



# Alternative Dispute Resolution in Elections

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## Practitioner Brief

JULY 2022

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While formal dispute resolution processes in elections are vital to upholding the rule of law, the introduction of **alternative dispute resolution (ADR)** mechanisms may be beneficial, particularly in fragile and post-conflict states or new democracies where disputes must be resolved quickly to avoid violence or where there is very low trust in the judiciary. The case studies in this report demonstrate that ADR mechanisms, if designed and implemented effectively, can ensure more accessible and timely resolutions than formal mechanisms, at lower cost. The use of mediation or conciliation for certain types of pre-election disputes can lead to greater community

engagement (including of non-traditional actors), promote accessibility, mitigate impunity for electoral violations, and reduce burdens on the courts and the election management body (EMB).

Our research also highlights that a well-designed and trained ADR body can enhance the role of women and provide a culturally appropriate mechanism for dispute resolution, while preventing and defusing tensions.

This report also highlights the potential risks and challenges to ADR, particularly in contexts where the legal framework, mandate, and procedures are unclear. Inadequate training of ADR practitioners can result in mediators behaving in a partisan manner or failing to guard against power imbalances or human rights abuses, which can further increase tensions or erode trust. Finally, a lack of stakeholder awareness on how to access ADR mechanisms may leave the public with the perception that there is no avenue for justice in some communities.

Due to the informal nature of ADR mechanisms, election management bodies (EMBs) have rarely collected data on the type and number of disputes handled through ADR, creating a challenge for research and a missed opportunity to draw on lessons learned, promote successful initiatives, and build trust in the EMBs' capacity to address legitimate disputes. This practitioner brief attempts to remedy the lack of information on the use of ADR in elections and presents a series of case studies to highlight lessons from diverse country experience. This paper also proposes recommendations to improve the design and implementation of ADR in elections.



# About IFES

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IFES advances democracy for a better future. We collaborate with civil society, public institutions and the private sector to build resilient democracies that deliver for everyone. As a global leader in the promotion and protection of democracy, our technical assistance and applied research develops trusted electoral bodies capable of conducting credible elections; effective and accountable governing institutions; civic and political processes in which all people can safely and equally participate; and innovative ways in which technology and data can positively serve elections and democracy. Since 1987, IFES has worked in more than 145 countries, from developing to mature democracies. IFES is a global, nonpartisan organization based in Arlington, Virginia, USA, and registered as a non-profit organization [501(c)(3)] under the United States tax code.

## IFES By The Numbers



**Reached 25M+**  
people with  
civic and voter  
education in 2021




**Supported 30**  
elections in 2021,  
training 300K+  
election officials



**Worked across 58**  
countries in 2021

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## Foreword

Electoral justice aims to protect and restore citizens' rights and provide opportunities for citizens whose rights have been violated to file complaints, present their cases to be heard, and obtain a decision. To achieve electoral justice, an electoral management body or election supervisory body can use alternative dispute resolution (ADR) mechanisms or electoral dispute resolution (EDR) mechanisms. Whichever form is taken, it has the purpose of providing for an effective remedy, independence, impartiality, and timely action, which are crucial to maintaining the credibility of the election process as noted in the 2011 International Foundation for Electoral Systems (IFES) *Guidelines on Understanding, Adjudicating, and Resolving Disputes in Elections*.

In the Indonesian context, all election disputes arising before the announcement of the final vote result by the election commission are under the authority of Bawaslu, a supervisory election body, and the use of ADR is expressly stipulated therein. Provisions in the law clearly define the role of the district court, administrative court, election commission, and Bawaslu. Bawaslu seeks to promote the concept of restorative justice, in which the parties' collective participation is based on consensus and focuses on efforts to improve the recovery of the losses suffered by the aggrieved persons. While ADR was used only in an informal manner at first, the 2017 Electoral Law marked an important evolution by defining electoral disputes, and it gave Bawaslu the authority to mediate over pre-election disputes. Bawaslu further defined the ADR process in its regulations which provided for the mediation process from submission of the dispute to settlement. Bawaslu also conducted an extensive training program for all its officials. In Indonesia, ADR has been a means to empower Bawaslu's supervisory board as an arbiter and adjudicator.

I welcome this Practitioner Guide, developed by IFES, regarding the use of ADR in elections. The election process is a long journey, and issues that arise at each stage of the process can cause the election cycle to be hampered or derailed. ADR can function adequately if the electoral law clearly states the mandates and powers of the ADR body, which can initiate mediation or conciliation and define the process and the object of the dispute in question. If this is not confirmed in regulation, then confusion could arise among the EDR actors responsible for handling allegations of criminal offenses and administrative violations, for instance. Moreover, without proper training and adequate rules, inconsistency, and procedural errors in the conduct of the ADR process in various regions can jeopardize the fairness of the process and the trust of the public.

ADR in the electoral process is not something new in Indonesia and has contributed to the efficiency of Bawaslu as a supervisory body in elections. However, this Practitioner Guide reveals that efforts to strengthen the practice of ADR in the electoral process are still needed. And, while implementation from one country to another differs, this guide provides recommendations for election administrators to improve these mediation or conciliation processes. This Practitioner Guide, I believe, can contribute to raising the importance of introducing or strengthening the use of ADR in the electoral process. And, as this publication shows, we can all benefit from other countries' positive experiences or challenges so we can all do better as election officials or election supervisory authorities in resolving election disputes.

**Fritz Edward Siregar, PhD** (*Indonesia Bawaslu, Former Commissioner*)

## Introduction

Misunderstandings, tensions, and disputes among candidates, political parties, and their supporters can arise not only on Election Day and when results are announced, but also during the pre-election period.<sup>1</sup> One candidate may allege an opposing candidate violated the campaign rules, or a party member may allege intimidation of a group of voters by another party. As elections are a fundamentally competitive process, disputes are to be expected. However, if they are not properly addressed, political tensions can escalate. Some disputes may have roots in longstanding societal conflicts and divisions that pre-date—but manifest during—the electoral process. Sometimes election violations such as destruction of campaign materials, disturbance at political rallies, on- and offline hate speech, and abuse of state resources by incumbent candidates can remain unaddressed until well after the elections are over (if they are addressed at all).

Delays in sanctioning violations or adjudicating legitimate grievances can be due to the constraints of the electoral timetable, limited resources for law enforcement and the judiciary, or the inadequate jurisdiction or power of the conventional election dispute resolution (EDR) bodies. While conventional—or formal—adjudication mechanisms are vital to upholding the rule of law and protecting fundamental rights, alternative dispute resolution (ADR) processes, such as mediation and conciliation, may be useful to ensure disputes do not escalate into conflict before or on Election Day. In particular, ADR can be useful in fragile and post-conflict states; in new democracies where election disputes must be resolved quickly to avoid violence; or where “the legacy of decades of tyranny, dictatorship, absence of the rule of law, abuse of human rights, and war can lead to a fundamental mistrust of the legal system by citizens.”<sup>2</sup>



**“ADR refers to a range of approaches — from negotiation, to mediation, to fact finding mechanisms, to semi-private decision-making forums such as binding arbitration — that are intended to help parties reach agreements. They supplement and enhance a country’s formal judicial processes, by providing an alternative avenue for parties to resolve their disputes.”**

*IFES, Guidelines for Understanding, Adjudicating and Resolving Disputes in Elections (GUARDE)*



If used appropriately, ADR provides several advantages over conventional EDR mechanisms, including by resolving disputes more quickly and at a lower cost than the court system. ADR can engender more local access to justice,

<sup>1</sup> As well as alleged campaign violations, candidate nomination often give rise to fierce disputes, including intra-party disputes. For example: Phungula, W. (2021, November 15). *ANC member who disputed the party’s candidate in Harding’s ward one silenced by gun*. IOL. <https://www.iol.co.za/dailynews/news/kwazulu-natal/anc-member-who-disputed-the-partys-candidate-in-hardings-ward-one-silenced-by-gun-ca4fb280-42b5-4b0b-85f0-24a8e2561a13>; Yang, M. (2022, January 11). *Voters move to block Trump ally Madison Cawthorn from re-election*. The Guardian. <https://www.theguardian.com/us-news/2022/jan/11/madison-cawthorn-trump-republican-north-carolina-voters>

<sup>2</sup> Kovick, D. & Young, J.H. (2011) Alternative dispute resolution mechanisms. In C. Vickery (Ed.), *Guidelines for understanding, adjudicating, and resolving disputes in elections (GUARDE)* (p. 257). IFES.

offer more targeted remedies, and strengthen dialogue at the community level. This can build confidence among members of the community and improve the legitimacy of the electoral process by involving stakeholders more closely in the dispute resolution process. Recent global surveys have illustrated the lack of trust in government institutions and the decline in democratic values, particularly among young people.<sup>3</sup> In this context, ADR can play an important role by providing a more inclusive, multi-actor forum to resolve electoral disputes. While ADR bodies are primarily led by election officials, civil society organizations (CSOs), political party representatives, and community leaders are often members and can actively participate in reaching a settlement or resolution to the dispute.

