt	The Carter Center, <i>Presidential Election in Egypt: Final Report</i> , May–June 2012, p. 66	Describing investigation and adjudication by Presidential Election Commission of alleged electoral violations related to votes cast by Egyptians in Saudi Arabia and South Africa, available at < https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/egypt-final-presidential-elections-2012.pdf >.
South Korea	National Election Commission, web page ‘Overseas voting’ [n.d.]	Website includes overview of voting from abroad and a description of electoral violations pertaining to voting overseas, available at < http://www.nec.go.kr/global/main.do?lang=en >.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Accessibility

21

Do EJS institutions facilitate the filing of complaints or challenges?

BACKGROUND

Paper and online forms can greatly facilitate the complaint process. Forms ensure that complainants provide all of the relevant information available in support of their complaint, simplifying the processing of complaints for EJS staff. Online forms can be particularly convenient, as they do not require paper, postage or travelling to an EJS site to file, although developing a system for processing electronic complaints can be challenging, given the volume of online complaints that may be filed.

EXAMPLES

Argentina	National Election Chamber website [n.d.] [in Spanish]	Provides online portal for filing of electoral complaints, available at < https://denuncias.electoral.gov.ar/ >.
United States (Texas)	Secretary of State website form, revised 28 February 2014	Online form for making allegations of violations of the criminal code connected with an election. Form also includes information on how to request a recount and how to contest an election result, available at < https://www.sos.state.tx.us/elections/forms/complaintform-sos.pdf >.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Accessibility

22

Do EJS institutions ensure confidentiality or anonymity of complainants' identities in appropriate circumstances?

BACKGROUND

Filing an electoral complaint is often a courageous act. In some instances, it involves an individual bringing allegations against a powerful interest in her or his country, such as a candidate or political party. If the identity of a complainant becomes known, it may lead to retaliation against the complainant. In societies where political violence remains a concern, a complainant's physical security may be threatened. The EJSs therefore sometimes guarantee confidentiality of a complainant's identity or give complainants the ability to file complaints anonymously, before administrative bodies such as EMBs and complaint commissions.

Provisions that guarantee complainant confidentiality may, however, conflict with a respondent's rights, such as the right to confront one's accuser in criminal matters. EJS institutions may be required to provide the identity of a complainant as part of a fair criminal process. In the cases of anonymous complaints, investigating bodies may face special challenges in commencing an investigation without being able to interview the complainant. An EJS may therefore impose stricter standards for verifiability before determining whether to investigate anonymous complaints.

EXAMPLES

Ireland	Standards in Public Office Act of 2001, section 8	Prohibiting investigation of complaints unless complainant includes her or his identity, although the investigating body may limit disclosure of the complainant's identity as it deems appropriate or in the interests of justice.
United States	Department of Justice, Civil Rights Division, 'Election Complaint Report' on website [n.d.]	Online report to investigators alleging violations of federal voting rights laws may be filed without including name, phone number or email address of the complainant, available at < https://www.justice.gov/crt/complaint/votintake/index.php >.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Timeliness

Questions 23–24

Timeliness

23

Do deadlines for the filing, investigation and adjudication of complaints and appeals reflect the need for expediency in resolving electoral disputes and irregularities?

BACKGROUND

There are two important sets of deadlines to consider when assessing the procedures of an EJS. The first set regard the deadlines for filing a complaint, responding to a complaint, holding a proceeding if necessary, and filing an appeal. Particularly in the case of certain aspects of the electoral process, such as the challenging of candidate nominations or the challenging of electoral results, these timeframes are often by necessity very short. The other set of deadlines pertain to the length of time authorized for adjudication of complaints by an EJS institution once a matter has been heard. This includes both first instance decisions and appellate decisions from a higher court or body, if applicable. Given the necessity for resolving disputes rapidly during certain phases of the electoral process, these timeframes can also be very short. When EJS institutions take a long amount of time to issue decisions, even when it is legally authorized for them to do so, it can cause political uncertainty, may unduly affect outcomes, may damage electoral credibility or legitimacy and could even lead to political instability.

In assessing the issue of timeliness in decision-making, it is useful to note when in the electoral cycle a dispute is taking place. Tight, controlled time frames, such as a designated time period for campaigning and for approving candidate applications, and particularly the period between election day and the required announcement of final results, are periods when expediency in disputes is essential. Nevertheless, even periods that are not as intense, such as the post-electoral period and the period calling for review of the electoral legal framework, may require timely decision-making, because changes in constitutional interpretation, and in constitutional or statutory electoral law, require lead times for stakeholders to become accustomed to these changes.

EXAMPLES

Australia	Commonwealth Electoral Act, 1918, registered 31 October 2016, art. 363A	Court must make decision 'as quickly as is reasonable in the circumstances'. [‘The Court of Disputed Returns must make its decision on a petition as quickly as is reasonable in the circumstances.’]
Myanmar	The Carter Center, <i>Carter Center Statement on the Post-Election Environment and Complaints Resolution Process in Myanmar</i> , 28 February 2016, p. 4 (‘Executive Summary’)	A challenge to election results on the basis of a violation of the election law can be filed by a candidate or a voter within 45 days of the official announcement of results for the constituency in question.
Tunisia	Basic Law on Elections and Referendums, 2014, arts. 145 and 146, cited in International IDEA’s Electoral Justice Database	Establishing maximum timeframes for all phases of the electoral dispute resolution process, including appeal of preliminary results within three days; deliberation and ruling pronouncement within three days of pleading session; appeal to Plenary Judicial Session of the Administrative Court allowable within 48 hours of the date of notification of the lower court ruling; and issuance of Plenary Session ruling within five days of pleading session.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Timeliness

24

Are EJS institution decisions enforced in a timely manner once issued?

