



Towards a Global Index of Electoral Justice

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1. Introduction

1.1 International IDEA and the Electoral Tribunal of the Federal Judiciary of Mexico team up for quality in electoral justice

In 2017, International IDEA and the Electoral Tribunal of the Federal Judiciary of Mexico (Tribunal Electoral del Poder Judicial de la Federación; TEPJF) signed a collaboration agreement that, among other things, proposed an activity to contribute to the fulfilment of United Nations Sustainable Development Goal 16 (SDG 16, Peace, justice and strong institutions). This goal seeks to facilitate access to justice for all; targets 16.3, 16.6 and 16.7 specifically stand out, and these seek, respectively, to: promote the rule of law; develop effective, accountable and transparent institutions; and ensure responsive, inclusive, participatory and representative decision-making at all levels.

It is in this context, and thanks to the support of the TEPJF, that International IDEA—through Miguel Angel Lara Otaola, Head of the Subregional Office for Mexico and Central America—made a comprehensive review of a significant number of indices and existing assessment tools related to the fulfilment of SDG 16 and to the evaluation of the quality of democracy and electoral processes. Two important gaps were detected from this review and from the evaluation of the different instruments. First, many indices dedicated to measuring compliance with SDG 16 focus on reducing forms of violence and strengthening public security, while very few focus on the creation of transparent, effective and responsible institutions or on strengthening the rule of law. Second, while there are a significant number of indices dedicated to the evaluation of the quality of democracy and electoral processes in general, the evaluation of electoral justice specifically has been neglected.

1.2 Many indices, none on electoral justice

In the field of democracy and elections, several indices and assessment tools enable users to learn and evaluate, in a comparative way, different aspects of democracy and of electoral systems, institutions and procedures around the world. A first group of indices focuses on evaluating the quality of democracy. For instance, The Economist Intelligence Unit's Democracy Index (EIU n.d.) classifies political regimes into four types, from authoritarian regimes to full democracies. Another example is International IDEA's Global State of Democracy Indices (International IDEA 2019), which evaluates democratic resilience through five main attributes: Representative Government, Fundamental Rights, Impartial Administration, Checks on Government, and Participatory Engagement.

A second group of indices focuses on the quality of electoral processes. V-Dem (Varieties of Democracy; V-Dem Institute n.d.), for instance, measures different aspects of a democratic regime, including the quality of ‘free and fair’ elections with indicators comprising, among others, the acceptance of results, media freedom and transparency in campaign finance. The Perceptions of Electoral Integrity Index (EIP n.d.), created by Harvard and Sydney universities, evaluates the quality of electoral processes along 11 components, including key aspects such as voter registration, campaign finance, boundary delimitation and campaign media.

Finally, a third group of indices is focused on assessing access to justice and the rule of law. The World Justice Project Rule of Law Index (World Justice Project n.d.), for instance, evaluates the way in which the rule of law is experienced and perceived worldwide, measuring countries’ rule of law performance in areas such as checks on government powers, lack of corruption, open government, fundamental rights, order and security, regulatory enforcement, and civil and criminal justice. Transparency International’s Corruption Perceptions Index (Transparency International n.d.) records the perceptions of analysts, businesspeople and specialists on corruption in the public sector in their countries.

All these indices, or at least some of their indicators, can be used to understand and measure certain aspects of electoral justice (as they sometimes include relevant measures on the performance of electoral authorities, the existence of electoral violence and judicial independence, among others). However, none of these indices focuses on the field of electoral justice, understood as 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, by giving people the ability to make a complaint, get a hearing and receive an adjudication’ (Orozco Henríquez 2010).

Hence the idea of launching a global index. At International IDEA, we identified the gap in the literature and in existing indicators. We decided to address this gap and design an index to systematically measure the quality of electoral justice—empirically, objectively, comparatively, and, above all, based on international standards. This index is important since electoral justice is one of the building blocks of a democratic state. Its importance lies in the fact that it not only guarantees the resolution of political disputes in events such as electoral campaigns, but also, fundamentally, it ensures and guarantees the political rights of citizens. And these are nothing less than human rights.

1.3 The construction of an international index

There is a need for an index that allows the comparison of electoral processes and institutions around the world, and specifically an index that measures their quality in the field of electoral justice. Therefore, this index takes into account key principles and guarantees of electoral justice systems, contained in different international instruments such as the Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966. Essential elements of this index, such as the importance of having access to a complete and effective justice system, the independence of the electoral conflict resolution body, and the independence and professionalism of its members, have been taken from these instruments. Hence, at International IDEA’s Mexico and Central America office, we designed terms of reference outlining the gap in existing indices and the need to address this by creating an index, and put forth a set of guidelines and criteria of what an index should—and should not—include. Mainstreaming basic electoral justice principles and rights contained in international instruments was our priority.

With this in mind, International IDEA summoned experts Jesús Orozco Henríquez and Hugo Concha Cantú of Mexico’s Institute of Legal Research at the National Autonomous

University of Mexico (Instituto de Investigaciones Jurídicas at Universidad Autónoma de México; IJ-UNAM), and Rocío Mondragón, from the National Institute of Statistics and Geography of Mexico (Instituto Nacional de Estadística, Geografía e Informática; INEGI)—for her statistical and quantitative support—to prepare a preliminary proposal. This proposal highlighted the importance of measuring access to electoral justice and established a first methodology and group of indicators. It included structural indicators, aimed at evaluating the regulatory framework of electoral justice; performance indicators, aimed at the practical operation of the system; and background indicators, relative to the country's political context.

At a later stage, the proposal was sent to the TEPJF, specifically to the General Directorate of International Relations, who provided accurate comments from their experience and jurisdictional perspective. These comments focused on the applicability of the index for the evaluation of electoral justice systems, institutions and procedures. International IDEA would like to thank Alberto Guevara Castro and Fernanda Rodríguez González for their useful comments from their wide international and judicial experience.

The structure of the first proposal and the comments made by the TEPJF were taken into account by International IDEA and were used as a solid foundation. On this basis, Holly Ann Garnett of the Royal Military College of Canada, Ferrán Martínez i Coma of Griffith University in Australia, and Miguel Angel Lara Otaola of International IDEA conducted a detailed review, incorporating diverse disciplines and experiences and adjusted the design of the index, taking into account different models, institutions and procedures of electoral justice worldwide. In this second stage, work consisted in including a comparative perspective so as to build a truly universal and measurable index. This stage benefited from these specialists' extensive experience in constructing and developing democracy indices.

Later on, this updated proposal was presented at two international fora organized by International IDEA—the first on 15 July 2019 in New York City, and the second on 15 August 2019 in Mexico City at the headquarters of the TEPJF. In both events, International IDEA presented the preliminary proposal to academics, specialists and electoral justice practitioners in order to obtain relevant feedback and make this a truly universal index. In both fora, it was emphasized that the ultimate goal was to build an internationally accepted index that would allow better understanding and possibility to evaluate the quality of electoral justice in the world, objectively and empirically.

Finally, International IDEA mapped, reviewed and systematized all the principles, guarantees and rights related to electoral justice that are contained in international instruments and brought them into the index proposal as key priorities. This means that each and every indicator considered in the Global Index captures an international principle that seeks to ensure the legality and impartiality of an election, and that citizens can exercise their political-electoral rights.

Hence, after various rounds of review and analysis, the pages below contain the proposal for a Global Index on Electoral Justice. This document explains the importance of electoral justice, gives a description of the different electoral justice systems and mechanisms, and presents an index that considers both normative and performance aspects of the electoral justice system (in addition to context/background indicators, which can be used as a supplement to understand the context where the electoral justice system operates). This index mainstreams political and electoral rights as contained in international and regional instruments and mechanisms that have been signed and ratified by most countries in the world. This index evaluates not only the quality of an electoral justice system but also its compliance with respect to human rights.