ADR's informal structure can enable simpler implementation at the local level, allowing for the involvement of non-traditional actors both as mediators/arbiters and as disputants. This creates a system that is more accessible for grassroots political parties, local candidates, and individuals to seek remedies and obtain justice. ADR can also enhance the participation of women or traditionally disadvantaged or marginalized groups, both as petitioners and as adjudicators/mediators; its flexible

approach is often more welcoming and user-friendly for individuals who are unfamiliar with formal judicial proceedings or have limited physical or financial access to the judiciary. For example, in Mexico, the Election Institute of the State of Oaxaca has introduced mediation as a means of resolving disputes in Indigenous communities that elect their local authorities using traditional practices. In India and Sri Lanka, the International Foundation for Electoral Systems (IFES) has supported projects to increase the participation of women in Muslim community Qadi courts as users and arbiters. This is a way to support Indigenous traditions and find inclusive, consensual, and culturally appropriate ways of resolving disputes, as well as reducing pressure on over-burdened electoral tribunals.<sup>4</sup>

“While formal, national judicial or administrative systems can and should remain the primary avenue for resolving election complaints and disputes, ADR approaches can play a key complementary role in enhancing the legitimacy of the electoral process.”

IFES GUARDE, Chapter 6, ADR (2011) p. 232

**ABOUT THE CONFLICT MANAGEMENT COMMITTEE (ZAMBIA):**

“The Election Commission of Zambia aimed to establish “a new mechanism that would stave off mounting conflict, clarify responsibilities for dispute resolution, and provide complainants with an effective outlet for their concerns before, during, and after an election.”

Princeton University, Woodrow Wilson School of Public and International Affairs, Creating avenues to Resolve Election Disputes, Conflict Management Committees in Zambia, 2011)

Despite the advantages it offers, ADR remains underutilized in elections or, in some cases where it is utilized, it is not optimally designed and implemented. There are also risks to the introduction of ADR in elections, including if the mechanism lacks sufficient details in the legal framework and guidelines on the mandate, responsibilities, and procedures for ADR; adequate resources to train election officials or other involved actors on ADR skills such as mediation, conciliation, or arbitration; and sufficient stakeholder awareness of the ADR mechanism.

Legal practitioners and anti-corruption experts have flagged challenges regarding the use of informal and customary dispute resolution systems outside the electoral context in various countries. A report by the U4 Anti-Corruption Resource Centre explained this conundrum as follows: “On the one

<sup>3</sup> [OECD 2021 Government at a Glance](#), p. 7: “Even with a boost in trust in government sparked by the pandemic in 2020, only 51% of people in OECD countries trusted their government, “[d]emocracy experienced its biggest decline since 2010” and the percentage of people living in a democracy fell to well below 50%. [Democracy Index 2021](#), The Economist Intelligence Unit, February 2021. Foa, R.S., Klassen, A., Wenger, D., Rand, A. and M. Slade. 2020. “[Youth and Satisfaction with Democracy: Reversing the Democratic Disconnect?](#)” Cambridge, United Kingdom: Centre for the Future of Democracy, October 2020.

<sup>4</sup> See the Mexico case study in the annex of this paper.

hand, such systems tend to be far more affordable, comprehensible, and accessible to the poor than formal state justice systems. On the other hand, just like formal justice systems, informal systems may feature corrupt and otherwise unfair influences and biases that produce unjust outcomes and perpetuate inequities.”<sup>5</sup> Jan Beagle, Director-General of the International Development Law Organization, has noted that it is important to “engage with the system that most people turn to,” and “recognize legitimacy of these [informal justice] systems.” But she also flagged the need to engage strategically with these systems to ensure greater respect for human rights.<sup>6</sup>

In 2011, with USAID support, IFES published *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections* (also known as GUARDE).<sup>7</sup> These guidelines included a chapter on ADR—including mediation and conciliation—in election disputes, based on preliminary research on the emerging use of ADR. Ten years later, the growing implementation of ADR in election disputes has provided new insights on good practices identified in GUARDE, and also highlighted some challenges to the use of ADR.

In South Africa, the Electoral Commission (IEC) was one of the first election management bodies (EMBs) to introduce and utilize these modes of dispute resolution. The IEC created conflict management mediation panels in local communities to mediate election disputes and deter electoral violations as the country sought to establish the credibility of its post-apartheid democracy.<sup>8</sup> While election officials chaired these panels, party representatives and members of the community took part in encouraging peaceful settlement of the disputes. This model has inspired other countries in Africa: Zambia, Malawi, and Nigeria have rolled out mediation initiatives by their election commissions and in Nigeria there is a growing push for ADR to expand to the judicial system to reduce the backlog of cases filed during the elections.<sup>9</sup> Prior to the 2015 and 2020 elections, the Myanmar Union Election Commission instituted election mediation committees to mediate disputes arising from the code of conduct and campaign in order to address the lack of timely mechanisms to deal with disputes during the pre-election period.<sup>10</sup>



**Due to the informal nature of ADR mechanisms, EMBs have rarely collected data on the type and number of disputes handled by ADR, creating a challenge for research but also a missed opportunity to draw on lessons learned, promote successful initiatives and build trust in the EMBs' capacity to address legitimate disputes.**



<sup>5</sup> Golub, S.; (2014). *Mitigating corruption in informal justice systems: NGO experiences in Bangladesh and Sierra Leone*. Bergen: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute. <https://www.u4.no/publications/mitigating-corruption-in-informal-justice-systems-ngo-experiences-in-bangladesh-and-sierra-leone>

<sup>6</sup> Pantuliano, S. (2021, December 8). *High-level dialogue on customary and informal justice and sustainable development goal (SDG)16+* [Webinar]. Overseas Development Institute, <https://odi.org/en/events/high-level-dialogue-on-customary-and-informal-justice-and-sdg16/>

<sup>7</sup> Vickery, C. (Ed.). (2011). *Guidelines for understanding, adjudicating, and resolving disputes in elections (GUARDE)*. IFES. <https://www.ifes.org/publications/guidelines-understanding-adjudicating-and-resolving-disputes-elections-guarde>

<sup>8</sup> See the South Africa case study in the annex of this paper.

<sup>9</sup> See the Nigeria case study in the annex of this paper.

<sup>10</sup> See the Myanmar case study in the annex of this paper.

ADR mechanisms can also increasingly be found in other parts of the world. However, little information on the use of ADR in electoral or political processes has been collected and publicized in the last 10 years since GUARDE was published.

In addition, election observers do not systematically include ADR mechanisms within their observation methodologies, although some observer missions assess them on an ad hoc basis. As a result, although interviews with practitioners and former and current election officials conducted by IFES for the purpose of this paper provided a good deal of fruitful information, there is a clear lack of systematic data on ADR across electoral cycles. It is particularly difficult to find information about successful uses of ADR. One hypothesis is that the successful resolution of disputes is marked by the *absence* of violence, threats, intimidation, or other illegal campaign activities. This makes it hard to assess what further conflict might have occurred had the disputes not been resolved, and therefore difficult to measure success. Nonetheless, systematic monitoring of ADR mechanisms and their outcomes would produce valuable insights.

The popularity of ADR is not unique to election disputes. In 2019, the International Development Law Organization reported that “Recurring estimates suggest non-state actors, including customary, traditional and religious leaders, address 80 to 90 per cent of legal disputes in developing, fragile and post-conflict states.”<sup>11</sup> Several organizations have produced guidelines and toolkits on mediation practices and ADR, although they are not specific to elections.<sup>12</sup> While research and technical assistance in election disputes has primarily focused on formal EDR processes, it is important to analyze how informal justice mechanisms operate and how they interact with the formal justice process during an election. A better understanding of these processes will help all stakeholders engage effectively with customary and informal justice, in line with Sustainable Development Goal 16 on access to justice for all.<sup>13</sup>

This Practitioner Brief attempts to make an initial contribution to filling the research gap on the use of ADR mechanisms in elections. It draws on lessons learned from ADR programs globally, collected through desk review and a series of key informant interviews with election practitioners, EMB members and officials, judges, experts, and local partners around the world. IFES also collected lessons learned during an in-depth consultation session with judges from the Africa Electoral Jurisprudence Network in July 2022 and secured peer reviews from experienced practitioners at Bawaslu in Indonesia and the Malawi Election Commission. IFES is thankful for the contribution of election practitioners, EMB

## WHAT THIS PRACTITIONER BRIEF COVERS

Different modes of alternate dispute resolution (ADR) in elections

ADR's complementary role to more formal or conventional election dispute resolution

When implementation of ADR might be appropriate in elections

Potential advantages and risks of using ADR in elections

ADR in practice; lessons for practitioners

Recommendations for stakeholders and practitioners

<sup>11</sup> International Development Law Organization. (2019, January 30). *Practitioner brief: Engagement with customary and informal justice systems*. <https://www.idlo.int/publications/practitioner-brief-engagement-customary-and-informal-justice-systems>

<sup>12</sup> The Council of Europe's European Commission for the Efficiency of the Justice Working Group on Mediation developed a Mediation Development Toolkit. The Guidelines emphasize the principles of equality, impartiality and neutrality, and the importance of raising public awareness of the benefits of mediation.