BACKGROUND

Timely, consistent enforcement of EJS orders and other decisions is important if an EJS is to be perceived as legitimate (International IDEA 2010: 130–31). Delays in the enforcement of decisions can result in injustice, especially in an electoral context. ('Timely' enforcement may vary from country to country depending on its legal system. In this context, 'timeliness' refers to enforcement of orders or decisions in a sufficiently expeditious manner to ensure that the effect of the order or decision is carried out and justice is served.)

If the state will not empower EJS institutions by facilitating the timely enforcement of their decisions, or if EJS institutions themselves lack the will to enforce judgments against certain stakeholders, then the EJS may be perceived (understandably) as biased or powerless.

EXAMPLES

Ecuador	European Union Election Observation Mission, <i>Ecuador Final Report Presidential and Parliamentary Elections</i> , 26 April 2009, June 2009, p. 34	In 2009, delays in issuing resolutions by the Elections Disputes Tribunal and infighting among EJS institutions undermined 'timely enforcement of election rules and the confidence of election participants in an effective remedy.'
India	Supreme Court of India, <i>Rahim Khan vs. Khurshed Ahmed and others</i> (1975 AIR 290, 1975 SCR (1) 643), dated 8 August 1974, p. 25 of 28	Dismissal of appeal regarding alleged corrupt practices in State Assembly election: 'Timely enforcement is as important to the rule of law as the making of legislation.'

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Education/awareness-raising

Question 25

Education/awareness-raising

25

**Are individuals educated on how to access the electoral justice system?
Are individuals educated on the purpose of the EJS and encouraged to
use the EJS to resolve disputes or to report electoral misconduct?**

BACKGROUND

Citizens may be unaware of the full extent of their election-related rights and the full range of options available for seeking electoral justice when those rights have been injured in some manner. Voter and civic education providers of all types, including EMBs, schools and universities, and civil society organizations, should therefore encourage all to use the EJS to resolve electoral disputes and to encourage reporting of electoral misconduct. Ignorance of an EJS or apathy about the purpose of an EJS in a functioning democracy can render the EJS useless, no matter how well resourced, well designed and well staffed it may be.

Particularly in cases where literacy levels may be lower, electoral justice education using a variety of formats might be considered, including television and radio broadcasts, posters and other visual media, and even in-person presentation by EJS or other educators to citizens throughout the region or country.

EXAMPLES

Australia	Australian Electoral Commission website, 'Reporting fraud', updated 15 September 2015	Web page describes the definition of electoral fraud and details how to make a report. The web page contains the link that leads to the actual reporting page, available at < http://www.aec.gov.au/footer/fraud.htm >.
Costa Rica	Supreme Election Tribunal, Institute on the Formation and Study of Democracy, <i>Citizen Participation in Democracy: Spaces and Mechanisms</i> , 2016, section 2.1, pp. 26–32 [in Spanish]	Manual provides background on existence and purpose of democratic rights in Costa Rica, including the right to seek redress when political or electoral rights have been violated. The publication includes details on a variety of electoral justice resources available to citizens.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Independence

Questions 26–27

Independence

26

To what extent are EJS officials politically independent in performing their duties?

BACKGROUND

The independence of EJS officials is an important condition for promoting the legitimacy and credibility of an EJS institution. Electoral legal frameworks should ensure that, barring serious and proven ethical misconduct, EJS officials may operate with autonomy—including with full protections in tenure, salary, benefits and authority. States might even take steps to protect the personal security of officials in circumstances where their safety may be at risk.

Some investigators of electoral misconduct, such as police or prosecutors, will not have the benefit of some of the independence provisions listed above, because law enforcement is generally a branch of local or national executive government. Nevertheless, these officials must also operate without any undue influence on their investigative or prosecutorial decision-making in accordance with the law.

Perception of independence also matters. Even with legal safeguards such as those categorized above, Assessment Guide users should consider whether EJS officials are perceived to be operating independently from the state or other powerful interests in society.