2. Electoral justice and its measurement

Electoral justice is of fundamental importance for democracy. According to *Electoral Justice: The International IDEA Handbook* (Orozco Henríquez 2010), this includes diverse means and mechanisms to ensure that each action, procedure and decision related to the electoral process is in line with the law, as well as 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.

As indicated by International IDEA's *Electoral Justice System Assessment Guide* (Joseph and McLoughlin 2019: 8), electoral justice encompasses the means and mechanisms for:

1. guaranteeing that the electoral process operates in accordance with the law (from the constitution to international standards); and
2. protecting and restoring electoral rights.

It is from this elementary but comprehensive definition, and its two components, that a first proposal of indicators to assess the quality of electoral justice and its operation is developed. Thus, electoral justice is not only responsible for resolving electoral conflicts or ensuring the legality of an election, but it is also the key for guaranteeing the political-electoral rights of citizens (Lara Otaola 2019). Therefore, the proposed indicators consider those principles and guarantees that, in accordance with international instruments and standards, ensure that the electoral process is in line with the law and that electoral rights are guaranteed.

2.1. The importance of electoral justice

The essential purpose of an electoral justice or electoral dispute resolution system (EDRS) is not only to resolve electoral disputes, but to guarantee the right to elect or be elected, and to participate in authentic, free and democratic elections through equal and universal suffrage.

To have full and complete access to an effective justice system, 'procedures should be *accessible* in terms of time, distance and cost, and *inclusive* so that citizens, candidates, political parties and political groupings can make their challenges without discrimination' (Orozco Henríquez 2010: 121). Likewise, they must guarantee the right to a defence, so petitioners and interested third parties can plead their case, while at the same time being able to issue a prompt resolution to the conflict. It requires pre-determined standards, which are made public, and decisions by independent adjudicators to be made without

regard to the status of the individual. Decisions by adjudicatory bodies of first instance must be reviewable by higher authorities.

Any non-compliance, breach or violation of the norms that make up the legal framework that regulates the various stages of the electoral cycle constitutes an irregularity and may give rise to conflict.¹ Electoral justice seeks to resolve, in a lawful, institutional, complete and effective way, possible electoral disputes. For this purpose, it makes available to the affected person various means and mechanisms to correct the irregularity and/or punish whoever has committed it. Access to the EDRS becomes a fundamental right for democratic life and, thus, a human right.

Hence, electoral justice not only guarantees electoral regularity, but also the fulfilment of the democratic principle of holding free, fair, authentic, periodic and law-abiding elections (Orozco Henríquez 2010). In this sense, it represents the ultimate guarantee of electoral democracy and respect for the popular will; therefore, it is fundamental to democratic governance, as well as essential for the credibility of the electoral process and results.

Electoral justice cannot be reduced to issues related to judicial processes to protect and enforce electoral rights; it also considers the normative design that regulates both the mechanisms that resolve election conflicts and the conduct of the entire electoral process itself. As a result, in the end electoral justice influences all aspects surrounding an election.

Box 2.1 Electoral justice as the strength of a political system

The recurrence of challenges and other procedural mechanisms to resolve electoral conflicts should not be perceived:

. . . as a reflection of the weakness of a political system or a symptom of deficient or manipulated electoral procedures, but as a test of the strength, vitality and openness of the system and its procedures. While greater access to and understanding of the EJS [electoral justice system] may result in a larger number of challenges, it may also help to ensure that electoral conflict is dealt with and resolved by institutional means, thereby contributing to stability and peace and thus reducing potential conflicts of any other kind.
(Orozco Henríquez 2010: 3)

It is different when the means of electoral challenge are used in an abusive or frivolous way by political actors, in order to exert some political pressure or to try to lengthen the definitive resolution of a procedure—for example, when resorting to the means of electoral challenge is part of the political strategy of certain actors to win in the judicial space what they did not achieve at the ballot box. In those cases, the EDRS will also be responsible for establishing controls to prevent the system from becoming a political mechanism and distorting its essential objectives.

At the international level, it is found that many elections are contested, even when they are characterized as ‘clean and free’ and are held in a democratic context with high electoral integrity, which could imply that sometimes parties and candidates resort to political strategies without a real irregularity in the electoral process. In this sense, Lara Otaola (2018), using the 4.0 edition of the Perceptions of Electoral Integrity Index (Electoral Integrity Project 2019), finds that, out of a total of 102 national elections classified as democratic and held between 2012 and 2016, a total of 34 were disputed by political parties, with different methods and degrees of intensity. Furthermore, the study shows that many of them were registered in countries with moderate and high levels of electoral integrity. Two examples of this are: Indonesia in 2014, where challenges were registered and the presidential election was accused of electoral fraud, and El Salvador in 2014, where the representatives of one of the candidates withdrew from the final count and the nullity of the elections was requested. In these types of cases—where challenges are presented despite the high levels of electoral integrity—the presented claims must be considered with great attention to detail to determine their validity (Lara Otaola 2018). Therefore, there are occasions when contestants challenge the electoral process and its results, based on political considerations or as part of a strategic negotiation, and not necessarily on the basis of existing irregularities (Hernández-Huerta 2015).

2.2. The importance of measuring access to electoral justice

Taking a broad perspective, electoral justice encompasses other components of the electoral system as a whole, such as the contextual elements related to the political system of a given society. However, from a specific, more formal perspective, electoral justice refers solely to the bodies and procedures that provide this type of service to the society, covering its design and performance (Figure 2.1).

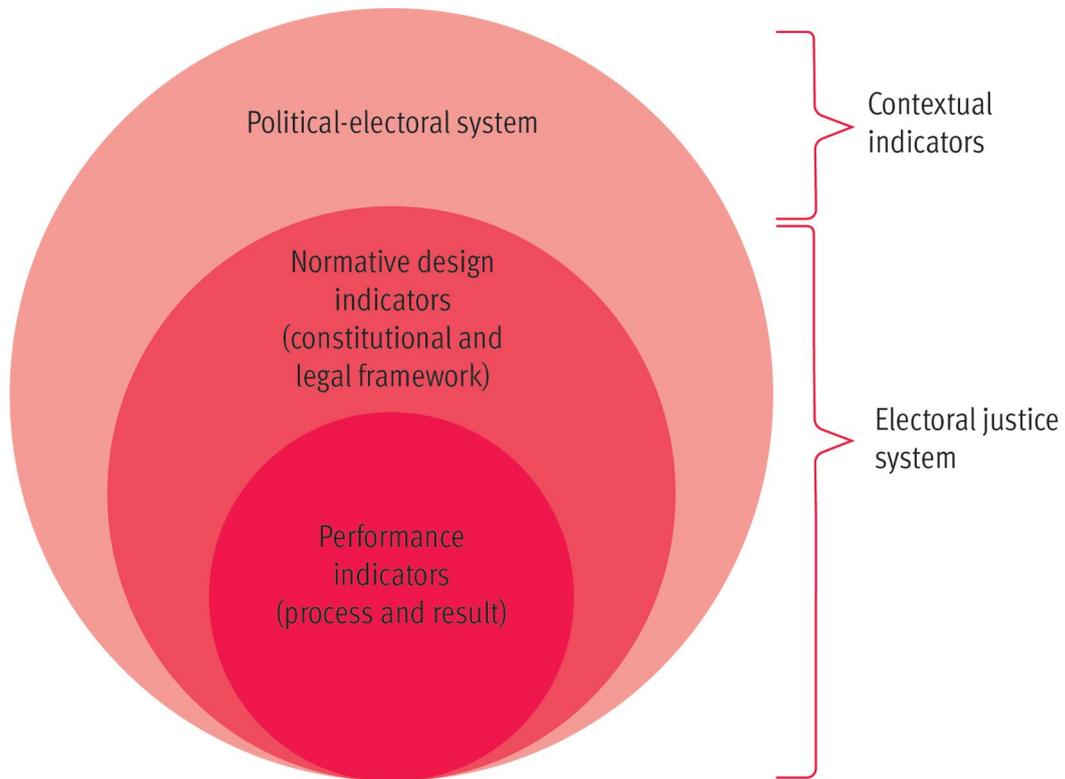
From a broad perspective (largest circle in Figure 2.1), the set of existing elements in an electoral regime or democratic system that, in one way or another, are related to the design and operation of the electoral justice system, can be measured. The indicators in this category provide information on the political system as a whole, which helps to better understand the environment in which electoral institutions and procedures operate. These contextual indicators reflect specific characteristics of a given electoral system. Among them, for example, we find indicators on the type of political regime (democratic, hybrid or authoritarian), electoral integrity and the level of corruption in the country.