<sup>13</sup> Pantuliano, S. (2021, December 8). *High-level dialogue on customary and informal justice and sustainable development goal 16+* [Webinar]. Overseas Development Institute, <https://odi.org/en/events/high-level-dialogue-on-customary-and-informal-justice-and-sdg16/>

members, and judges, who contributed to the development and review of these case studies on use of ADR in elections.

## Purpose and Scope of This Paper

ADR has considerable potential for helping resolve disputes and enhance trust in the electoral process, yet information is scarce on how it can be used most effectively. This gap prompted the development of this practitioner brief.

EDR encompasses the range of complaints, disputes, violations, and offenses that can occur throughout the electoral cycle, including post-election cases that challenge the results of elections. However, this paper focuses specifically on ADR mechanisms for pre-election and Election Day disputes. Our research and consultations with arbiters and judges confirm that most ADR mechanisms are focused on voter registration, candidate nomination, intra- or inter-party disputes, and campaigns up to and including Election Day. In most countries, the legal framework clearly defines the jurisdiction of a court of law to address post-election results disputes within prescribed deadlines. It is important that these cases be addressed by a court of law in a timely manner, rather than through a conciliation or mediation process, as a clear winner must be determined. Occasionally, election results disputes can escalate into political crisis and risk serious violence, where international or regional mediation may occur post-election. Some jurisdictions may even exclude the use of mediation for post-election disputes when specific, tight adjudication deadlines are prescribed.<sup>14</sup> During a consultation session led by IFES in the margins of the Africa Electoral Jurisprudence Network in July 2022, an electoral judge from Malawi shared that “For post-election, ADR comes as a difficult enterprise in Malawi under the civil procedure rules limiting the practice of mediation, but (...) for pre-election disputes, it should be highly encouraged.” If the formal justice system fails, international mediation or extraordinary ADR mechanisms can be helpful to resolve the conflict, but this remains exceptional. Disputes relating to election results have therefore been excluded from the scope of this paper.<sup>15</sup>

This paper also does not assess administrative adjudication by an EMB or another body in a quasi-judicial capacity, as such mechanisms are usually set out in the law as mandatory and binding processes rather than voluntary and, as such, are considered to be conventional EDR.<sup>16</sup> The focus of this paper is on the implementation of ADR mechanisms that aim to reach voluntary agreements to resolve disputes between different stakeholders during the election, often with the assistance of a third party. We focused our research primarily on ADR mechanisms led or coordinated by EMBs, which can include mediation committees and conflict management committees. We also have not covered every consultative or conciliatory forum set up during elections to engage in dialogue with stakeholders.

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<sup>14</sup> In Malawi, rules of civil procedure provide that in expedited proceedings like post-election disputes, mediation cannot be invoked as it could derail the speedy adjudication of disputes.

<sup>15</sup> It is important to note that even when ADR is used, all of the legal frameworks studied either provide explicitly for a right to appeal if mediation fails or do not prevent a party from filing an appeal before a tribunal or court in parallel or after the mediation.

<sup>16</sup> Vickery, 2011, p. 229: “In brief, ADR refers to any method that parties to a dispute might use to reach an agreement, short of formal adjudication through the courts. This can include both formal administrative law systems, in which regulatory agencies establish special rules and procedures for resolving disputes and complaints, and case-specific, ad hoc 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.” However, GUARDE makes clear at p. 238 that rather than a bright line distinction between ADR and EDR, the various approaches can be visualized on a continuum, with a greater degree of party involvement at the ADR end of the spectrum, and a greater degree of time and resources spent at the EDR end of the spectrum.

Internal party dispute mechanisms or ADR led by political parties without the involvement of the EMB are outside the scope of this paper, as are the many efforts to prevent electoral violence that are led by CSOs.<sup>17</sup>



**“Because EMBs play a pivotal role throughout the cycle of the election process, their institutional capacity to develop and maintain effective strategies for dispute management is essential to the consolidation of democracy and mitigation of political conflicts.”**

*West Africa Network for Peacebuilding*



Finally, during our research we found only limited judicial initiatives for mediation in electoral disputes—in Kenya and Senegal—and have noted some calls for judicial mediation in Nigeria, along with keen interest from some interviewees. The limited use of ADR by the judiciary in election disputes can be explained by the development of non-judicial alternatives to litigation, lack of awareness, and reluctance from lawyers. However, there is also insufficient research in the field due to the informal nature of these bodies, the lack of instruction on reporting and the short time available prior to an election,<sup>19</sup> and this is an area ripe for further study.

## Summary Recommendations

The summary recommendations that follow focus on the different bodies or groups that may have a stake or a role (or both) in the effective implementation of ADR in elections. Ideally, these recommendations should be considered from the outset in the design of any ADR mechanism. However, our research also highlights the need for customized solutions based on a country’s experience with ADR, notably the culture and legal tradition of the country, and the experiences and practices of marginalized communities. Given the focus of this report, these recommendations mainly focus on EMB-led ADR processes. Subsequent research is needed on judiciary-led ADR or other forms of ADR in the electoral process.

### For Election Management Bodies:

- Conduct a feasibility study and consult with stakeholders to carefully design an ADR mechanism that is suited for the relevant context, the legal tradition and culture, and the phase of the electoral process.
- Well in advance of the election process, develop clear rules on the composition of ADR bodies, the mandate of such bodies, and the consistent procedures they will follow.

<sup>17</sup> Monitoring/tracking violence and risk factors, early warning systems, etc., are key activities to prevent disputes and can be complementary to the resolution of disputes, but are not the focus of this research as they relate more to a preventive mechanism rather than a dispute resolution mechanism.

<sup>18</sup> West Africa Network for Peacebuilding. (2013). Election dispute management for West Africa: A training manual. p. 2.

<https://gppac.net/resources/election-dispute-management-west-africa-training-manual>

<sup>19</sup> European Commission for the Efficiency of Justice, (2007, December 7). *Guidelines for a better implementation of the existing Recommendation on alternatives to litigation between administrative authorities and private parties*. <https://rm.coe.int/1680747683>

- Conduct training for the members of ADR bodies and an informational campaign for key stakeholders who will be utilizing ADR mechanisms (party representative or candidates). Consider the use of digital tools to address the potential late selection of members of mediation bodies and limited time available for training prior to an election.
- Conduct outreach or develop educational tools for stakeholders, including the media and voters, on the mandate, role, and procedures of ADR bodies, with a focus on clarifying the distinction between ADR and EDR as avenues of redress.
- Encourage the participation of women, youth, and marginalized groups such as persons with disabilities; ethnic, religious, and linguistic minorities; and Indigenous Peoples when selecting members of the ADR bodies.
- Engage with the judiciary, notably election judges, well before an election to inform them about existing ADR mechanism(s) that may be used prior to the filing of a dispute before the court.
- Set up a reporting system for disputes handled by the ADR body to enhance consistency in the process and outcomes, and to facilitate transparency and increase public understanding.
- Collect and analyze data on ADR cases and conduct lessons learned activities on the role of ADR after each electoral cycle to ensure it is being implemented effectively. Release data to the media and the public.
- Consider a range of diverse identities including gender, Indigenous identity, ethnicity, and disability, to promote inclusive and equitable representation of members on ADR bodies and to ensure these bodies have a gender equality policy and gender-sensitive training, as well as broader inclusion and human rights training, and that their proceedings are accessible to persons with disabilities and people with varying levels of literacy and education.
- Consider cooperating with other conflict prevention and resolution efforts for mutual reinforcement, to identify skilled mediators or conciliators at the local community level, refer potential disputes to relevant mechanisms and raise awareness on the availability of these mechanisms.

### For the Judiciary:

- Provide training for judges to inform them about the formal EDR and informal ADR processes established by the EMB during the elections and how they interact during elections or may impact court proceedings during the pre-election period.
- Consider introducing tested forms of judicial ADR with specific deadlines for certain types of pre-election disputes, depending on legal tradition and practices—in particular, for intra- or inter-party disputes.
- Establish channels to request information from the EMB/ADR body on the ADR process or to refer to EMB-led mediation when relevant for a dispute or appeal in court.

### For the Legislature:

- Consider introducing the use of ADR in the legal framework as a non-mandatory option for dispute resolution, or institutionalize in the law the existing practice of ADR by further defining the mode of resolution, mandate, and responsibilities.

- Adopt clear provisions regarding the exhaustion of remedies or initiatives to mediate a dispute to avoid issues of jurisdiction.
- Consider specific deadlines for mediation efforts in pre-election disputes to avoid disrupting election operations prior to Election Day.

### For Civil Society:

- In cooperation with the EMB, carry out awareness raising in local communities on ADR mechanisms for elections and how it differs from formal EDR avenues of redress.
- Promote ADR as a conflict resolution and violence prevention mechanism in peacebuilding initiatives around the electoral cycle.
- Observe ADR sessions, collect and analyze data on ADR mechanisms to assess their effectiveness, and contribute to lessons learned exercises.
- Where appropriate to the model of ADR in use, participate as members of the ADR body or advocate for inclusion of youth, women, minorities, Indigenous peoples, and persons with disabilities in mediator appointments.