EXAMPLES

Brazil	Constitution of the Federative Republic of Brazil of 1988 as amended through 2010, art. 121, para. 1	Constitutional provision regarding tenure and other protections for judges and electoral officials [‘The members of the [electoral] courts, the court judges and the members of the electoral boards, while in office and insofar as applicable to them, shall enjoy full guarantees and shall be non-removable.’]
Ghana	Constitution of Ghana, art. 128(4)	Constitutional requirements for Supreme Court Justices. [‘A person shall not be qualified for appointment as a Justice of the Supreme Court unless he is of high moral character and proven integrity and is of not less than fifteen years’ standing as a lawyer.’]
India	Patidar, V. and Jha, A., updated by S. Y. Quraishi, ‘India: the embodiment of EMB independence’, in International IDEA, <i>Electoral Management Design: Revised edition</i> , (Stockholm: International IDEA, 2014a), p. 359	Election commissioners granted protections equal to those of Supreme Court judges. [‘[E]lection commissioners enjoy the same status and receive the same salary and other benefits as judges of the Supreme Court of India. The chief election commissioner can be removed from office only through impeachment by Parliament. Impeachment can take place on two grounds only—proven misbehaviour or incapacity—and requires an elaborate procedure which is also prescribed for the removal of judges of the Supreme Court and the high courts. Other election commissioners cannot be removed from office except on the recommendation of the chief election commissioner.’]

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Independence

27

To what extent are EJS institutions independent of other state institutions?

BACKGROUND

Institutional independence is another important characteristic of an effective EJS. As noted in the *Handbook on Electoral Justice* (International IDEA 2010: 88–94), institutional independence may include three dimensions:

1. Explicit legal provisions guaranteeing the independence of an EJS institution may pertain to a specific institution such as a specialized electoral court or EMB, or to a larger class of institutions, such as the judiciary, that may have responsibility for adjudicating electoral matters among other duties. Because of the importance of EJS institutional independence, legal language establishing independence is often found in a constitution or other fundamental legal document.
2. Functional independence relates to whether the EJS institution operates independently of other institutions as a practical matter. An EJS institution may be considered functionally independent if it is not obliged as a matter of law to answer to other institutions, such as an executive branch ministry or the legislature, for the performance of its functions and also operates independently of other institutions as a matter of fact.
3. Administrative and financial independence is an important dimension of institutional independence. Independence may be demonstrated by measures that give the EJS institution a role in the establishment of its operating budget. Practices in some countries that provide even greater degrees of autonomy for EJS institutions include requiring a legislature to consider both the EJS's requested budget and any modified budget sought by other state authorities, and the authority for EJS institutions to submit budgets to the legislature without any interference by the executive branch.

Finally, as with the independence of EJS officials and other employees, it is crucial that EJS institutions themselves are perceived as independent by a critical mass of the public and other electoral stakeholders. Institutions that in law meet these three standards may still not be perceived as independent if their history or record does not demonstrate fearless independence from other authorities (International IDEA 2012: 8–9).

EXAMPLES

Costa Rica	Constitution of 1949 with Amendments through 2011, art. 99	<p>Constitutional provision indicating Supreme Tribunal enjoys independence in performance of its mission.</p> <p>['The organization, direction and supervision of the acts relative to the suffrage, correspond in exclusive form to the Supreme Tribunal of Elections, which enjoys independence in the performance of its mission.']</p>
Georgia	Election Code of Georgia, art. 53, 'Funds necessary for elections/referenda', as cited in European Commission for Democracy Under Law (Venice Commission), <i>Election Code of Georgia as of 27 October 2015</i> , CDL-REF(2016)004, Strasbourg, 13 January 2016, p. 60	<p>Legal provisions governing allocation of national funds to EMB.</p> <p>['1. The CEC [Central Election Commission] shall, not later than 55 days before polling, submit to the Ministry for Finance of Georgia a plan for funding the preparation and conduct of elections/referenda. 2. The Ministry for Finance of Georgia shall, not later than 50 days before polling day, according the submitted plan, deposit into the CEC account the funds allocated from the State Budget of Georgia for elections/referenda. 3. The CEC shall by ordinance regulate the distribution and use of election funds, necessary for the conduct of elections, by election commissions.']</p>
Uruguay	ACE Electoral Knowledge Network, 'Uruguay: the electoral court – a fourth branch of government?', in <i>Electoral Management</i> (ACE Electoral Knowledge Network, 2014)	Discussion of Electoral Court's reputation for independence from other institutions in society.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Impartiality

Question 28

Impartiality

28

Are there legal provisions for ensuring impartiality or political balance within EJS institutions?

BACKGROUND

Impartiality is a fundamental principle underpinning any EJS institution. If investigators, courts and other tribunals are seen as being biased towards or against certain groups, this will lead to a lack of trust among those groups against which the EJS institution is discriminating and, ultimately, to an erosion of trust in the EJS overall.

To help ensure impartiality, EJS decision makers should implement measures that will help ensure that EJS institution officials and employees are perceived as being fair. These provisions often include requirements that officials and employees should not act in a politically partisan manner whether inside or outside the EJS institution. It is not uncommon for the law to require that EJS officials such as judges and EMB officials terminate membership of political parties and that they have no recent history of involvement in party political activities (International IDEA 2010: 105).

The perception of impartiality in some circumstances, however, may be difficult to achieve. This may be the case, for example, in countries with sharp ethnic, religious, racial or other divisions, or in countries with a recent history of internal violence or extremely contentious political discourse. In these instances, multi-person bodies such as appellate courts and EMBs may wish to adopt the approach of appointing members who represent all groups, factions or major political parties.