Now, from a more specific or strict perspective (the two smaller circles in Figure 2.1), an EDRS and its components can be measured according to its design and performance, which is the main objective of this index. For this, we developed two different types of indicators:

- normative design indicators (constitutional and legal framework); and
- performance indicators (process and outcome).

On the one hand, normative design indicators constitute a way to assess the scope of what has been established in norms and standards, regarding both institutions and procedures. On the other hand, performance indicators try to collect information to evaluate the operation of the system and assess whether it meets the objectives established in its normative design, measuring its efficiency (costs, quality, deadlines), and its effectiveness (observance and compliance).

Figure 2.1 Broad and specific senses of electoral justice



Endnotes

1. 'An integrated, comprehensive and effective approach to designing and implementing an electoral justice system is only possible if the three periods of the electoral cycle are taken into account: pre-electoral, electoral and post-electoral' (Orozco Henríquez 2010: 18).

3. Electoral justice mechanisms and systems

3.1. Electoral justice mechanisms

The concept of electoral justice includes the means and mechanisms for ensuring that electoral processes are held according to the law and for defending political and electoral rights. This includes all the means in place for preventing electoral disputes, as well as the mechanisms for resolving them—the latter can be formal and institutional or informal (Orozco Henríquez 2010). Among the mechanisms for resolving electoral disputes (judgements, appeals or claims), a distinction should be made between:

- those that provide a formal remedy or the possibility to promote a trial against the irregular act and are corrective in nature, such as the means of bringing electoral challenges, which annul, modify or acknowledge the irregularity;
- those that are punitive in nature, which impose a penalty on the perpetrator, entity or person responsible for the irregularity, such as the procedures through which the following are established:
 - election-related administrative liabilities (whether the sanction applicable to the corresponding administrative infraction is imposed by the electoral management body (EMB) in charge of organizing the elections, another administrative authority or the electoral dispute resolution body (EDRB));
 - criminal liabilities (whether the penalty applicable to the offence is applied by an ordinary criminal court or, in certain countries and specific cases, by the same EDRB); and
- alternative mechanisms for electoral dispute resolution, which are voluntary for the parties in dispute and frequently informal and include the use of mediation (Orozco Henríquez 2010).

This is how we can distinguish between direct formal means (the means of electoral challenge) and indirect formal means (the regime of electoral criminal or administrative liabilities) to ensure the regularity of elections and compliance with the legal-electoral order.

Due to this classification, the means for bringing an electoral challenge can be properly distinguished from the procedures for determining liabilities and responsibilities. On the one hand, the means of electoral challenge provide direct oversight to ensure that elections comply with the legal framework and have the effect of preserving or restoring the correct

electoral legal order (Orozco Henríquez 2010). On the other hand, the electoral responsibilities regime (administrative or criminal) does not correct or annul the effects of the irregularity but imposes a punishment or sanction on the person responsible for it (whether it is a crime or an administrative infraction) (Orozco Henríquez 2010). So it is an indirect control of electoral regularity or compliance with the electoral legal order (while it does fulfil an important persuasive function so that the recipients comply with the provisions of the electoral rules, in the specific cases when this does not happen, this regime, by itself, does not deprive irregularities of effects nor restore electoral legal order).

As for alternative mechanisms, due to their generally informal nature, they depend on the will of the disputing parties (think, for example, in institutional spaces for dialogue and mediation with political parties within the scope of the EMB, or specifically, those that operate in South Africa, as well as in some federal entities of Mexico, such as Oaxaca, where elections are held under the regime of indigenous norms and traditions). In many cases, these mechanisms exist to prevent formal/legal conflicts.

To the extent that the means of electoral challenge prevail and ensure the electoral legal order and, where appropriate, restore the person affected in the exercise or enjoyment of the right that has been violated, they constitute the main and most effective guarantee of the EDRS. This, however, does not mean that the other complementary mechanisms (indirect and informal) are not also recommended.

3.2. Variety of electoral dispute resolution systems (EDRSs)

There is a wide variety of means and mechanisms to prevent and resolve electoral conflicts; there is no single formula that fits all countries. This leads to different electoral dispute resolution systems that vary depending on the country and are the result of specific historical, political and social contexts. This is why there are different criteria and methods for classifying EDRSs: while some focus on the different parts that make up the EDRSs, others focus on the type of challenges available in the system and others on the type of body that hears and resolves challenges. International IDEA's Handbook on Electoral Justice (Orozco Henríquez 2010) uses a classification—based on the type of the body that is vested with the final decision for ensuring that electoral results comply with the legal framework—as the criterion for the global classification of EDRSs. Based on this, there are at least four types or models:

- legislative body (the legislature or other political assembly);
- judicial body;
 - regular courts of the judicial branch;
 - constitutional courts or councils;
 - administrative courts;
 - specialized electoral courts;
- electoral management bodies with judicial powers; and
- ad hoc bodies created for a specific electoral process.

Some EDRSs confer the final decision on the challenges to the legislative chambers or some of their commissions. This is the case in the United States, where the power to resolve national legislative elections rests with the House of Representatives or the Senate (except when it comes to presidential elections and the decision rests on the entire Congress). There

are also EDRSs that entrust the final decision to a judicial body. Such systems include examples like Ethiopia and Kenya where the body with the power to make the final ruling is the Supreme Court, or cases like Germany and France with a constitutional court. The third type of EDRSs includes countries like Costa Rica (Supreme Electoral Court), Uruguay (Electoral Court) or Turkey (Supreme Electoral Council), where an autonomous electoral administrative body has jurisdictional powers to resolve the challenges and give validity to the electoral process. Finally, there are ad hoc bodies, which represent provisional arrangements that arise as a solution to conflict situations (such as Cambodia in 1993 or Nepal in 2008; see Orozco Henríquez 2010).

This plurality of electoral justice systems responds to the diversity of political, institutional, social and economic contexts. Therefore, there is no single formula to guarantee the legality of elections and protect electoral rights. In general, the EDRS of each country is the result of its own historical, political and social context, as well as its own legal tradition, thus it is not valid to claim that one system is better than the rest. However, in spite of this diversity, the objectives of every EDRS must be the same, which allows the comparison of their essential principles and guarantees, which represents the main objective of this Global Index.

3.3. EDRS and the electoral cycle

Challenges to elections and their processes can arise during any stage of the electoral cycle (pre-election, electoral or post-election periods). As the Electoral Justice Handbook (Orozco Henríquez 2010) indicates, an EDRS that focuses only on the acts that occur in the most active part of the electoral cycle—during election day—is not the best way to ensure that electoral procedures and their results comply with the legal order (Orozco Henríquez 2010). Pre-election and post-election periods may provide a better opportunity for undue attempts to prevent holding free, fair and authentic elections, as well as to manipulate or divert procedures towards partisan interests through illegal and illegitimate practices (for example, with respect to voter registration or political party financing).