### For Election Observers:

- Include the monitoring of ADR bodies and processes in the election observation methodology, based on pre-determined criteria and international standards, including with respect to the accessibility and inclusiveness of the ADR mechanism.

### For Political Parties and Candidates:

- Participate in ADR briefings by the EMB or relevant EDR/ADR body.
- When relevant, appoint a member of the ADR mechanism in a timely manner and ensure participation in trainings. Ensure representation of youth, women, minorities, Indigenous Peoples, and persons with disabilities.
- Conduct briefings for party members, candidates, and supporters on who can use the ADR process, and when and how they can do so.
- Commit in good faith to attempt to resolve disputes through ADR mechanisms such as mediation or conciliation prior to filing with the formal mechanism.

### For National and Local Governments:

- When relevant, appoint a representative in a timely manner to sit as a member of an ADR mechanism and ensure participation in trainings. Ensure representation of youth, women, minorities, Indigenous Peoples, and persons with disabilities.

- Cooperate with ADR bodies as needed (for example, in the provision of facilities for ADR training or open sessions), while ensuring that the bodies remain impartial and are not dominated by the incumbent party.

### **For the Media:**

- Monitor activities of ADR bodies; attend meetings to learn more about ADR and analyze its effectiveness.
- Educate the media to clarify distinctions between formal and informal dispute resolution processes.
- Request EMB to release data on ADR mechanisms and analyze and use data in reporting.

### **For Conflict Prevention, Resolution and Peacebuilding Programs, and Researchers:**

- For conflict prevention, resolution, and peacebuilding programs: Ensure cooperation with the EMB for awareness-raising efforts around the existence of ADR mechanisms to resolve election disputes. Alternatively, identify trained mediators or conciliators in the community at the time of an election.
- For researchers: Conduct research on the effectiveness of ADR mechanisms, and collect data on the types of disputes resolved through ADR to further contribute to filling the knowledge gap in this area.

# Designing and Implementing Alternative Dispute Resolution Mechanisms for Elections

## Applicable Standards

As well as resolving specific disputes, the broader goals of a dispute resolution mechanism are to deter electoral violations, prevent electoral conflicts from escalating into violence, strengthen compliance with the rule of law, improve electoral practice, and contribute to building trust in election results—or at least acceptance of the results. These goals apply to both formal and informal justice mechanisms.

In post-conflict countries, informal systems of dispute resolution may also be fundamental to restoring some degree of law and order; they may be all that is available for many years, as formal justice sectors take time to rebuild.<sup>20</sup> As a recent IFES analysis of democracy and governance assistance in post-conflict countries has identified, “in some post-conflict countries, the legal structure for protecting citizens’ rights might be weak, manipulated, lacking in enforcement mechanisms or nonexistent. The lack of established justice mechanisms, or [lack of] awareness of existing mechanisms to resolve grievances in peaceful ways, can also lead to violence.”<sup>21</sup> The report continues that “[e]stablishing sound procedures for handling and resolving electoral disputes through legally valid mechanisms is crucial to strengthen trust in electoral systems, especially in regard to perceptions of impartiality and fairness. This is particularly true in post-conflict environments and applies to both formal EDR mechanisms and alternative dispute resolution (ADR) mechanisms that might be put in place to resolve certain types of disputes in a more informal, consensus-driven way.”

International frameworks promote the rights and standards that apply to dispute resolution. The International Covenant for Civil and Political Rights (ICCPR) and regional human rights treaties and conventions do not explicitly refer to ADR. Article 14 of the ICCPR applies to “courts and tribunals.” Depending on the characteristics of the ADR body, the ADR process may fall “outside the ambit of the procedural requirements of the Covenant.”<sup>22</sup> These agreement-based mechanisms are incorporated within national legal frameworks, and there is a proliferation of their use in courts in civil, administrative or criminal law.<sup>23</sup> For example, the “European Union has adopted a series of resolutions on mediation.”<sup>24</sup> In September 2015, the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development, which includes Sustainable Development Goal No.16: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” The goal of ensuring access to justice for all includes both formal and informal justice

<sup>20</sup> Wojkowska, E. (2006). *Doing justice: How informal justice systems can contribute*. UNDP Oslo Governance Centre.

<https://www.un.org/ruleoflaw/files/UNDP%20DoingJusticeEwaWojkowska130307.pdf>

<sup>21</sup> Buriil, F., Dinman, B., & Vickery, C. (2022, January). *Increasing the success and sustainability of democracy and governance interventions in post-conflict countries*. IFES, p. 35 [https://www.ifes.org/sites/default/files/migrate/transitions\\_2\\_report\\_final.pdf](https://www.ifes.org/sites/default/files/migrate/transitions_2_report_final.pdf)

<sup>22</sup> Office of the High Commissioner for Human Rights. *Human rights and traditional systems in Africa*. United Nations. p. 50.


[https://www.ohchr.org/sites/default/files/Documents/Publications/HR\\_PUB\\_16\\_2\\_HR\\_and\\_Traditional\\_Justice\\_Systems\\_in\\_Africa.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/HR_PUB_16_2_HR_and_Traditional_Justice_Systems_in_Africa.pdf)

<sup>23</sup> McGregor, L. (2015). Alternative dispute resolution and human rights: Developing a rights-based approach through the ECHR. *The European Journal of International Law*, 26(3), 607–634. <https://doi.org/10.1093/ejil/chv039>

<sup>24</sup> Ibid.

mechanisms.<sup>25</sup> However, the fundamental right to an effective remedy, as enshrined in international law, requires recourse to an independent and impartial tribunal, meaning that, where fundamental rights are concerned, there needs to be the right of appeal to a court or tribunal from these ADR mechanisms.<sup>26</sup> Because the right of redress applies to any violation of political rights, the administrative and judicial adjudication system—election tribunals, courts, EMBs—should remain the primary avenue for receiving and adjudicating election disputes. This means that ADR should play a complementary role to EDR mechanisms to enhance the legitimacy, inclusiveness, and efficiency of the electoral dispute resolution process. ADR should not replace the formal EDR process and further specifies that “in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing....”

IFES' 2011 [Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections](#) (GUARDE) laid out seven international standards applicable to electoral complaints and appeals processes.<sup>27</sup> These legal standards stem from widely recognized fundamental rights, such as the right to participate in government, the right to a fair and public hearing, and the right to an effective remedy and access to justice.<sup>28</sup> Most of these standards are relevant to informal justice mechanisms, as outlined in the graphic below. In addition, anti-discrimination treaties require these rights to be accessible to all in practice. ADR can provide a more inclusive and accessible dispute resolution mechanism, helping traditionally disadvantaged individuals claim their political rights.



### HOW INTERNATIONAL ELECTION DISPUTE RESOLUTION STANDARDS APPLY TO ALTERNATIVE DISPUTE RESOLUTION PROCESSES

1	<b>Transparent right of redress:</b> Equally important in ADR, to ensure individuals understand they have an avenue of recourse when their rights have been violated.
2	<b>Clearly defined rules and procedures:</b> Important to limit conclusion between ADR and EDR, help clarify roles and responsibilities, and help prevent delays in the resolution of disputes.
3	<b>An impartial and informed arbiter:</b> while formal independence is less important for a non-binding ADR process, the fairness, neutrality, and capacity of arbiters or mediators in an ADR process is important.
4	<b>Judicially expedited decisions:</b> In formal EDR, deadlines are important to allow for due process and ensure the electoral process can move forward. The ADR process is more informal and flexible, but this flexibility should not lead to delays.
5	<b>Defined burden of proof and standard of evidence:</b> generally less relevant for ADR. Could deter individuals from using ADR and make the process overly legalistic.
6	<b>Availability of meaningful and effective remedies:</b> applies differently in ADR. The parties are encouraged to reach an agreement to settle the dispute. ADR is rarely a punitive process in elections.
7	<b>Effective education of stakeholders</b> applies equally to ADR to ensure that all stakeholders know when, where, how and who can use ADR mechanisms.

<sup>25</sup> United Nations SDG Hub. (n.d.). *SDG 16 indicators*. <https://www.sdg16hub.org/landing-page/sdg-16-indicators>.

<sup>26</sup> See Vickery, 2011, p. 16 onwards and footnote 26 for a discussion of the right of redress and citation of international standards. The right of appeal to an independent court or tribunal is protected by ICCPR Art 2(3)(b) and Art 14(1), and similar provisions in other treaties. See also UN Human Rights Committee (HRC) CCPR General comment No. 13: Article 14 (Administration of justice), Equality before the courts and the right to a fair and public hearing by an independent court established by law (April 13, 1984); HRC CCPR General Comment No. 25: Article 25 (Participation in public affairs and the right to vote), The Right to participate in public affairs, voting rights and the right of equal access to public service; UN Doc. CCPR/C/21/Rev.1/Add.7, (July 12, 1996); HRC, General comment No. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant; UN Doc CCPR/C/21/Rev.1(HRC/Add.13 (May 26, 2004); HRC CCPR General comment No. 32, Article 14, Right to equality before courts and tribunals and to fair trial, UN Doc. CCPR/C/GC/32 (August 23, 2007).