EXAMPLES

Canada	Elections Canada, <i>Elections Canada Code of Conduct</i> , section 6, 'Political impartiality', effective 22 February 2013	Code applicable to all Elections Canada employees, requiring political impartiality and neutrality both within and outside the work environment.
Ghana	African Union, <i>African Union Election Observation Mission to the 7 December 2016 General Elections in the Republic of Ghana, Final Report</i> , June 2017, p. 23	The multi-party Inter-Party Advisory Council (IPAC) assisted in maintaining a peaceful environment and resolving political disputes during elections in 2016 but should be strengthened further to help resolve other disputes that may result in costly litigation.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Efficiency and effectiveness

Questions 29–30

Efficiency and effectiveness

29

Do EJS institutions employ effective methods of communication with the public, media and observers?

BACKGROUND

An EJS institution's communication with the public, media, observers and other electoral stakeholders is an important means of educating others on the role of the institution, therefore building confidence in the institution. It also prevents inefficiency resulting from misunderstanding an EJS institution's role and mandate that may result from inaccurate or inadequate communication.

Some effective techniques employed by EJS institutions include the retention of a communication point person, who is the sole person responsible for answering media and other queries on behalf of the institution, and the development of a website that includes public information about proceedings of the institution and other general information regarding the institution.

EXAMPLES

Germany	Federal Constitutional Court website	The court's press office prepares press releases on major court decisions and handles media enquiries, available at http://www.bundesverfassungsgericht.de/EN/Presse/Pressestelle/pressestelle_node.html .
Tunisia	Independent High Authority for Elections (ISIE) website	EMB offers a webpage with different links offering access to institutional information, available at http://www.isie.tn/isie/acces-a-linformation/ .

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Efficiency and effectiveness

30

Do EJS institutions have the authority to impose a full range of remedies to restore electoral rights?

BACKGROUND

‘The main guarantee of an effective [electoral dispute resolution] system is the availability of a remedy that can correct an irregularity by annulling, revoking, modifying or even just acknowledging it.’ (International IDEA 2010: 84). ‘A direct mechanism to verify compliance with the election framework is one that offers a remedy, making it possible to reverse the effects of the unlawful or wrongful conduct, and also correcting or repairing the damage or harm caused by such conduct. As a general rule, this is achieved when the [electoral dispute resolution body] declares that the electoral action or decision subject to an electoral challenge should be invalidated, annulled, revoked or modified.’ (International IDEA 2010: 39).

Remedies can be ordered and enforced throughout the electoral cycle, such as an order to return improper campaign donations. Common electoral remedies associated with election day include the following:

- ordering annulment of some results based on irregularities;
- ordering an annulment of an entire election based on irregularities;
- ordering a recount of some or all votes based on alleged irregularities (if the law does not provide for mandatory recounts in close margin victories or for automatic recounts); and
- ordering that a particular candidate not be certified due to ineligibility for office (International IDEA 2010: 169–80).

The law typically establishes clear legal standards for the imposition of remedies such as recounts and annulments leading to the rerunning of elections. In cases such as ordering a recount of a large number of votes, a process requiring significant time and resources to complete, an EJS must ensure that a recount request has legal merit and that a recount would address the alleged injury of the party seeking a recount.

EXAMPLES

<p>Georgia</p>	<p>ACE Electoral Knowledge Network, 'Absence of effective legal remedies' in <i>Electoral Integrity</i> (3rd edn, 2012)</p>	<p>Report on improvements in flawed post-electoral complaint process and issuance of remedies following 2008 presidential election. During subsequent parliamentary election, clarification of the appeals process led to greater number of electoral annulments and fewer dismissals of valid appeals due to technicalities.</p>
<p>Kenya</p>	<p>Supreme Court of Kenya, <i>Presidential Petition No. 1 of 2017</i>, section 405, [<i>Odinga and another vs. IEBC, et al</i>]</p>	<p>Excerpt from Supreme Court final order nullifying presidential election results based on a petition filed by presidential candidate Raila Odinga.</p> <p>['FINAL ORDERS By a majority of four (with two justices dissenting), we make the following final Orders: (i) A declaration is hereby issued that the Presidential Election held on 8th August, 2017 was not conducted in accordance with the Constitution and the applicable law rendering the declared result invalid, null and void; (ii) A declaration is hereby issued that the irregularities and illegalities in the Presidential election of 8th August, 2017 were substantial and significant that they affected the integrity of the election, the results notwithstanding. (iii) A declaration is hereby issued that the 3rd respondent [presidential candidate Uhuru Kenyatta] was not validly declared as the President elect and that the declaration is invalid, null and void; (iv) An Order is hereby issued directing the 1st respondent [Independent Electoral and Boundaries Commission] to organize and conduct a fresh Presidential Election in strict conformity with the Constitution and the applicable election laws within 60 days of the determination of 1st September 2017 under Article 140(3) of the Constitution ...']</p>
<p>North Macedonia</p>	<p>ACE Electoral Knowledge Network, 'Absence of effective legal remedies' in <i>Electoral Integrity</i> (3rd edn, 2012)</p>	<p>An unclear legal framework resulted in an absence of adequate legal remedies for people alleging campaign violations during 2008 elections.</p>

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Accountability

Questions 31–34

Accountability

31

Is there appellate review of all EJS first instance decisions?