For these reasons, mechanisms must be provided to resolve disputes that arise, not only during polling day, but throughout the entire cycle (from voter registration and candidate nominations, to validation of the election). See Figure 3.1.

Figure 3.1 Stages of the electoral cycle



Source: Catt, H., Ellis, A., Maley, M., Wall, A. and Wolf, P., *Electoral Management Design: Revised Edition* (Stockholm: International IDEA, 2014).

An EDRS requires mechanisms to ensure that all activities, carried out in the different stages of the electoral cycle, comply with the law. Thus, for example, during the pre-election phase, activities like the formation and/or registration of political parties, their financing (direct and indirect) and the update of the voter roll are carried out. Later on, in the electoral phase, the issuance of the identity document or voter identification card, the nomination and/or registration of candidates, electoral campaigns, the registration of electoral observers, the integration and location of polling stations, the printing and distribution of ballot papers and other electoral material, oversight of political parties' expenses and/or candidates all start to happen, as well as election day and results. Finally, in the post-election phase, the (re)integration of the electoral bodies (administrative and/or jurisdictional), the control of other resources of the political parties and/or candidates and challenges to other participatory or direct democracy processes take place.¹

It is important that the EDRS provides mechanisms to control the regularity and legality of every action and decision described above. This is especially important when the electoral

law establishes bodies with a limited mandate that does not extend beyond the electoral period. In those cases, other bodies should be entrusted with the final decision of possible challenges that arise during pre-election and post-election periods. In this regard, having permanent and independent bodies that are responsible for resolving electoral disputes is considered an international best practice.

3.4. Principles and guarantees of EDRS

Regardless of the type of EDRS adopted, all electoral justice systems and bodies must follow and apply certain universal principles and guarantees to ensure full and complete to an effective justice system, the holding of free, fair and authentic elections, and the protection or restoration of citizens' electoral rights. Thus, regardless of the type of EDRS that is followed, an electoral justice system must guarantee fundamental rights, such as effective remedy before an independent and impartial tribunal, due process of law and access to a public hearing.

These principles and guarantees must be observed and applied by the diverse EDRBs that make up the different systems. Whether the EDRB is part of the chain of electoral challenges (either in the first or final instance)² or whether it resolves electoral administrative sanctions, these universal standards must be guaranteed and safeguarded.

'Principles' refer to the supreme and paramount ethical values of a legal order or institution. In general, these principles are set out in international human rights instruments and are characteristic of a constitutional democracy (Orozco Henríquez 2010). In this sense, an EDRS must be limited not only to the general principles of law, but also to constitutionality and legality, judicial independence, due process and adequate means of defence. In addition, an EDRS must follow fundamental electoral principles such as holding free, fair and authentic elections or universal suffrage, and more specific principles such as the principle of irrevocability, which argues that the subsequent stages of the electoral process must be definitive (Orozco Henríquez 2010).

On the other hand, 'guarantees' refer to the means, mechanisms or legal instruments of a procedural nature by which certain rights or institutions protected or established by the legal order are secured, endorsed, defended or safeguarded (in compliance and observance of such principles) (Orozco Henríquez 2010). Following these principles and guarantees leads to the moral or political justification of the corresponding legal order.

As mentioned, the main guarantee of an effective EDRS is the availability of a remedy that can correct an irregularity by annulling, revoking, modifying or even just acknowledging it. Other mechanisms can either deter or punish a transgressor through a regime of criminal or administrative liability. Proper institutional design can safeguard or foster certain values; for example, it is more likely that impartiality will be observed if the EDRB has more than one member (Orozco Henríquez 2010).

It is important to distinguish between structural guarantees and procedural guarantees. The former are legal instruments that ensure that the EDRBs act with autonomy, independence and impartiality (for example, the procedure for selecting and appointing its members). The latter are those legal measures that ensure that the mechanisms for bringing and resolving electoral challenges have attributes which promote electoral justice and guarantee that the EDRS is both effective and efficient (for example, by guaranteeing effective and inclusive access to electoral justice) (Orozco Henríquez 2010). In this sense, it is usual that, in the chain of electoral challenges—for example, in cases such as the refusal to register certain candidates—administrative means are used, prior to other mechanisms, and its resolution may be contested later on before judicial means.

As observed, it is common for an EDRS to provide several types of challenges and mechanisms for resolving electoral conflicts (means of challenge or for the imposition of criminal and administrative sanctions), as well as different instances to solve them (the EMB,

one or more judicial bodies and, on occasion, a legislative body). While EDRSs generally provide for different types of mechanisms, all of them should be consistent with the principles and guarantees of EDRS in order to ensure that all electoral actions, procedures and decisions are in line with the principles of constitutionality and legality (Orozco Henríquez 2010).

The identification of principles and guarantees of EDRSs is done with two main objectives. First, to establish parameters to meet international commitments and standards, that have been signed and ratified by member states of the international or regional human rights systems. Second, identify ‘good practices’, ‘minimum conditions’ or ‘elemental characteristics’ required for considering an EDRS to be in line with the characteristic principles of constitutional democracy under the rule of law (Orozco Henríquez 2010).

As mentioned in the Electoral Justice Handbook, ‘identifying such principles and guarantees is not intended to inhibit other experiments or practices, as long as their purpose is to consolidate the holding of elections that are free, fair and genuine, and in keeping with the law. Commitments and standards are constantly evolving in both theory and practice’ (Orozco Henríquez 2010: 85).

Endnotes

1. ‘An EDRS needs to provide mechanisms to ensure that all electoral actions and decisions carried out in the different periods of the electoral cycle are in keeping with the law’ (Orozco-Henríquez 2010: 20). Reforms to the electoral laws, like the other electoral acts that are carried out during the electoral cycle, are fundamental activities, frequently carried out in the post-electoral stage; and they are also part of the electoral justice system.
2. In the case of electoral results, for example, it is common that during election day, in the presence of any perceived irregularity at the voting table, interested political parties or candidates challenge the tally sheet result before some higher body of the EMB. This body is generally in a position to correct the alleged irregularity. Once the official election result is issued, several EDRSs consider the right of political parties, or unsatisfied candidates, to challenge it before a judicial body (ordinary, constitutional, administrative or electoral). Sometimes, for example, a means of electoral challenge is considered, first before an ordinary court of the judiciary or a specialized electoral court, and then, another one before a constitutional court, which issues the final resolution. Some EDRSs still provide the subsequent possibility of going to the legislative body, which holds the final decision on the validity of the election and its results (for example, in cases such as the United States, Italy or Germany, the possibility of attending the legislative body is prior to that of going to the constitutional court, whose decision is final).

4. International standards on electoral justice

The principles and guarantees underlying the indicators that make up this Global Index are derived from international treaties, declarations and covenants signed and ratified by a majority of states around the world. Therefore, these are not unilateral instruments that reflect a particular vision of one country, culture or group of countries, but rather they are guidelines that contain the needs, interests and aspirations of all humanity.