<sup>27</sup> International standards. (2011). In C. Vickery (Ed.), *Guidelines for understanding, adjudicating, and resolving disputes in elections* (GUARDE) (pp. 9-96). IFES. <https://www.ifes.org/publications/guidelines-understanding-adjudicating-and-resolving-disputes-elections-guarde>

<sup>28</sup> Ibid.

This overview of the seven standards shows that ADR mechanisms used during an election process are not exempt from rule of law principles. It is also important to ensure that the mechanisms do not perpetuate discrimination based on ethnicity, gender, or other grounds. Indeed, research by practitioner organizations shows that discrimination or corruption in informal justice bodies can tarnish the resolution process and perpetuate human rights abuses.<sup>29</sup> It is crucial to maintain the avenue to the formal EDR process, which can act as a safeguard to fundamental justice principles.

## Types of ADR in Elections

ADR mechanisms in elections can engage a multitude of actors and tackle many diverse issues. The different methods of ADR include conciliation, mediation, arbitration, and negotiation, with varying degrees of formality. These terms have slightly different meanings in different countries according to the legal system and the language used, and they are sometime used interchangeably in the literature and in practice, and even in countries' laws.<sup>30</sup> Some legal frameworks are silent on these modes of ADR, despite institutions carrying out ADR in practice. Finally, some countries have set up hybrid systems involving consultation, awareness-raising, and problem-solving mechanisms, although their laws refer to "mediation."<sup>31</sup> The lack of clarity around the definitions has the potential to cause confusion. However, broadly speaking, ADR types can be classified as follows:

- **Conciliation and Mediation** are voluntary and informal processes in which the disputing parties select a neutral third party (one or more individuals) to assist them in reaching a mutually acceptable settlement. *Mediation* encourages a search for the solution by the parties involved in the dispute. *Conciliation* involves a more active role by the conciliator, including proposing a resolution. Parties are free to accept or reject the proposal of the conciliator.
- **Arbitration** is rare in the electoral context. It is similar to mediation and conciliation in that it is a voluntary process in which a neutral third party is involved in arbitrating the dispute. However, instead of guiding the conversation to help the parties come to a resolution, the arbitrator is presented with the evidence and then makes the final decision, which can be binding or non-binding in its outcome according to what the parties have agreed to in advance. When binding, it is often used by agreement in place of court proceedings, as it has similar characteristics to a judicial decision.<sup>32</sup>
- **Negotiation** is a relatively unstructured method of settling disputes in which a third party facilitates communication between parties to reach voluntary agreement on the issues in dispute, even where the issues do not raise an actionable legal claim.

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<sup>29</sup> See Wojkowska, 2006; Golub, 2014; International Development Law Organization, 2019.

<sup>30</sup> For example, the Kenyan Code of Conduct (Schedule II of the Electoral Act) refers to three modes of ADR— "conciliation, mediation or negotiation"—being available for peace committees to address breaches of the code of conduct.

<sup>31</sup> For example, El Salvador and Guatemala.

<sup>32</sup> This point is made in the definition of Arbitration in the International IDEA Electoral Justice Handbook, p. 187. Orozco-Henríquez, J. (2010). *Electoral justice: The International IDEA handbook*. International Institute for Democracy and Electoral Assistance. <https://www.idea.int/sites/default/files/publications/electoral-justice-handbook.pdf>

For the purpose of preventing or resolving certain types of election disputes, EMBs appear to have focused on the use of conciliation<sup>33</sup> and mediation<sup>34</sup> rather than arbitration (although Namibia is a rare example of the latter).<sup>35</sup> Informal methods of resolution, including discussion and dialogue,<sup>36</sup> and referrals to non-formal authorities, such as respected members of the community, are also used to resolve electoral disputes in some countries.<sup>37</sup> It is important to distinguish these mechanisms from the complaints adjudication function of the EMB when it has a quasi-judicial role and has the mandate to make binding decisions as part of its mandate to ensure the integrity of elections. In such cases, these mechanisms will be referred to as formal or conventional EDR (or simply “EDR”), rather than ADR.

It is generally a feature of ADR mechanisms that the parties have voluntarily agreed to enter into the process, whereas EDR does not require any opt-in process or agreement of the parties. Our research and interviews with interlocutors found that mediation or conciliation in the electoral field are voluntary processes that the parties agree to participate in, although in other areas of law mediation can be mandated by a court. In general, it is rare for ADR processes to yield a binding outcome, although arbitration can do so, whereas mediation and conciliation tend to yield an agreed, consensual outcome. Regardless of the nature of the outcome, it is an important principle in the electoral context, given the fundamental rights at stake, that the right of redress to a court is maintained.



**“[Alternative Election Dispute Resolution] mechanisms may exist alongside formal EDR mechanisms or come into being on an ad hoc basis or during exceptional circumstances. They provide for one or more parties to a conflict to initiate a process to resolve it, unilaterally, bilaterally, or through a third party or agency. In the latter case, the equivalent judicial mechanisms are conciliation, mediation and arbitration.”**

*International IDEA, Electoral Justice Handbook*



In practice, case studies show that the lines between ADR and EDR can be blurred. For example, in adjudicating complaints about voter or candidate eligibility, some EMBs include in the decision-making body representatives from political parties or persons from the community. This can result in confusion over the final adjudication authority. These blurred mandates appear to be more and more common due to the expansion of ADR mechanisms by EMBs without adequate rules, guidance, or training for election officials, mediators, or conciliators. In some countries, the broad or undefined mandate of these EDR and ADR committees can raise concerns over the quality and fairness of the adjudication, as stressed in the examples from Tanzania, Myanmar, and Ethiopia discussed later in this paper. While the line between ADR and EDR may sometimes be blurred, the element of consent, the non-binding nature of

<sup>33</sup> For example, in Cambodia, which employs Conciliation Committees through the National Election Commission.

<sup>34</sup> For example, District Ethics Committees in Tanzania, Election Mediation Committees in Myanmar, indigenous traditional justice mechanisms in the state of Oaxaca in Mexico, the Complaints Center in Sri Lanka, Conflict Management Committees in Zambia.

<sup>35</sup> Electoral Institute for Sustainable Democracy in Africa. (2005). *EISA Election observer mission report Namibia – Presidential and national assembly elections 2004: EISA election observer mission report*, No. 18, pp. 17-18. <https://www.eisa.org/pdf/namomr04.pdf>

<sup>36</sup> For example, in El Salvador, the Attorney General's Office provides trained mediators to provide information and facilitate discussion.

<sup>37</sup> For example, committees of the wise in Niger, made up of traditional and religious leaders. See *Committees of the wise in Niger's general election (in French)*. (2020, December 6). Africa-Press. <https://www.africa-press.net/niger/homepage-french/elections-generales-au-niger-le-comite-des-sages-appelle-toutes-les-parties-a-oeuvrer-pour-des-elections-apaisees>

<sup>38</sup> Orozco-Henríquez, J. (2010). *Electoral justice: The International IDEA handbook*. International Institute for Democracy and Electoral Assistance. <https://www.idea.int/sites/default/files/publications/electoral-justice-handbook.pdf>

decisions, the degree of informality and the actors involved are key elements to distinguish ADR from EDR. The distinction between formal and informal mechanisms also needs to be interpreted based on each country's legally mandated EDR system.<sup>39</sup> Although there is no universal consensus on the definitions of each ADR mechanism, it is important to ensure in each country that terms are defined clearly and are well-understood by all stakeholders.

## Legal Basis for ADR In Elections

Several national constitutions studied for this research provide for or encourage the use of ADR mechanisms as a general principle rather than specific to election disputes.<sup>40</sup> More commonly, references to ADR mechanisms are found in electoral laws,<sup>41</sup> election bylaws, rules, or notifications.<sup>42</sup> But in most of the countries studied, IFES has noted that details are very limited in the legal framework or even in the rules, as will be described later in this paper. The legal provisions sometimes provide for the mode of ADR to be used (negotiation, conciliation, or mediation) but often remain vague on the composition of the ADR body, timing of appointment, number of members, respective roles, scope of issues that can be addressed, and procedures.

## Models of ADR Mechanisms Used in Elections

As outlined previously, this paper focuses primarily on ADR mechanisms initiated or led by EMBs. While such mechanisms often include a multitude of actors, party representatives, governmental officials, elders from the community, and civil society actors, we mostly included case studies of committees or panels set up by an EMB or by courts. However, there are alternative models to resolve election disputes initiated by civil society or political parties, as set out in the table below.

### ADR committees established and chaired by EMB

Such committees have been established in a number of countries. While they are chaired by EMB officials, these committees and panels include diverse actors as members (government officials, party representatives or lawyers, community members). The EMB can act as a mediator or arbiter or form part of a panel or committee that is mandated to perform that role.

- **Kenya:** The law provides for the establishment of Peace Committees at the constituency level led by a returning officer to conciliate, negotiate, and mediate disputes arising from breach of code of conduct.
- **South Africa:** The EMB established conflict management mediation panels to mediate local conflicts and allow for consultation and cooperation between the EMB and electoral stakeholders.