BACKGROUND

An EJS often includes several institutions that work in concert to ensure that EJS decisions are correct in fact and law. In electoral criminal matters, the right to appeal a lower court's criminal decision is an important, internationally recognized right (see paragraph 45 of General Comment 32 on the ICCPR).

Regarding non-criminal electoral matters, in some countries a lower court, EMB or other decision-making authority may render a decision on a matter that can then be reviewed by a higher court or tribunal. In other countries, non-criminal electoral complaints are reviewed by one body only, without appeal to another court (see International IDEA's Electoral Justice Database for comparative information). To promote the legitimacy of the dispute resolution process, the better practice is to ensure that a body with final decision authority on electoral cases is not one that may frequently have a conflict of interest in deciding these cases, such as cases in which an EMB (or a tribunal appointed by an EMB) decides matters in which the EMB may be directly involved and there is no appeal from these decisions.

Some appellate bodies consider appeal requests as a matter of course. In other systems, a high appellate court may have the choice of deciding to accept or reject an appeal. These courts will accept appeals based on only certain criteria, such as whether a reversal of the lower court's decision may change an election result. An appellate court may confirm a lower body's ruling, reverse a lower body's ruling or order a rehearing by the lower court of the same matter under conditions imposed by the higher court (International IDEA 2010: 139–40).

EXAMPLES

Bosnia and Herzegovina	Election Law of Bosnia and Herzegovina, art. 6.9, enacted 11 March 2013, cited in International IDEA's Electoral Justice Database	Allows for appeals to the Appellate Division of the Court of Bosnia and Herzegovina of decisions of the Central Election Commission.
Switzerland	Federal Act on Political Rights as amended, in force as of 13 January 2019, art. 80, 'Appeal to the Federal Supreme Court'	Authorizing appeals from decisions of cantonal governments on matters involving election violations.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Accountability

32

Is there judicial review of relevant EJS laws for constitutionality and adherence to international obligations?

BACKGROUND

Judicial review can provide an important degree of accountability for an EJS. Judicial review is the process of empowering a higher court, usually a constitutional court, to review enacted laws to ensure that they are consistent with the constitution, and to strike down or order modifications of laws that fail to pass constitutional muster (International IDEA 2010: 39–40). In some countries, high courts have the power to review draft legislation, which can be modified or rejected by the court before the law is enacted. In the context of an EJS, judicial review helps ensure that laws governing an EJS meet constitutional standards regarding the provision of due process and other rights for parties to an electoral dispute.

Because many countries have assumed international obligations related to the provision of electoral justice and have incorporated adherence to international obligations into their national law, national and in some cases international courts may also conduct a review of whether national laws are consistent with international obligations.

EXAMPLES

Italy	Longo, E. and Pin, A., ‘Judicial review, election law, and proportionality,’ <i>Notre Dame Journal of International and Comparative Law</i> , 6/1 (2016), pp. 101–17	Article analysing Italian Constitutional Court’s decision in 2014 to exercise greater judicial review of new Italian electoral law from a human rights perspective.
Mexico	International IDEA, <i>Improving Electoral Practices: Case Studies and Practical Approaches</i> , 2014c, pp. 190–92	Describing the Mexican Electoral Tribunal’s actions in enforcing gender quotas in the Chamber of Deputies.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Accountability

33

Is there legislative oversight of EJS institutions?

BACKGROUND

In many democratic systems, legislative bodies play a key role in ensuring that EJS institutions are operating legally, efficiently and effectively. Legislative oversight proceedings give EJS leaders the opportunity to discuss with legislators ways in which the services provided by an EJS can be made fairer and more effective. Communication by EJS leaders with legislators on electoral justice-related issues is a good practice even if not legally mandated (International IDEA 2010: 111).

EXAMPLES

Canada	Elections Canada website, 'The role and structure of Elections Canada. The Chief Electoral Officer' [n.d.]	The Chief Electoral Officer of Elections Canada reports directly to Parliament, which helps ensure the agency's independence from the government of the day, available at < http://www.elections.ca/content.aspx?section=abo&dir=role&document=index&lang=e >.
Uruguay	Constitution of 1966, reinstated in 1985 with Amendments through 2004, art. 118	Constitutional provision establishing legislative privilege to obtain data and information from electoral justice institutions. [‘Any Legislator may ask a Minister of state, the Supreme Court of Justice, the Electoral Court, the Contentious-Administrative Tribunal, and the Tribunal of Accounts, for such data and information as he may consider necessary for the discharge of his duties. . . Matters pertaining to the jurisdictional business and competence of the Judicial Power and of the Contentious-Administrative Tribunal may not be [the] object of such a request.’]

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

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Accountability

34

Is there a fair process for citizen- or other stakeholder-initiated complaints regarding misconduct by EJS officials?

BACKGROUND

EJS officials and other employees may from time to time break laws or act unethically in the performance of their duties. In circumstances such as these, it is important that an EJS includes a meaningful, effective system for reviewing allegations of misconduct and, after a proceeding that accords with due process, imposes reasonable disciplinary measures on the offending official or other employees.

