



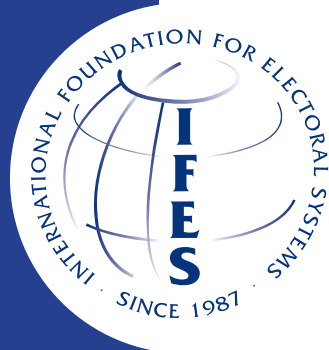
Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections (GUARDE) *Application of the Seven Standards*

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Seven Standards of Electoral Dispute Resolution/ Complaints Adjudication

- 1. The Right of Redress**
- 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**

Seven Standards of Electoral Dispute Resolution/ Complaints Adjudication



1. Right of Redress

- ✓ A right of redress should be available to allow wronged parties to challenge the outcome of an election
- ✓ The procedures to exercise this right should be transparent and legal standing to make complaints should be defined by law before the election

2. A Clearly Defined Regimen of Election Standards and Procedures

- ✓ The mechanisms used to challenge an election outcome should be established and defined well in advance of the election, and not on an ad hoc basis

Seven Standards of Electoral Dispute Resolution/ Complaints Adjudication



3. An Impartial and Informed Arbiter

- ✓ The officials charged with ruling on an election complaint should be insulated from outside political pressures both in the selection and training process and in the performance of their official duties

4. A System that Judicially Expedites Decisions

- ✓ The system should be speedy in order to resolve election complaints in a prompt manner, but this speed must be balanced with the fair and proper administration of justice

5. Established Burdens of Proof and Standards of Evidence

- ✓ The burden of proof should be on the party bringing the complaint, and whatever standard of evidence it will be held to should be established and defined in advance of the election.

Seven Standards of Electoral Dispute Resolution/ Complaints Adjudication



6. Availability of Meaningful and Effective Remedies

- ✓ In order to make the complaints adjudication process meaningful, the arbiter must be able to grant the complaining party a remedy. There should be rules in place governing this remedy

7. Effective Education of Stakeholders

- ✓ In order for a complaint adjudication system to be implemented properly, stakeholders should be taught how to make use of it: what procedures are required to file a complaint, who has standing to bring the action, and so forth.

Programmatic Suggestions and Case Studies

- ✓ GUARDE presents practical advice for the practitioner in the field, both in the form of legal explanations of the seven standards and programmatic suggestions for implementing the standards

- ✓ Programmatic suggestions are based on input from expert election practitioners from around the world
 - Legal frameworks for effective complaints adjudication systems, by *Bob Dahl*, with contributions from *Michael Clegg*
 - Complaints adjudication training for election management bodies and political parties, by *Steven Gray* and *Linda Edgeworth*
 - Complaints adjudication training for arbiters, with case studies on the Mexican and Philippine systems, by *Gerardo de Icaza Hernández*, *Ernesto Ramos Mega*, *Luie Tito F. Guia* and *Vincent Pepito F. Yambao, Jr.*
 - Approaches to voter education and the role of civil society, by *Catherine Barnes* and *Grant Kippen*
 - Alternative dispute resolution mechanisms, by *David Kovick* and *John Hardin Young*

Programmatic Suggestions and Case Studies



✓ Legal Frameworks

Considerations for development practitioners when reviewing the legal and administrative framework for election complaints adjudication in new and consolidating democracies

✓ Training of EMBs and Political Parties

Issues that arise when designing and implementing training programs for election management bodies and political parties on their roles in the complaints adjudication process

✓ Training of Judges and Arbiters

Insights into training judges and arbiters on the complaint process, with case studies from Mexico and the Philippines

Programmatic Suggestions and Case Studies



- Voter Education and Civil Society

Outreach methods to prepare voters to participate in the election complaints adjudication process, both before and on Election Day

- Alternative Dispute Resolution (ADR)

Issues that arise when using non-judicial methods to resolve election complaints. ADR approaches have been implemented in an election context in many countries in Africa, but are relatively unknown in the rest of the world.

Alternative Dispute Resolution in Africa



- ✓ ADR refers to any method that parties to a dispute might use to reach an agreement, short of formal court adjudication
- ✓ This can include both formal administrative law systems and case-specific processes of negotiation and mediation, in which parties seek to reach voluntary agreements to resolve their disputes, often with the assistance of an impartial third party

The Zambian Experience

The Electoral Commission of Zambia (ECZ) administers all elections in that country and is given the power to create and appoint the officers of any number of conflict management committees (CMC's) tasked with resolving complaints as they arise. CMC's are the adjudicative bodies of first resort and an example of an official ADR body. According to the Electoral Code of Conduct, CMC's should "mediate" and "encourage amicable settlements of electoral disputes."

Alternative Dispute Resolution in Africa



Panels or Committees of the Wise

Groups like this are particularly common in Sub-Saharan Africa, and include special envoys that supervise elections and enable dialogue between political leaders and candidates. Generally these panels or committees are composed of former heads of state. Panels were involved in Burundi in 2005, in the Central African Republic in 2005, in Liberia in 2005-06, in the Democratic Republic of the Congo in 2006, in Sudan in 2009-10, and in Côte d'Ivoire in 2010.

Party Liaison Committees (PLC)

In many countries, public bodies are established to increase communication among parties and between parties and EMBs. They provide space for political parties to resolve election related disputes. It is important to note that PLCs are just consultative and the final decision-making powers remain with the EMB, which is often an independent body and officially independent from influence by political parties. Countries like South Africa, Burundi and DRC use this tool.

Conclusions

- If States can codify, adopt and enforce these seven standards, they will be taking a huge and important step toward meeting their international obligations and building the foundation of the rule of law in their countries
- Though, as the *Kriegler Commission* of Kenya noted in 2007, “Electoral dispute adjudication requires flexibility and pragmatism, an eye to the political exigencies, sometimes even at the cost of strict legalism”