The content of the Global Index is inspired and derived from the following international law instruments:

- Universal Declaration of Human Rights (UDHR), 1948;
- International Covenant on Civil and Political Rights (ICCPR), 1966;
- UN Human Rights Committee, General Comments on the International Covenant on Civil and Political Rights (GC);
- UN Convention Against Corruption (UNCAC), 2005;
- specific treaties and conventions, including the following:
 - Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
 - Convention on the Rights of Persons with Disabilities (CRPD), 2006
 - Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007; and
- the sources of international law, as defined in article 38, section 1, of the Statute of the International Court of Justice.¹

The Global Index also considers regional instruments such as:

- regional conventions:
 - European Convention on Human Rights (ECHR) (formally known as Convention for the Protection of Human Rights and Fundamental Freedoms), 1950;
 - American Convention on Human Rights (ACHR), 1969; and
 - African Charter on Human and Peoples' Rights (ACHPR), 1981.

These instruments, which should be considered in the design and implementation of an EDRS, are the universal acquis in the field of political-electoral rights. Hence, they represent the foundation of the proposed index and have been used as the basis for its development.

4.1. From international standards to specific indicators

4.1.1. International rights and obligations

Due to the number of international treaties and the variety of principles and guarantees contained in them, as well as the fact that some of the established rights are general in nature, it is important to translate them into specific, measurable and relevant indicators. Therefore, as a first step in this synthesis effort, the Global Index uses International IDEA's 'international obligations for elections' (Tuccinardi 2014), which offers a summarized version of the political-electoral rights contained in these instruments (Table 4.1). According to this document, there are 20 'building blocks' which help us understand and connect these general obligations to the different components of the electoral process.

Table 4.1 International obligations for elections

Right and opportunity to participate in public affairs	Freedom of assembly
Right and opportunity to vote	Freedom of movement
Right and opportunity to be elected	Freedom of opinion and expression
Periodic elections	Right to security of the person
Universal suffrage	Transparency and the right to information
Equal suffrage	Prevention of corruption
Secret ballot	Rule of law
Freedom from discrimination and equality under the law	Right to an effective remedy
Equality between men and women	Right to a fair and public hearing
Freedom of association	States must take necessary steps to give effect to rights

Source: Tuccinardi, D. (ed.), *International Obligations for Elections: Guidelines for Legal Frameworks* (Stockholm: International IDEA, 2014).

These are indeed the building blocks of a democracy and therefore offer an initial perspective on the principles and guarantees that the Global Index should cover. However, this is still general, and the building of the index requires more detail. To this end, two additional sources of information have been used. Both of them were used and proposed as a reference during the international workshop 'Towards a Global Index of Electoral Justice', held on 15 August 2019 at the TEPJF in Mexico.

The first source is The Carter Center's Assessment Manual on *Election Obligations and Standards* (Carter Center 2014). This instrument summarizes key issues of the electoral process and connects them to the applicable sources of international law. The manual includes 10 stages of the electoral process, ranging from the legal framework and voter registration process to the resolution of electoral disputes. It identifies four fundamental types of obligations: macro-level obligations, individual rights and freedoms, process-focused obligations and foundational obligations. These echo the building blocks contained in a International IDEA compendium (Tuccinardi 2014) and encompass basic rights such as the opportunity to vote and be voted for, freedom of association and assembly, and the right to an effective remedy.¹

The second source of information used is the *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections* from the International Foundation for Electoral Systems (IFES; Vickery 2011). In this work, IFES defines seven electoral justice related standards. These, based on international law obligations, provide the necessary normative foundations to develop effective, consistent and transparent EDRSs. These findings are especially relevant

for the construction of the index since they allow us to get closer to the object of study and to the elaboration of specific indicators. The seven standards are (Vickery 2011: 16):

1. A right of redress for election complaints and disputes
2. A clearly defined regimen of election standards and procedures
3. An impartial and informed arbiter
4. A system that judicially expedites decisions
5. Established burdens of proof and standards of evidence
6. Availability of meaningful and effective remedies
7. Effective education of stakeholders

4.1.2. From rights and obligations to specific indicators

A second step in the construction of this Global Index involved transforming this relevant catalogue of general rights and obligations into operational indicators, applicable and specific to an electoral justice system (EDRS). Thus, based on the two sources of information mentioned in section 4.1.1. and the recommendations of specialists made during the two international fora,² International IDEA concentrated and systematized two levels of rights: those that are necessary for the design and operation of an electoral justice system and those that establish a favourable political context for the exercise of these rights and obligations. Both levels are detailed below, accompanied by their respective international law source.³

Necessary rights for the design and operation of an EDRS:

- forum for electoral grievances (ICCPR 2.3);
- judicial review of administrative decisions related to elections (ICCPR 2.3, 14.1);
- right to an effective remedy (ICCPR 2.3; UDHR 8);
- independent and impartial electoral justice systems (ICCPR 14; GC 32);
- legally reasoned and published decisions (ICCPR 14, 19.2; UNCAC 10, 13.1);
- right to a fair and public hearing (ICCPR 2.3, 14);
- guarantee access to justice for all (ICCPR 2.3, 26);
- no unreasonable fees imposed for filing complaints (ICCPR 26; GC 32.10);
- provisions to protect participants in legal proceedings from reprisals for testifying in electoral disputes (ICCPR 9; UNCAC 32, 33);
- effective, proportionate and dissuasive sanctions (ICCPR 2.1, 2.2; OG 25, 31);
- independence of the judiciary from the executive branch and the legislative (ICCPR 14; GC 32);
- due process and fair trial rights (ICCPR 9, 14; ACHR 8.1);
- prohibition of military trials for civil actors (ICCPR 14; GC 13, 32);
- the right to be presumed innocent (ICCPR 14.2; UDHR 11.1; ACHR 8.2);
- effective enforcement of electoral offences (ICCPR 2.2, 2.3; GC 31);

- competent, independent and impartial tribunals established by law (ICCPR 14; GC 32; UDHR 10);
- all persons shall be equal before courts and tribunals (ICCPR 14.1); and
- timely and expeditious judicial decisions (ICCPR 14.3; ACHR 8.1; ECHR 6).

Rights that establish a favourable democratic context:

- rule of law (UDHR preamble; ICCPR 3, 26; GC 29, 32);
- states must take necessary steps to give effect to rights (ICCPR 2.2);
- universal suffrage (ICCPR 25b; ICERD 5c; GC 25);
- equal suffrage (UDHR 21.3; ICCPR 25b; ICERD 5c; GC 25);
- secret ballot (UDHR 21.3; ICCPR 25b; GC 25);
- periodic elections (ICCPR 25b; GC 25);
- prevention of corruption (UNCAC 7); and
- effective education for relevant actors (GC 25).

All these are derived from the internationally recognized fundamental right that everyone has to participate in the decision-making processes of their country and to express their will through authentic and periodic elections. These rights are the cornerstone of this index and have been mainstreamed into its indicators.

Endnotes

1. The specific obligations established in The Carter Center’s manual are: **macro-level obligations**—the overarching obligation to hold genuine elections that reflect the free expression of the will of the electors; **individual rights and freedoms**—right and opportunity to vote, right and opportunity to be elected, right and opportunity to participate in public affairs, freedom of assembly, freedom of association, freedom of movement, freedom of opinion and expression, transparency and access to information, right to security of the person, right to security of the person, freedom from discrimination and equality before the law, equality between men and women, right to a fair and public hearing and right to an effective remedy; **process-focused obligations**—universal suffrage, equal suffrage, secret ballot, periodic elections and prevention of corruption; **foundational obligations**—rule of law and the state must take necessary steps to give effect to rights (The Carter Center 2014: 14–33).
2. These were: (a) the international forum ‘Access to Justice for All: Effective, Accountable and Inclusive Electoral Institutions’, held on 15 July at the Uganda House, within the framework of the 2019 UN High Level Political Forum (HLPF) in New York City; and (b) the international workshop ‘Towards a Global Index of Electoral Justice’, held at the facilities of the TEPFJ in Mexico on 15 August 2019.
3. American Convention on Human Rights (ACHR); United Nations Convention against Corruption (UNCAC); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); European Convention on Human Rights (ECHR); Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR); United Nations Human Rights Committee, General Comments on the International Covenant on Civil and Political Rights (GC).