In the case of judges, many countries have judicial inspectorates or other internal services that may review both a judge’s conduct and the quality of her or his decisions. Other ethics committees may review the conduct of other EJS officials and employees, such as those who work on behalf of an EMB. These inspection or review bodies play an important role in ensuring that EJS personnel meet high standards.

It is also important that citizens and other stakeholders who use the services of the EJS have the opportunity to file complaints with a disciplinary authority, and that the authority conscientiously considers and investigates credible allegations. Electoral stakeholders may witness misconduct of which disciplining authorities are not aware. Citizen complaint mechanisms also help support the perception that EJS officials do not operate above or outside the law.

EXAMPLES

New Zealand	Courts of New Zealand, <i>Annual Report of the Judicial Conduct Commissioner for the year ended 31 July 2016</i>	Office of the Judicial Conduct Commissioner processes and reports annually on the disposition of complaints filed against judges in New Zealand, available at < https://www.jcc.govt.nz/reportsandnews.html >.
United States (South Carolina)	South Carolina State Ethics Commission website, ‘Complaints’ [n.d.]	Agency authorized to review and investigate ethics complaints filed by anyone who suspects that a public official has violated the law. Information on how to file a complaint is available at < https://ethics.sc.gov/complaints >.

FINDINGS

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ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Professionalism

Questions 35–36

Professionalism

35

Is there comprehensive initial and continuing training for EJS officials?

BACKGROUND

Ensuring electoral justice requires a degree of specialized legal knowledge and familiarity with unique aspects of processing, investigating and adjudicating electoral complaints and challenges. Training for EJS officials and other EJS employees is therefore a very important aspect of ensuring the professionalism of EJS personnel and the quality of the service provided by EJS institutions. Judges, although they are already usually beneficiaries of extensive legal and judicial training, also benefit from special training on the unique aspects of hearing and adjudicating electoral justice-related matters.

EXAMPLES

Mexico	Information on the Electoral Tribunal website regarding Electoral Justice Institute [in Spanish]	Description of a department of the Mexican Electoral Tribunal that provides internal training, among other functions, available at < https://www.te.gob.mx/eje/page/content/1 >.
Uganda	The Judiciary Uganda, 'Fast tracking election petitions' in <i>The Judiciary Insider</i> , 5 (2016), pp. 6–7	Description of efforts by Ugandan judiciary to train judges to handle election petitions more efficiently, including by accepting 'e-evidence' and encouraging alternative dispute resolution when possible.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Professionalism

36

Are EJS institutions able to maintain institutional memory and knowledge between elections?

BACKGROUND

Administering an EJS institution requires skill and experience. An election is typically the largest participatory event in any democracy and, as with any event, it requires careful planning and preparation by professionals who have specific knowledge of elections. Similarly, an EJS benefits from employing personnel at all levels with deep knowledge of elections and experience with the electoral process. An EJS therefore generally benefits from retaining professionals over several electoral cycles, giving these professionals an opportunity to enhance their electoral experience and sharpen their skill sets.

Given the schedule of national elections in many countries, which may occur only once every four or five years, EJS institutions in some cases may terminate or reduce operations at a certain point after election day. Under these circumstances, it may be a challenge to retain experienced, capable clerks, investigators, secretaries and other employees that comprise the bureaucracy supporting EJS institutions between elections.

EXAMPLES

Botswana	Bafaneli, S., 'Staff selection and retention at the Independent Electoral Commission (IEC) Botswana', <i>International Journal of Novel Research in Humanity and Social Sciences</i> , 2/3 (2015), pp. 28–47	Study on causes of staff turnover at EMB and discussion of approaches EMB might take to lessen turnover.
South Korea	Kim, J.-G., 'South Korea: An independent and neutral electoral management body', in <i>Electoral Management</i> (ACE Electoral Knowledge Network, 2014)	The employees of the National Election Commission are public servants. Secretariat public servants typically have many years of electoral management experience.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

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Inclusivity

Questions 37–38

Inclusivity

37

Do the leadership and staff of EJS institutions reflect gender balance?

BACKGROUND

Democratic institutions function most effectively when they reflect the composition of the people they are designed to serve. This is particularly the case when institutions—from the leadership level on down—include a fair representation of groups that in many countries have been historically underserved by democratic institutions and state institutions. Inclusive representation within EJS institutions promotes credibility and trust of these institutions (International IDEA 2010: 96–97).

Gender balance is a fundamental element of inclusive representation. In the case of EJS institutions, gender balance should be reflected in the leadership of all institutions and among employees at all levels of the institutions.

Providing an equal opportunity to serve as a leader of an EJS institution, however, may not be enough of a protection in many countries, as EJS institution leaders, such as senior judges and EMB officials, in many cases are chosen from broader male-dominated institutions such as the judiciary or the civil service. In these and other circumstances, appointing authorities may need to devise approaches to ensure that both men and women are adequately represented on high courts, EMBs and other institutions comprising an EJS (International IDEA 2010: 106). EJS institutions may also address this concern by encouraging law schools, judicial institutes and other gateway institutions to the upper echelons of an EJS, to support more enrolment by women to build up a larger pool of qualified women selectees.

Agreement on what constitutes ‘gender balance’ may vary from country to country, but laws or rules that allow for only a token percentage of leadership by women on an EMB board, high court or other senior EJS leadership group would not constitute ‘balance’ in any circumstance.