<sup>39</sup> See the chart at Kovick, D. & Young, J.H., 2011, p. 238.

<sup>40</sup> Constitutions that encourage the use of ADR include those of Kenya, Nepal, Malawi, Mexico, and Zambia, as set out in the case studies below.

<sup>41</sup> For example, in the South Africa Electoral Act and in the Kenya Electoral Act Schedule II on Code of Conduct or in Indonesia Election Law 2017.

<sup>42</sup> For example, in Myanmar and Sri Lanka.

- **Myanmar:** Election Mediation Committees established by the EMB mediate local disputes in elections.<sup>43</sup>
- **Zambia:** EMB-constituted Conflict Management Committees at the national and district levels mediate and resolve electoral disputes.<sup>44</sup>
- **Sri Lanka:** Complaints Centers established by the Election Commission mediate disputes and refer disputes to relevant adjudicating authorities.<sup>45</sup>
- **Botswana:** Dispute Resolution Committees established by the Code of Conduct serve as a preliminary step before a dispute moves to court.<sup>46</sup> Also uses a conciliation form of ADR.<sup>47</sup>
- **Tanzania:** The EMB sets up an Ethics Committee in each district and at the central level, composed of returning officers and election officials as well as party representatives and government officials.
- **Oaxaca, Mexico:** The EMB establishes local mediation committees to resolve disputes at local council elections governed by indigenous customs.
- **Malawi:** The EMB establishes the National Elections Consultative Forum and Multiparty Liaison Committees to mediate disputes over the electoral process.<sup>48</sup>
- **United States:** The [Federal Election Commission](#) offers mediation to the parties involved as a first step to the resolution of election disputes.<sup>49</sup>
- **Sierra Leone:** District Monitoring Committees, which operate under the Political Parties Registration Commission (PPRC), address political party disputes at the local level to defuse tensions before they came to formal complaints regarding campaign spending.<sup>50</sup>

### Political party liaison committee led by the EMB

This is a common model. These committees are established to increase communication between parties and EMBs. They are consultative so, while they can make recommendations and work to resolve problems, the final decision-making power rests with the EMB. While their exact form varies depending on the country, party liaison committees can utilize mediation and arbitration to resolve conflicts, or they may simply offer a forum for discussion. The wide variety of implementation models also affects the range of possible resolutions.

<sup>43</sup> The Carter Center. (2016). *Observing Myanmar's 2015 general elections final report*, p. 66.

[https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/myanmar-2015-final.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/myanmar-2015-final.pdf).

<sup>44</sup> The Electoral Process Act No. 35 (2016) GOVERNMENT GAZETTE (SI) § 113 (Zam.); *European Union election observation mission final report: Republic of Zambia – General elections and referendum 2016*. (n.d.) European Union Database on Election Missions, pp.30–31. <https://ec.europa.eu/info/strategy/relations-non-eu-countries/types-relations-and-partnerships/election-observation/mission-recommendations-repository/missions/>

<sup>45</sup> Mohan, V. (2015). *Sri Lankan electoral commissioner Mahinda Deshapriya sets the bar high*. IFES. <https://www.ifes.org/news/sri-lankan-electoral-commissioner-mahinda-deshapriya-sets-bar-high>.

<sup>46</sup> Electoral Institute for Sustainable Democracy in Africa. (2010). *EISA technical assessment team report Botswana - Parliamentary and local government elections 2009: EISA election observer mission report, No. 35*, pp. 2–22. <http://aceproject.org/electoral-advice/dop/?keywords=&country=Botswana&organization=&year=&election=&mission=&report=>

<sup>47</sup> Ibid.

<sup>48</sup> See the Malawi case study in the annex.

<sup>49</sup> See the United States case study in the annex and Federal Election Commission Guidance on how to file a complaint at

<https://www.fec.gov/legal-resources/enforcement/complaints-process/how-to-file-complaint-with-fec/>

<sup>50</sup> "District level PPRCs operated in most of the districts (not the new ones). In some cases, they played an important role in mediating." *European Union election observation mission final report: Republic of Sierra Leone - Presidential, parliamentary and local council elections 2018*. (2018). Election Observation and Democracy Support. [https://www.eods.eu/library/eu\\_eom\\_sl\\_2018\\_final\\_report\\_4.pdf](https://www.eods.eu/library/eu_eom_sl_2018_final_report_4.pdf)

- **Ethiopia:** The Political Party Joint Forum was established and is coordinated by the EMB, with a mandate to resolve inter-party disputes by dialogue and consent.<sup>51</sup>
- **Democratic Republic of Congo:** Party liaison committees utilize mediation during elections.<sup>52</sup>

### Inter-party mechanism not led by the EMB

Various African nations have established inter-party committees or task forces that mediate conflicts among parties, and between parties and the EMB. In some cases, the EMB participates in these mechanisms, but it does not lead them. These mechanisms can be set up at the local level, regional level, and/or at the central level.

- **Nigeria:** The Inter-Party Advisory Council and National Peace Committee mediate conflicts between parties during elections.<sup>53</sup>
- **Somaliland:** The Election Task Force and an Eminent Group consisting of three former vice presidents mediate conflict between political parties.<sup>54</sup>
- **The Gambia:** The mandate of Inter-Party Committees and Inter-Party Advisory Committee covers the resolution of disputes between political parties and with the EMB.<sup>55</sup>
- **Ghana:** The Inter-Party Advisory Committee and National Peace Council can mediate pre-election disputes between political parties.<sup>56</sup>

### Other Dispute resolution or prevention efforts

In a few countries, other state bodies take on a role in preventing or resolving specific type of election disputes, which can be at the national or local level. In some countries, conflict management bodies are established to train community leaders in conflict management skills. EMBs coordinate with these panels to receive their feedback in identifying potential risks or conflict, which allows the EMBs to respond to them appropriately. Finally, some countries rely on their traditional legal systems.

<sup>51</sup> See the Ethiopia case study in the annex.

<sup>52</sup> Kovick, D. & Young, J.H. (2011) Alternative Dispute Resolution Mechanisms. In C. Vickery (Ed.), *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections (GUARDE)* (pp. 227–258). IFES. <https://www.ifes.org/publications/guidelines-understanding-adjudicating-and-resolving-disputes-elections-guarde>

<sup>53</sup> International Republican Institute & National Democratic Institute. (2019). *IRI/NDI Nigeria International Election Observation Mission Final Report*, pp. 68–69. [https://www.iri.org/sites/default/files/2019-6-18\\_final\\_nigeria\\_eom\\_report.pdf](https://www.iri.org/sites/default/files/2019-6-18_final_nigeria_eom_report.pdf); see also *European Union election observation mission final report: Nigeria 2019 – General Elections*. (2019). [https://www.eods.eu/library/nigeria\\_2019\\_eu\\_eom\\_final\\_report-web.pdf](https://www.eods.eu/library/nigeria_2019_eu_eom_final_report-web.pdf)

<sup>54</sup> Walls, M., Heine, C., Klingel, A., Goggin, C., Farag, A., & Mwape, S. (2018). *The limits of consensus? Report on the Somaliland presidential election, 13th November 2017*. UCL Bartlett Development Planning Unit: London, UK. <https://discovery.ucl.ac.uk/id/eprint/10047014>

<sup>55</sup> *Report of the Commonwealth Expert Team: The Gambia Presidential Elections 24 November 2011*. (2011). The Commonwealth Secretariat. <https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/migrated/news-items/documents/TheGambiaPresidentialElection2011Final.pdf>; The European Union (EU) *Election Observation Mission (EOM) Final Report* on the 2017 National Assembly elections in The Gambia notes that the Inter-Party Committee was inactive (pp. 19 and 35). The *EU EOM Final Report* on the 2021 elections in The Gambia notes that the Inter-Party Committee has been more active and played a role in organizing the signing of the Code of Conduct for Political Parties and in mediating an inter-party dispute (p. 10).

<sup>56</sup> Nkansah, L. (2016). Electoral Justice Under Ghana's Fourth Republic. *SSRN Electronic Journal*. [https://www.researchgate.net/publication/318006586\\_Electoral\\_Justice\\_Under\\_Ghana%27s\\_Fourth\\_Republic](https://www.researchgate.net/publication/318006586_Electoral_Justice_Under_Ghana%27s_Fourth_Republic). See also European Union Election Observation Mission Final Report: Ghana 2020 – Presidential and Parliamentary Election. (n.d.) [https://www.eas.europa.eu/sites/default/files/eu\\_eom\\_ghana\\_2020\\_final\\_report.pdf](https://www.eas.europa.eu/sites/default/files/eu_eom_ghana_2020_final_report.pdf)

- **El Salvador:** The Attorney General's Office deploys trained mediators to guide voters on how to report potential violations and promote dialogue and peaceful resolution of problems on Election Day and during the count process.<sup>57</sup>
- **Kenya:** CSOs formed a broad-based network with the EMB and other state agencies for conflict prevention and resolution, known as the Uwiano Platform for Peace.<sup>58</sup>
- **Burundi:** A traditional system called Bashingantah or "Council of Wise Men" to resolve election disputes was reported in the 2010 elections.<sup>59</sup>
- **Niger:** Committees of the Wise, made up of traditional and religious leaders, worked on inter-party dialogue during the 2020 elections.<sup>60</sup>

## Judiciary or quasi-judicial models

The judiciary could also implement a mediation system for election disputes. This could allow for a formalized process that is faster and more approachable to members of the community. But our research has found only rare examples of successful use of ADR mandated by election judges in elections.

