

CONCEPT NOTE

ELECTORAL JUSTICE: Exploring approaches for effective resolution of electoral disputes

Friday, September 7, 2018

12:00 – 14:30

IDLO Branch Office, Hofweg 9E, The Hague

Electoral justice and election-related disputes are key concerns for both emerging and consolidated democracies. As a competition for political power, elections invite disputes at all stages of the electoral cycle (pre-election, election day, and post-election). These disputes may reflect a genuine conviction that the rules of the electoral process were not followed, or they may be intended to derail the democratic process. Additionally, particularly in emerging democracies, electoral contests may involve some level of sectarian conflict. Despite efforts to move towards multi-party elections that are free, fair and peaceful, there remain challenges, which can include the rise of ethnic-based or divisive political parties, weak institutions, the underrepresentation of women in political life, cybersecurity interference, and limited media freedom. Further, concerns about judicial independence and unclear laws can prevent the timely and fair handling of electoral violations and complaints.

Preventing violence and strengthening democracy through electoral justice

Rule of law-based processes to address electoral complaints are fundamental and electoral dispute resolution (EDR) systems are a core element of the integrity and legitimacy of an election. Providing a peaceful means for the resolution of electoral grievances, such systems help mitigate the risk that disgruntled candidates and voters will resort to violence. EDR systems also provide an independent assessment of electoral compliance with the Constitution and related laws.

More generally, when electoral violence is not a pronounced risk, dispute resolution mechanisms can confer credibility on electoral procedures and their results, helping to improve public confidence in democratic institutions. Typically, national constitutions and electoral laws have identified courts as the appropriate institution to deal with election disputes, often within the framework of the existing judiciary. Yet courts, especially courts in emerging democracies, are rarely in a position to assume this function.

The intense bursts in which election petitions are filed, the short time limits in which election matters must be dispensed, their political sensitivity, and the public interest in their outcomes, collectively mean that electoral cases cannot be treated the same as other matters that come before the judiciary. One of the ongoing challenges facing democracies, therefore, is ensuring the judiciary is adequately prepared for the election process, and in a position to handle disputes challenging election results in a timely, fair and effective manner.

Exchanging knowledge and disseminating lessons on EDR

Despite growing pressure from the international community, knowledge about key elements of EDR lags behind other parts of the electoral process; many election management bodies are unprepared to implement the legal standards necessary for effective EDR. The judiciary may not be adequately equipped to handle disputes challenging election results in a timely, fair and

effective manner; and effective systems to manage election cases may be lacking. In many instances, very little cooperation takes place between electoral management bodies and courts, resulting in a dearth of much-needed peer-to-peer knowledge exchange and professional support among election arbiters, who are operating in complex environments with growing challenges.

Drawing from these experiences, this dialogue will delve into electoral dispute resolution and the role of the judiciary, highlighting examples from recent elections, focusing on how the independent work of the judiciary can strengthen the rule of law while addressing challenges that arise. The dialogue will aim to share good practices among participating organizations of how judiciaries have prepared for electoral dispute resolution, contributing to the democratic process consistent with relevant laws and standards of good governance.

In addressing these issues, the discussion will cover topics including:

- Structuring independent and specialized bodies for electoral matters;
- Good practices and experiences from comparative electoral dispute resolution;
- The importance of international cooperation, involving international organizations, peer-to-peer support and international initiatives such as the Global Network on Electoral Justice to address common challenges.

IDLO is an inter-governmental organization devoted to empowering people and enabling governments to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity. IDLO's research Brief, [Avoiding Violence and Enhancing Legitimacy: Judicial Preparedness for Handling Electoral Disputes in Kenya and Beyond](#), derives lessons from its pioneering EDR programming in Kenya as well as from other comparative jurisdictions with the objective of sharing knowledge on how to design and implement electoral dispute preparation programs, with a focus on working effectively with the judiciary.

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