EXAMPLES

<p>Bolivia</p>	<p>United Nations Development Programme (UNDP) and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), <i>Inclusive Electoral Processes: A Guide for Electoral Management Bodies on Promoting Gender Equality and Women’s Participation</i> (2015), p. 30</p>	<p>Supreme Electoral Tribunal is required by law to comprise ‘seven members, of whom at least two shall be of indigenous origin. From the total number of members of the Supreme Electoral Tribunal, at least three will be women.’</p>
<p>Spain</p>	<p>Judicial Authority website, ‘General Council of the Judiciary. Area of Equality of the General Council of the Judiciary’ [n.d.] [website primarily in Spanish]</p>	<p>Website provides an overview of the judiciary’s Commission on Equality’s activities and provides periodic data on breakdown of men and women in courts at different levels of the judiciary, available at <http://www.poderjudicial.es/cgpj/en/Subjects/Gender-Equality/Gender-Equality-in-Judicial-Services/>.</p>

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Inclusivity

38

Does the leadership of each EJS institution reflect the country’s or region’s composition, including that of marginalized groups?

BACKGROUND

In diverse societies, the legitimacy of democratic institutions, including EJS institutions, often hinges on whether they are perceived to be of service to all groups in the community. In the case of groups that are vulnerable in society and that historically have been underserved by the government, promoting legitimacy requires a commitment to appointing members of these groups to leadership, senior and other positions throughout the EJS. In the case of countries emerging from a period of conflict between groups in society, it is generally especially important that all groups have a voice in the leadership of democratic institutions, including EJS institutions.

As with gender balance, ensuring fair representation among marginalized groups in society may require affirmative steps by appointing authorities, as larger pools from which applicants might be drawn might be dominated by members of non-marginalized groups in the region or country at issue. EJS institutions may wish to encourage law schools, judicial institutes and other institutions that act as gateways to the upper echelons of an EJS to support more enrolment by people from minority or marginalized groups.

EXAMPLES

Bolivia	United Nations Development Programme (UNDP) and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), <i>Inclusive Electoral Processes: A Guide for Electoral Management Bodies on Promoting Gender Equality and Women’s Participation</i> , (2015), p. 30	Supreme Electoral Tribunal is required by law to comprise ‘seven members, of whom at least two shall be of indigenous origin. From the total number of members of the Supreme Electoral Tribunal, at least three will be women.’
Bosnia and Herzegovina	Hadžiabdić, I., ‘Bosnia and Herzegovina: the challenges of an independent EMB model’, in <i>Electoral Management</i> (ACE Electoral Knowledge Network, 2014)	Describing legally mandated multi-ethnic composition of Central Election Commission board and of Municipal Election Commissions.
Canada	Cairns Way, R., ‘Judicial diversity’, in <i>Policy Options, The Public Forum for the Public Good</i> (Institute for Research on Public Policy, 5 October 2015)	Article arguing that there is a lack of diversity in Canadian courts.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Adaptability

Questions 39–40

Adaptability

39

Have there been recent assessments of the EJS or individual EJS institutions?

BACKGROUND

To ensure that successful measures are replicated—and constructive lessons are learned—in future electoral cycles, it is important that EJS institutions attempt on a regular basis to assess the quality of the services that they have provided. Ideally, an EJS should attempt to establish baseline data regarding the characteristics that are essential to a well-run EJS (e.g. efficiency, inclusivity, accessibility, education, outreach). EJS institutions may establish how these aspects of an EJS are to be measured in various ways, including through quantitative data (e.g. number of complaints processed, number of languages in which services provided, length of time between intake and complaint adjudication), qualitative data (e.g. interviews with EJS users, interviews with EJS employees) and user survey information. EJS officials may also wish to establish benchmarks of progress or success in meeting objectives in different measurable areas.

Assessments may be conducted internally, provided the assessment authors can examine issues without bias or favouritism. External evaluators from outside organizations may in some cases be preferable providers of review and analysis of an EJS.

Finally, as a means of promoting both transparency and the accountability of the EJS institutions to the people they serve, a good practice is to ensure that assessment reports be made public and widely disseminated online and in print.

EXAMPLES

Bangladesh	Akram, S. M. and Das, S. K., 'Bangladesh Election Commission: a diagnostic study' (Executive Summary), in <i>Social Movement against Corruption</i> (Transparency International Bangladesh [n.d.]	External report analysing legal framework and performance of EMB and offering recommendations for improvement.
South Africa	Electoral Commission, <i>Electoral Commission Fiscal Plan for the Fiscal Years 2014/15–2018/19</i>	Internal report establishing baselines for future measurement of progress in a range of electoral operations and setting goals, including adjusting capacity to handle electoral disputes and court cases.

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Adaptability

40

Do EJS institutions play a significant role in initiating and participating in EJS reform efforts?