5. Methodology for the elaboration of indicators on electoral justice

Access to electoral justice is understood as the guarantee that must exist so that everyone can effectively use the means and mechanisms of electoral justice (Orozco Henríquez 2010). Universal access to justice includes a multiplicity of elements that range from the knowledge of rights and institutions—as well as their procedures, their operation and what can be expected of them in order to fully and effectively guarantee electoral regularity—to the defence or protection of electoral rights. Thus, this work aims to develop a methodology to measure and monitor access to and the functioning of electoral justice, in a full and effective manner.

To achieve this objective, a set of indicators has been developed. The idea stems from a long evolution of studies that seek, in different ways and with different scopes, to measure the effectiveness of judicial conflict resolution procedures, or to measure the effectiveness and efficiency of human rights protection mechanisms.¹ The set of indicators was built after analysing these materials, in particular the publication by the UN Office of the High Commissioner of Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (OHCHR 2012).²

It is important to recall that conventional methodology classifies indicators by their nature or by the objectives they seek to assess, that is: structural, process and result-oriented indicators.³ However, this work proposes a new classification structure: indicators that provide information on the normative design and on the operation of the electoral justice system, complemented by background indicators (which include relevant information on the context where the electoral justice system works). Those that describe the context in which the electoral justice system operates (such as the type of political regime, levels of corruption and the rule of law) are complementary to the index. They provide information to help understand the background in which such institutions and procedures operate. This is especially relevant when the context is unfavourable because it can have a negative impact on the electoral justice system.

The means of electoral challenge constitute the main and most effective guarantee of an EDRS. Therefore, in order to identify the indicators that evaluate the efficiency and effectiveness of the various electoral justice systems in the world (Orozco Henríquez 2010), this paper pays special attention to the analysis and characteristics of the means of electoral challenge. While other complementary mechanisms (indirect and/or informal) are important and also included, they are not the main focus of the Global Index. In other words, the indicators proposed (outlined in section 6) try to establish measurements on electoral justice,

including those indicators that specifically seek to collect information from the institutions in charge of it.

As mentioned, the judicial process in various EDRSs may include a variety of bodies (one or more of judicial nature and/or some administrative or legislative bodies). The indicators proposed here can be used to measure the performance of a single specific institution (for example, the institution that validates an election or is vested with the final decision on an election, the institution that resolves electoral disputes in the first instance or the one that resolves the majority of the challenges), or of each and every one of the corresponding EDRBs in a specific EDRS.

In order for these indicators to be relevant worldwide, they must have at least four key characteristics: useful, universal, reasonable and measurable.

- *Useful*. Indicators must be useful for many audiences. They should not only be useful for academics that carry out scientific studies, but also for decision-makers in charge of designing electoral justice systems and identifying opportunity areas for their strengthening. The objective of these indicators is to measure the level of complete and effective access to electoral justice and the robustness of the institutions in charge of delivering it. Therefore, these indicators can become a mechanism for evaluating the design of the EDRS and the performance of the EDRB.
- *Universal*. Indicators must be applicable for any country, regardless of its political or legal context. Whether it is a unitary or federal model, or whether its electoral justice system relies on either: ordinary judiciary courts (as in Australia, Bosnia and Herzegovina, Canada, Estonia, Ethiopia, Hungary, India, Jamaica, Kyrgyzstan, Japan, Kenya, Lesotho, Pakistan, Poland, Russia, Serbia, South Korea, Uganda, United Kingdom or Uzbekistan); a constitutional court or council (such as Armenia, Austria, Bulgaria, Burkina Faso, Cambodia, Cameroon, Croatia, Czechia, Slovakia, Slovenia, Spain, France, Georgia, Germany, Guatemala, Indonesia, Kazakhstan, Moldova, Montenegro, Mozambique, Niger, Portugal or Romania); an administrative court (such as Colombia or Finland); a specialized electoral court (such as in Albania, Chile, Ecuador, Greece, Mexico, the Palestinian Authority, Peru or South Africa); or a legislative body (such as in Belgium, Iceland, Italy, Lithuania, Norway, Netherlands, Switzerland and the USA⁴).
- *Reasonable*. Indicators have to be realistic and feasible, easy to obtain and use, and adjusted to reality. For example, measuring judges' intentions would be somewhat difficult; instead, it is easier to identify and measure the procedure by which they are selected and appointed.
- *Measurable*. Indicators must be measurable. Therefore, each indicator has to be matched to an existing and relevant source of information, so they are easily quantifiable.

The most important points are that indicators must be relevant for people interested in evaluating or measuring EDRSs, and that they can be used in any country, as a common and universal standard for electoral justice.

Endnotes

1. Numerous authors have highlighted the need to develop indicators in the area of access to justice as a way to follow up on knowledge, policies and the exercise of the means to provide justice. See: Friedman (1978); Binder et al. (2003); Gregorio (2003); Pásara (2004).
2. This work seeks to establish a methodological framework that allows promoting and monitoring civil, political, economic, cultural and social rights in the States Parties. Based on this methodology, Mexico's Superior Court of the Federal District and the UN Office of the High Commissioner of Human Rights published *Indicadores sobre el derecho a un juicio justo del Poder Judicial del Distrito Federal* in three volumes (OHCHR and TSJDF 2013). This methodology establishes three types of indicators (UNOHCHR and TSJDF 2013):
Structural indicators (qualitative): 'They measure the ratification and adoption of legal instruments and the existence of basic institutional mechanisms that are considered necessary to guarantee a human right. They reveal the State's commitment or intention to adopt measures to make that right effective.'
Process indicators: 'They reveal all the measures (public programs and concrete interventions) that a State is adopting to materialize its intention or its commitment to guarantee certain human right. They evaluate the way in which a State fulfils its obligations, and at the same time, they help to directly monitor the progressive exercise of the right or the process for its protection.'
Result indicators: This type of indicator shows the degree of realization of a human right in a given context. 'A result indicator is usually less sensitive to transitory variations than a process indicator and it measures the cumulative effects of various underlying processes (which can be described by one or more process indicators).'

Mexico has been a pioneer country in the application of the OHCHR methodology for the identification and construction of human rights indicators. For example, in the attempts to measure the access to a fair trial, the generation of statistical information in different Superior Courts of Justice in Mexico resulted in the proposal for a fourth type of indicators—context—which would help to enhance the interpretation of the structural, process and result indicators.

Context indicators: They provide relevant information regarding the political, economic, social and cultural sphere, which is part of the context in which public policies and government programmes are carried out.
3. In this case, other indicators, such as impact indicators, are not considered due to the nature and scope of this work, and because its access and feasibility is usually more difficult.
4. In this case, at both the state and federal levels, indicators involve EMBs, ordinary courts of general jurisdiction and ultimately a legislative body.

6. International standards and indicators

The construction of the indicators stems from the analysis and characteristics, as well as from the research, identification and systematization of international standards that have been mainstreamed into the proposal. Table 6.1 presents this mainstreaming and shows how each of the proposed indicators is linked to one or more international principles.

It is important to emphasize that the third group of indicators was not included in our analysis, as they are suggested elements to carry out an evaluation of the context where the electoral justice system and the institutions operate. These indicators refer to the political background of the country analysed, but in a strict sense, they are not part of the electoral justice system.