- **Senegal:** Selected judges from an ad hoc commission supervising the tabulation of results act as mediators when addressing polling and counting disputes prior to the announcement of preliminary election results.
- **Kenya:** The Political Parties Dispute Tribunal refers to mediation as the first step for resolving disputes on party nomination or inter and intra party disputes.
- **Indonesia:** Bawaslu, an election supervisory body with adjudication powers over administrative disputes and election offenses, introduces mediation as a first step upon receiving complaints for some pre-election disputes (nomination of candidate, party registration, and campaign disputes).

Our research identified only limited use of ADR in election processes in Central and Eastern Europe. One explanation may be that many of these countries have tight deadlines for administrative review or adjudication of election complaints before the EMB and before the courts.<sup>61</sup> ADR is often used to avoid lengthy judicial proceedings and to provide a quick remedy. It is not prevalent in Western Europe, either, which could be due to the generally lower degree of conflict around elections and stronger law enforcement. However, mediation and

<sup>57</sup> El Salvador Attorney General's Office, [Report on Election Day 2018](#). Also, see the case study in the annex.

<sup>58</sup> *Guide for Civil Society on Sustaining Peace through Elections*. (2019). European Commission Supporting Democracy Programme. [https://media4democracy.eu/wp-content/uploads/documents/Toolkit\\_EN/Guide-sustaining-peace.pdf](https://media4democracy.eu/wp-content/uploads/documents/Toolkit_EN/Guide-sustaining-peace.pdf); The IFES EVER and PAVE programs work on capacity-building and training local CSO partners in preventing electoral violence.; Uwiano Platform for Peace. (n.d.). <https://nscpeace.go.ke/108/about.php>

<sup>59</sup> Kovick, D. & Young, J.H. (2011) Alternative Dispute Resolution Mechanisms. In C. Vickery (Ed.), *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections (GUARDE)* (pp. 227–258). IFES. <https://www.ifes.org/publications/guidelines-understanding-adjudicating-and-resolving-disputes-elections-guarde>; Union européenne Mission d'observation électorale rapport final: Burundi 2010 - Elections communales, présidentielle, législatives, sénatoriales et collinaires 2010. (n.d.). [https://www.eods.eu/library/FR%20BURUNDI%202010\\_fr.pdf](https://www.eods.eu/library/FR%20BURUNDI%202010_fr.pdf)


<sup>60</sup> *Committees of the wise in Niger's general election (in French)*. (2020, December 6). Africa-Press. <https://www.africa-press.net/niger/homepage-french/elections-generales-au-niger-le-comite-des-sages-appelle-toutes-les-parties-a-oeuvrer-pour-des-elections-apaisees>

<sup>61</sup> Kosovo, Serbia, Bulgaria, Romania, referred to in the European Commission for Democracy Through Law (Venice Commission) Report on Election Dispute Resolution, 2020, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)025-e)

conciliation in other areas of law is expanding in Europe and North America and could be considered for use in elections in the future.

## Types of Disputes

ADR can offer an efficient resolution to a variety of election disputes and serve as a complement to the judicial system if designed well. For example, in Myanmar in 2015 and 2020, voters, political parties or candidate reported violations to the Election Mediation Committees (EMCs) to resolve issues of hate speech, allegations of illegal campaign activities, intimidation of voters, and disturbances on Election Day. ADR can be used to address concerns about the secrecy of voting and to ensure compliance with electoral or non-electoral regulations, such as COVID-19 restrictions. In South Africa, mediation and conciliation are used for violations of the electoral code of conduct (e.g., mediation or conciliation can de-escalate threats, address instances of undue influence or abuse of state resources, tackle illegal campaign materials, and mitigate disinformation). Disputes may involve political parties, candidates, agents, election officials, or group of voters.



### TYPES OF DISPUTES

ADR can offer an efficient resolution to a variety of election disputes and serve as a complement to the judicial system

Examples of pre-election disputes that could be suitable for ADR, subject to the specific legal framework, context and determination of suitability as described below:

- Destroying, removing or defacing campaign materials of other parties;
- Using hate speech against a specific individual or group;
- Intimidation of candidates or voters by rival party supporters;
- Publishing false information about candidates or parties on social media;
- Misuse of a political party's symbols or names to mislead voters;
- Carrying arms or weapons at political meetings, marches or campaign rallies;
- Disrupting the campaign rallies of a party or candidate;
- Public officials working for a campaign during official working hours or using public premises or resources for campaign activities; or
- Intra-party disputes around candidacy.

## Determining Whether Disputes Are Suitable for ADR

Before designing an ADR mechanism for election disputes or accepting a specific dispute for mediation or conciliation, certain issues and the cultural and political context should be carefully considered. When facing the scenarios featured in the box below, the EMB, court, or tribunal should question whether ADR is appropriate.<sup>62</sup>

<sup>62</sup> EDR BRIDGE MODULE. ADR session.

Not all disputes are suitable for mediation or conciliation. In election cases, there are “interested parties” to a specific dispute, but the resolution of the dispute may also have broader implications for the public interest. During consultations with the Africa Electoral Jurisprudence Network on the use of ADR in elections, judges confirmed that, when the public is a party to the dispute (e.g., bribery of voters, intimidation, or election results), mediation may not be appropriate. In some cases where the dispute concerns fundamental rights, such as the right to be a candidate, or when serious acts of election violence or intimidation have been committed, it may be preferable to refer matters directly to a quasi-judicial body for resolution with the required due process rights. But it can be challenging for non-legally trained mediators to clearly assess the nature of the disputes submitted. The failure to distinguish cases that are not suitable for ADR can be particularly problematic. That is why it is crucial that the mediators, arbiters, or conciliators clearly inform disputants of the right to file their complaint with a formal EDR body if ADR fails.



### **FACTORS THAT MAY MEAN A DISPUTE IS NOT SUITABLE FOR ADR:**

- Where the dispute is of a recurring nature and/or severe or novel and there is a particular need for consistency among like disputes in other parts of the country.
- Where the dispute or its resolution will affect parties outside the process to a substantial degree (for example, affecting a particular group of voters).
- Where it is in the public interest for certain kinds of issues, such as major criminal offenses and legally prescribed qualifications to become a candidate, to be dealt with publicly through the formal process.
- Where there is ambiguity or a gap in the legal framework and judicial resolution of the dispute is needed to establish a precedent for future similar disputes and ensure consistency.
- Where there is a considerable gap in social status or education between the parties to the conflict, which could lead the less sophisticated party to be pressured into agreeing to an unfair resolution or agreement.

In some regions and states in Myanmar during the 2015 election campaign, the EMC facilitated the settlement of disputes concerning voter intimidation and violence between two major political parties. The group of voters who were the aggrieved parties to the dispute were not invited to attend the mediation meetings. Moreover, these violations were apparently occurring in multiple areas across the state and region, showing the widespread nature of the violation. Due the lack of representation of the victims and the severity of the violations, the EMCs should likely have considered these cases to be inappropriate for ADR.

The type of dispute may not be the only factor that determines whether ADR is advisable in elections. The local socio-political context and the efficacy of existing adjudication bodies will often play a key role in determining the electoral disputes to be handled by an ADR mechanism. In South Africa, concerns around increasing election violence led to the deployment of an ADR mechanism specifically focused on addressing violence. The success of ADR initiatives that are focused on a particular type of dispute could encourage an EMB to expand its scope in future elections. For example, in the 2020 elections in Myanmar, the EMCs’ mandate in 2015 was expanded to cover hate speech and disinformation. The status of the alleged respondent to a dispute—whether a senior official, a public servant, a party, or a voter involved in the dispute—may also be relevant to determining whether a dispute is suitable for ADR. If there

is an existing effective disciplinary mechanism to deal with abuse of state resources violations by a senior official, for example, ADR may not be appropriate. But if the dispute involves voters or party supporters from both sides of the political spectrum abusing financial resources or accessing public vehicles, it may be important to engage in dialogue during the pre-election phase and reach a settlement, rather than immediately engaging in disciplinary or legal proceedings.

## Advantages of Using ADR

IFES's GUARDE research identified the benefits of implementing ADR in election disputes. While not applicable to all conflicts, ADR can serve as an effective complement to EDR because it can efficiently provide tailored remedies to challenges that arise without being overly restricted by complicated procedures. This allows EMBs to tackle violations of the code of conduct or misunderstandings about election procedures—giving them an important tool to prevent and resolve conflict and a mitigation measure to address small irregularities in election processes before they become more pervasive. Because of these advantages, when ADR is applicable it can aid the EMB and the courts, as well as the participants. As noted by the chair of Nigeria's election commission: "It would be ultimately cheaper for everybody if we have a seamless process, and that process can be achieved not just by the legislation enabling us to conduct elections and legal processes but also the intervention of Institutes such as the Institute of Chartered Mediators and Conciliators."<sup>63</sup> With this in mind, ADR mechanisms can be designed to decrease conflict and improve legitimacy.