BACKGROUND

EJS officials, including EMB officials, investigators, judges, and court staff members possess unique, first-hand knowledge of the strengths of an EJS, and where an EJS may face the greatest challenges. It is therefore usually beneficial for EJS officials to participate in reform efforts meant to improve an EJS. This is especially the case with efforts to reform the administration of electoral justice, to which EJS officials are in a unique position to contribute due to their knowledge of and experience with the process. EJS officials may also add significant expertise to efforts aimed at reforming the legal framework governing an EJS, or proposed political changes affecting an EJS institution, such as efforts to grant institutions greater independence (see International IDEA 2014a: 365–66).

EXAMPLES

<p>Canada</p>	<p>Gould, R., updated by Sloan, N., ‘Canada: stability, independence, and public trust’, in <i>Electoral Management</i> (ACE Electoral Knowledge Network, 2014)</p>	<p>Discussing role of chief electoral officer of EMB in advising legislature on potential electoral reforms.</p> <p>[‘Only Parliament can undertake electoral reforms that require amendments to legislation. The CEO makes recommendations to Parliament related to changes in electoral legislation and provides advice to Parliamentarians as they review proposed amendments to the federal electoral law.’]</p>
<p>Costa Rica</p>	<p>Sobrado, L. A. and Aguilar, I., ‘Costa Rica: The Supreme Tribunal of Elections’, in <i>Electoral Management</i> (ACE Electoral Knowledge Network, 2014)</p>	<p>Constitution mandates Supreme Tribunal of Elections, role in considering and approving election-related legislation.</p> <p>[‘In accordance with the constitution, the [Supreme Tribunal of Elections] TSE must be consulted before legislation related to electoral matters is passed by congress. If a decision by congress goes against the wish of the TSE or if the TSE is not consulted, congress can pass election related legislation only with the support of at least two-thirds of its members. Likewise, the constitution states that six months prior to a popular election and four months after it, congress cannot pass laws related to electoral matters without the agreement of the TSE.’]</p>

FINDINGS

List here each law, regulation or practice that is relevant to the question. Are they sufficient? Are there areas for improvement?

ACTIONS

Add here any potential actions relevant to the question that could help achieve an effective electoral justice system.

Further reading

International IDEA hopes that the *Electoral Justice System Assessment Guide* has been helpful in identifying and understanding the many aspects of individual electoral justice systems and that using the Assessment Guide will assist participants in the electoral process and in improving the electoral process and the electoral justice process in their communities and countries.

For more information on electoral justice, please refer to the following International IDEA products, which can be found at <<https://www.idea.int>>:

- *Handbook on Electoral Justice* (<<https://www.idea.int/publications/catalogue/electoral-justice-international-idea-handbook>>);
- Electoral Justice Database (<<https://www.idea.int/data-tools/data/electoral-justice>>);
- *International Obligations for Elections: Guidelines for Legal Frameworks* (<<https://www.idea.int/publications/catalogue/international-obligations-elections-guidelines-legal-frameworks>>); and
- the Online Electoral Cycle (<<https://www.idea.int/data-tools/tools/online-electoral-cycle>>).

Please visit the International IDEA website for other products, including databases, tools and publications on a range of topics related to democracy and elections.

International IDEA is pleased to be a supporter of the Global Network on Electoral Justice and encourages Assessment Guide users to visit the Global Network's website at <http://sitios.te.gob.mx/red_mundial/> for further information about this initiative and about electoral justice issues facing democracies around the world.

International IDEA is also pleased to be a contributor to two significant educational initiatives that are designed to enhance understanding of the electoral process generally, including the essential role of electoral justice within the process. These are the following:

- ACE Electoral Knowledge Network (<<http://aceproject.org>>). The ACE Electoral Knowledge Network is the world's largest online community and repository of electoral knowledge. It provides comprehensive information and specialized advice on any aspect of electoral processes. The foremost aim of ACE is to foster the integrity of elections and to promote credible, sustainable, professional and inclusive electoral processes throughout the globe.
- BRIDGE (Building Resources in Democracy, Governance and Elections, <<https://www.bridge-project.org>>). BRIDGE is a modular professional development programme with a particular focus on electoral processes. BRIDGE represents a unique initiative in which five leading organizations in the democracy and governance field have jointly committed to developing, implementing and maintaining the most comprehensive curriculum and workshop package available, designed to be used as a tool within a broader capacity development framework.

To learn more about electoral justice, please also see the References section at the end of the Assessment Guide.

References and further reading

- The Carter Center, Election Obligations and Standards Database, <<https://eos.cartercenter.org>>, accessed 25 June 2018
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About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

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Free, fair and trusted elections provide legitimacy to governments and ensure the genuine expression of the will of the people. Electoral justice guarantees electoral processes are conducted with integrity and that mechanisms exist to restore electoral integrity when it has been violated.

Intentionally or unintentionally electoral norms may be violated by those who design, administer or participate in an electoral process. The manner in which these violations are addressed can determine the overall legitimacy of an electoral outcome and the level of trust in the electoral process. The realisation of electoral justice requires a set of institutions, practices, norms and mechanisms that culminate in fair and open processes—not simply on election day but throughout the electoral cycle.

The *Electoral Justice System Assessment Guide* is designed to support users to assess the administration of electoral justice in their country. Inclusivity and accessibility are important elements of electoral justice. The questions in the Assessment Guide reflect key electoral justice principles, drawing on international standards and an analysis of diverse electoral justice practices from many countries around the world.



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