Table 6.1 Indicators and international standards

Indicator			International standard
Design or normative framework of the electoral justice system (<i>Structural indicators</i>)	Institutional design	Institutional autonomy of EDRB	<ul style="list-style-type: none"> Competent, independent and impartial tribunals established by law (ICCPR 14; GC 32; UDHR 10) Independent and impartial electoral justice systems (ICCPR 14; GC 32)
		Independent EDRB members	
		Accountability regime	<ul style="list-style-type: none"> Transparency and right to information (UNCAC 10, 13.1)
		Professionalism	<ul style="list-style-type: none"> Independent and impartial electoral justice systems (ICCPR 14; GC 32) Each state shall endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants (UNCAC 7.1)
	Design of electoral justice mechanisms	Formal mechanisms	<ul style="list-style-type: none"> Due process and fair trial rights (ICCPR 9, 14; ACHR 8.1) Right to an effective remedy (ICCPR 2.3; UDHR 8) States must take necessary steps to give effect to rights (ICCPR 2.2) Right to public notice of standards and offences (UDHR 10; ICCPR 2.3) Right to a fair and public hearing (ICCPR 2.3, 14) Guarantee access to justice for all (ICCPR 2.3, 26) All persons shall be equal before courts and tribunals (ICCPR 14.1)
		Informal mechanisms	<ul style="list-style-type: none"> Right to an effective remedy (ICCPR 2.3; UDHR 8)
Performance of the EDRB (<i>Process and result indicators</i>)	Efficiency	<ul style="list-style-type: none"> Effective enforcement of electoral offences (ICCPR 2.2, 2.3; GC 31) Timely and expeditious judicial decisions (ICCPR 14.3; ACHR 8.1; ECHR 6) Judicial review of administrative decisions related to elections (ICCPR 2.3, 14.1) Effective, proportionate and dissuasive sanctions (ICCPR 2.1, 2.2; GC 25, 31) Guarantee access to justice for all (ICCPR 2.3, 26) 	
	Effectiveness		
	Adherence to international standards	<ul style="list-style-type: none"> Ratification or adherence to international human rights instruments: Universal Declaration of Human Rights International Covenant on Civil and Political Rights 	

Indicator		International standard
		<ul style="list-style-type: none">• UN Human Rights Committee, General Comments on the International Covenant on Civil and Political Rights• UN Convention Against Corruption• Convention on the Elimination of All Forms of Discrimination Against Women• Convention on the Rights of Persons with Disabilities• Declaration on the Rights of Indigenous Peoples• European Convention on Human Rights• American Convention on Human Rights• African Charter on Human and Peoples' Rights

Source: Authors

7. Final considerations for the use and application of the Global Index of Electoral Justice

Electoral justice is key to ensuring the legality of the electoral process and the protection of human rights. For this reason, the Global Index seeks to be an instrument that allows different actors to understand and evaluate electoral justice. The objective is to systematically inform, measure and identify the strengths and areas of opportunity of different electoral dispute resolution systems, while being able to make comparisons between and within nations over time.

However, before proceeding to the section that lists and describes the indicators—and to allow a better use of the Global Index—certain elements should be considered:

1. *Definition.* The Global Index stems from a broad definition of electoral justice. As such, it evaluates aspects of both its normative design and its performance and operation. For this reason, it is not limited to a single type of system or a specific set of electoral dispute resolution mechanisms.
2. *Geographical dimension.* The Global Index can be used to make measurements both nationally and locally; it is designed to make evaluations of electoral justice systems and mechanisms, regardless of their geography.
3. *Electoral cycle dimension.* The Global Index is not limited to a specific stage of the electoral cycle; it covers the pre-election, electoral and post-election phases and its different components. The Global Index can be used to measure the quality and integrity of the entire system, regardless of the stage in the electoral process.
4. *Time period.* The Global Index allows for the identification and evaluation of the electoral justice system at a specific point in time as well as its performance and evolution across time.
5. *Universal dimension.* As noted, there are various electoral dispute resolution systems where different bodies are in charge of electoral justice. The body might be legislative, judicial (supreme courts, ordinary, administrative or specialized courts), ad hoc or mixed, but the Global Index is designed to be used in any of these different systems, regardless of their legal or institutional tradition.

6. *The context.* The current proposal includes a set of indicators that refer to the type and nature of the political system. While these context indicators are to be used as a supplement and are only optional, they can help us achieve a better understanding of the conditions and/or the environment in which the electoral justice system, institutions and procedures operate, and bring up interesting correlations.
7. *Sources of information.* The Global Index relies on different types of sources of information. This has two objectives: (a) to use appropriate sources for each indicator; and (b) to increase the richness of the analysis.

It should be noted that the Global Index will be tested in a pilot exercise in four different jurisdictions, including Mexico, during 2020.

8. A Global Index of Electoral Justice

As already mentioned, electoral justice in a given country can be analysed in three different areas:

1. the design or normative framework of the electoral justice system (EDRS);
2. the performance and operation of the electoral dispute resolution body (EDRB); and
3. the political-electoral regime (the context in which the electoral justice system operates).

These are the three core areas for the construction and development of the indicators, as presented below.

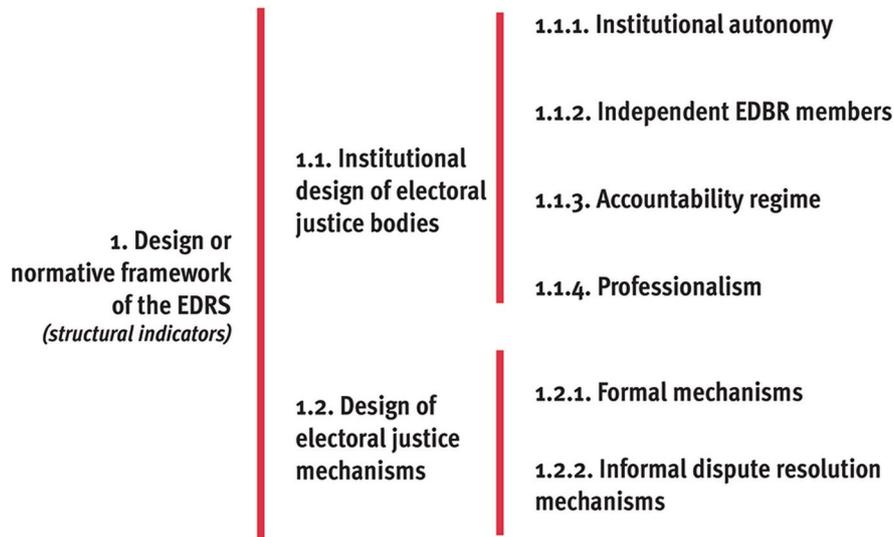
8.1. Design or normative framework of the electoral justice system

The purpose of this first dimension is to collect information contained in the Constitution and electoral laws of a country, that provide for the creation and operation of existing institutions, as well as the procedural elements of the system. Indicators identified for this dimension will aim to verify:

1. whether all necessary institutions have been set up for the operation of a full judicial system;
2. whether these institutions have appropriate means of electoral challenge and methods to guarantee their efficient operation; and
3. whether these means and mechanisms are designed taking into account functional standards.¹

The indicators of the normative framework are presented in Figure 8.1.

Figure 8.1 Indicators on the design or normative framework of the electoral dispute resolution system (EDRS)



According to this classification, the indicators included in this group are:

- 1.1.1. Institutional autonomy
 - 1.1.1.1. Permanence of the body
 - 1.1.1.2. Technical autonomy
 - 1.1.1.3. Normative autonomy
 - 1.1.1.4. Establishment of jurisprudence
 - 1.1.1.5. Financial autonomy
- 1.1.2. Independence of EDRB members
 - 1.1.2.1. Appointment mechanisms
 - 1.1.2.2. Professional requirements for appointment
 - 1.1.2.3. Job stability for members
 - 1.1.2.4. Guarantees against political interference
 - 1.1.2.5. Guarantees against conflicts of interest
 - 1.1.2.6. Guarantees for the integration of the body with a gender perspective
 - 1.1.2.7. Guarantees for the integration of the body with an ethnic perspective
- 1.1.3. Accountability regime
 - 1.1.3.1. Transparency through public records, procedures and decisions
 - 1.1.3.2. Public accountability mechanisms
 - 1.1.3.3. Liability/responsibility regime
- 1.1.4. Professionalism
 - 1.1.4.1. Electoral civil service
 - 1.1.4.2. Recruitment mechanisms
 - 1.1.4.3. Staff training and education
 - 1.1.4.4. Staff evaluations/assessments
 - 1.1.4.5. Staff stability

1.2. Design of electoral justice mechanisms (for electoral dispute resolution)

1.2.1. Formal mechanisms

- 1.2.1.1. Direct (system of challenges and appeals)
 - 1.2.1.1.1. Right of access to an appeals system
 - 1.2.1.1.1.1. Universality
 - 1.2.1.1.1.2. Right to an effective remedy
 - 1.2.1.1.1.3. Due process and fair trial rights
 - 1.2.1.1.1.4. Free or reasonable fees
 - 1.2.1.1.2. Design of means of appeal
 - 1.2.1.1.2.1. Comprehensiveness of the system
 - 1.2.1.1.2.1.1. Constitutional control of electoral laws
 - 1.2.1.1.2.1.1.1. Abstract
 - 1.2.1.1.2.1.1.2. Concrete
 - 1.2.1.1.2.1.2. Every electoral action can be subject to appeal
 - 1.2.1.1.2.1.3. Jurisdictional control of decisions by electoral authorities
 - 1.2.1.1.2.1.4. Jurisdictional control of final actions by political parties
 - 1.2.1.1.2.2. Completeness of the system
 - 1.2.1.1.2.2.1. Corrects irregularities not affecting the election outcome
 - 1.2.1.1.2.2.2. Annuls effects affecting the outcome of the election
 - 1.2.1.1.2.2.3. Restitution of the electoral right involved
 - 1.2.1.1.2.3. Opportunity
 - 1.2.1.1.2.3.1. Reasonable times for appeals/challenges
- 1.2.1.2. Indirect
 - 1.2.1.2.1. Criminal liability system (sanctions)
 - 1.2.1.2.1.1. Existence of a criminal liability system
 - 1.2.1.2.2. Administrative liability system (reparatory/sanctioning agreements)
 - 1.2.1.2.2.1. Existence of an administrative liability system

1.2.2. Informal dispute resolution mechanisms

- 1.2.2.1. Presence of alternative dispute resolution mechanisms
 - 1.2.2.1.1 Administrative body
 - 1.2.2.1.2 Judicial body
 - 1.2.2.1.3 Others/ad hoc mechanisms

This first group of indicators is somewhat similar to the ‘structural indicators’ based on the methodology and indicators proposed by the UN Office of the High Commissioner for Human Rights and Mexico’s Superior Court of the Federal District to assess a fair trial (OHCHR and TSJDF 2013a). In accordance with such methodology, structural indicators reflect the ratification and adoption of legal instruments and the existence of basic institutional mechanisms deemed necessary for the realization of a human right. They reflect the commitment of the state to adopt steps in order to guarantee such a right. Structural indicators must, above all, focus on the nature of national laws applicable to the relevant right—i.e. indicate if international rules have been incorporated—and on institutional mechanisms designed to promote and protect rules. Structural indicators must also reflect state policies and strategies relevant for that right.

8.2. Operation of the electoral justice bodies

This set of indicators seeks to show, from all possible perspectives, the way in which the system operates. This category assumes that all necessary institutions exist and have been created, and seeks to contrast their existence with their performance. While the aim of the previous group of indicators was to verify that the institutions existed, and assess their design, the purpose of this set is to have enough elements to verify that the system is effective and efficient in practice (Figure 8.2).

Figure 8.2 Indicators on the performance of electoral dispute resolution bodies (EDRB)



Indicators included in this group are:

2.1. Efficiency

- 2.1.1. Use of the system
 - 2.1.1.1. Use of the system in the pre-electoral phase
 - 2.1.1.2. Use of the system in the electoral phase (election day)
 - 2.1.1.3. Use of the system in the post-electoral phase
- 2.1.2. Use of legal remedies
- 2.1.3. Number of cases received
- 2.1.4. Received vs. resolved cases
- 2.1.5. Timeframes for resolution

2.2. Effectiveness

- 2.2.1. Compliance
- 2.2.2. Accessibility of parties involved
- 2.2.3. Transparent resolutions
- 2.2.4. Due process

2.3. Compliance with international standards

- 2.3.1. Ratification or adherence to international human rights instruments (universal system)
- 2.3.2. Ratification or adherence to international human rights instruments (regional system)

8.3. The political-electoral regime

The third group of indicators is related to the existing political system in a given country. Therefore, the starting point is a generic verification of the type of political-electoral regime in which the electoral justice system operates. Thus, in a democratic regime, we can assume there is a minimum independence and effectiveness in the resolution of electoral disputes.

Other variables that could have an effect on the use of the system are also considered, such as the levels of political participation and trust in electoral institutions.

It should be noted that this set of indicators is not strictly part of the Global Index of Electoral Justice. However, they are suggested to assess the context in which the electoral justice system and institutions operate, and they can be used to obtain correlations between variables (Figure 8.3).

Figure 8.3. Indicators on the political-electoral regime



Indicators included in this group:

- 3.1. Type of political regime
- 3.2. Civil and political rights
- 3.3. Corruption level
- 3.4. Rule of law
- 3.5. Citizens' knowledge of their electoral rights
- 3.6. Political participation
- 3.7. Number of political parties
- 3.8. Trust in electoral institutions
- 3.9. Electoral integrity level

With the purpose of providing certain additional elements for a greater contextual understanding, these indicators are somewhat similar to the 'context indicators' developed by the UN Office of the High Commissioner for Human Rights. The purpose of these indicators is to contribute elements related to political, economic, social or cultural aspects that may help to enhance the understanding of the operation of the various components of access to electoral justice. Unlike indicators in other groups, context indicators reveal correlations and identify connections between the existing democratic regime and the operation of the EDRS.

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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.

What do we do?

In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work.

International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge on democratic practices; offers technical assistance and capacity-building on reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

Where do we work?

Our headquarters are located in Stockholm, and we have regional and country offices in Africa, Asia and the Pacific, Europe, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations and is accredited to European Union institutions.

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Globally, a wide variety of indices and indicators evaluate and provide information on different aspects of democracy and electoral procedures. On the one hand, there are indices that measure the quality of democracy and its resilience over time, focusing on building blocks such as the existence of representative governments, civil and political rights and necessary power limits. Other indices evaluate the quality of elections and specific aspects, such as voter registration, campaign financing and the performance of electoral authorities. Finally, others evaluate rule of law and access to justice.

However, none of these indices focuses on the dimension of electoral justice, understood as the means and procedural mechanisms that guarantee free and fair elections, carried out in accordance with the law, and that guarantee the exercise and fulfilment of political rights. This is about to change. International IDEA, with the support of the Electoral Tribunal of the Federal Judiciary of Mexico, makes an unprecedented proposal for the construction of a Global Index dedicated exclusively to electoral justice.

This document includes a measurement proposal with normative design, process and result indicators, which will offer useful and comparative information on the electoral conflict resolution system of a given country or countries. It will provide comparative knowledge on electoral processes and institutions from around the world and assess the quality of their electoral justice.



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