### AFRICA ELECTORAL JUSTICE NETWORK MEETING, JULY 19–20, 2022, CONSULTATIONS ON ADR:

**"A lot of issues can be effectively disposed of in pre-election phase through mediation." But also warned that "ADR may well be used for pre-elections if the process and mandate should be adequately explained to the voters to avoid misperception about the mandate of the ADR body."**

### Potential advantages:<sup>64</sup>

- ADR claims are efficient, have a lower cost, and provide timely and accessible resolution of disputes, crucial during an election period.
- ADR can help to remedy the general lack of enforcement of election rules and codes of conduct, therefore reducing impunity and increasing deterrence.
- The ADR objective of reaching a solution that meets the needs of both parties can be more suited to local cultural preferences, notably for traditionally excluded populations. For example, mediation can limit the pressure of finality and winner-takes-all attitudes for cultures that are wary of win/lose decisions.
- ADR provides an opportunity for dialogue between stakeholders, which increases the chances for reciprocal commitments, improving satisfaction with the process and outcomes. This constructive dialogue can lead to more lasting resolution to grievances within or underlying the electoral process.

<sup>63</sup> Independent National Electoral Commission. (n.d.). *INEC advocates the use of ADR to reduce cases of election litigation*. <https://inecnigeria.org/news-all/inec-advocates-the-use-of-adr-to-reduce-cases-of-election-litigation/>

<sup>64</sup> Kovick, D. & Young, J.H. (2011) Alternative Dispute Resolution Mechanisms. In C. Vickery (Ed.), *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections (GUARDE)*. IFES. p. 233

- ADR increases local access to justice because it can complement or bypass court systems that may be slow, costly, or corrupt. It also decentralizes the process, allowing for resolution of disputes at the grassroots level, which strengthens local communities' democratic engagement.
- ADR can increase participation because it is a more approachable system for those who may be intimidated by the courts or law enforcement. This can increase access to justice for minorities and traditionally excluded populations, youth, women, or minorities.
- These advantages mean that ADR can improve confidence in the electoral system and help to prevent or resolve conflict and defuse political tension.

## Disadvantages or Risks of Using ADR

Our study also highlighted potential risks with setting up ADR mechanisms in elections and demonstrated the importance of conducting a feasibility study prior to establishing an ADR mechanism, as well as conducting thorough lessons learned exercises after each election cycle.

### Potential disadvantages and risks:

- ADR's accessibility and lack of procedural requirements can fail to filter out frivolous or spurious claims, which can waste resources.
- Decisions taken at the local level for nationwide problems can lead to inconsistency, which can undermine the legitimacy of the ADR mechanisms.
- ADR mechanisms lack the traditional power of courts to compel participation and may not have enforcement authority around decisions.
- Some ADR mechanisms, such as traditional justice systems, may not offer adequate guarantees to redress social power imbalance and may harm justice. For example, in tribal communities with existing ADR mechanisms, these bodies may be male-dominated and can reflect social norms that may enable discrimination against specific groups of vulnerable people.
- ADR can slow reform in the court system when programs siphon off resources to a process that cannot create systemic change because it operates on a case-by-case basis.
- The potential sluggishness and inefficiency of ADR mechanisms can raise due process concerns and, in the absence of clear deadlines can also delay election operations.
- ADR administrators may lack the training, impartiality, and professionalism required for courts or tribunals.

The increased use of ADR, coupled with insufficient training or predetermined rules, can lead to confusion of mandates with the conventional EDR bodies, therefore damaging understanding of the system and limiting the ability of stakeholders to seek a remedy or to trust in the institution. Moreover, the decision to establish an ADR mechanism should not lead to over-delegation of responsibility by the EMB to non-election officials, including civil society or traditional religious leaders who may not be bound by a commitment to neutrality and professionalism. The EMB should remain the body responsible for the conduct of the election process and, as part of its mandate, should address disputes and violations in the electoral process.

The lack of trust in an EMB may push it to design an inclusive ADR mechanism, but with that comes the risk of diluting its powers. IFES GUARDE stresses the importance of ADR as a complement to EDR, but not a replacement. Creating another forum will not solve existing defects in formal EDR processes.

Finally, another risk raised by judges when considering ADR as a first step to their adjudication of election disputes is their potential bias toward one of the parties. While they supported the introduction of ADR in pre-election disputes, they also noted that, if they are involved as mediators in a preliminary phase and if the mediation fails, it may be difficult for them to rule in an impartial manner on the case. To mitigate this risk, court needs to adopt strict rules on appointment of external mediators or conciliators or establish different panels of judges for the adjudication.

## Alternative Dispute Resolution in Practice— Lessons for Practitioners

This section examines ADR initiatives in various countries between the late 1990s and 2021, highlighting the specificities of the design and use of ADR in elections and including both successes and challenges. We focus on the lessons that have been learned as the use of ADR continues to expand and evolve. Further details about the countries that illustrate the lessons are provided in the case studies in Annex 1.

### Lesson 1: ADR structures should be clearly defined and transparent, and training should be provided for ADR practitioners

Experience has shown that successful ADR mechanisms have clearly defined structures that are representative of electoral stakeholders at the local level, thereby enjoying stakeholders' trust and building local ownership. It is also vital that all members of ADR bodies are well-trained, to avoid inconsistent practices and outcomes that can simply give rise to new grievances. Another success factor is for the ADR bodies to report publicly on their work, which enhances transparency and public trust.

As a pioneer of ADR in elections, the Independent Election Commission (IEC) in **South Africa** has used various ADR mechanisms over different election cycles that have evolved with the socio-political context. These consist of conflict management committees (CMCs) headed by provincial election officers and made up of political party liaison representatives, local NGOs, security forces, and members of mediation panels. The provincial panels are assisted in their work by community panelists at the local level, so they can deal with local conflicts at the source. Panelists are approved by the local party liaison committees and enjoy the respect and trust of political parties and the community, which is credited for their success in preventing violent conflicts. More recently, coordinators of Conflict Panels have been integrated into Joint Operation Centers (JOCs), enabling local risks of electoral conflict to be mapped and fed up the JOC chain to the provincial and national level. One weakness in the CMCs' work is that they are not required to collect data and report on their work, which would help to systematize their efforts across the country, improve effectiveness and increase transparency.<sup>65</sup>

In **Zambia**, similar successes and challenges are evident. The Electoral Commission of Zambia established an ADR mechanism (CMCs) at the national and district levels to resolve electoral disputes. The composition of the CMCs includes religious leaders, political party representatives, law enforcement and other government agencies, and civil society representatives, which has helped to create local ownership. The decentralized structure of the CMCs allows members with direct knowledge of the context and the actors involved to resolve disputes quickly through mediation and conciliation. Despite a positive start, the impact of the CMCs has been mixed. Although they have helped to reduce violence and defuse tensions, there has been a lack of consistent training at the district level, resulting in their performance and effectiveness varying widely. Another challenge is the lack of transparency, caused by CMCs' failure

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<sup>65</sup> Based on the interviews conducted, the IEC's dwindling budget is thought to be responsible for this weakness.

to follow recordkeeping requirements or to publish their decisions, linked to a lack of training and, ultimately, to a lack of funding.

The need to establish rules and provide mediation training for election officials as well as education for stakeholders is exemplified in **Myanmar's** experience in 2020 elections, which improved upon their first experience with election mediation committees (EMCs) in 2015. The lack of rules and training in 2015 left the door open for inconsistency across regions and states. In some instances of mediation, the major political parties reached a resolution to the detriment of independent candidates, by means of an unequal process in which the independent candidate was not part of the mediation. In other instances, the main political parties reached a resolution to the detriment of the voter who reported intimidation and vote buying. In 2020, the Union Election Commission (UEC) institutionalized EMCs for pre-election disputes, and the EMCs played a prominent role in resolving disputes in the pre-election period; this role was commended by observers. However, Myanmar's experience also shows the importance of an EMB communicating on the ADR process and the nature of the disputes it addresses during the election. The UEC made only limited communication efforts in 2015 and 2020, so the EMC mechanism did not succeed in building trust in the UEC or the election process.

In **Indonesia**, Bawaslu, a supervisory electoral body with adjudication powers over pre- and post-election disputes, successfully introduced mediation for certain types of pre-election disputes. Following the adoption of a legal provision on mediation in the 2017 election law, Bawaslu had a clear mandate and a two-day window to mediate disputes related to nomination, registration and campaign issues, and made significant investments in training its officials on the required skillset to become a mediator. A total of 2,300 Bawaslu officials were trained at the central, municipality and city levels as mediators. A former commissioner shared with IFES that 50.9 percent of the disputes filed with Bawaslu in the last election ended at the mediation stage.

In 2000, the Federal Election Commission (FEC) in the **United States** initiated a pilot program to promote compliance with campaign finance laws, which “sought to expedite resolution of some enforcement matters, reduce the cost of processing complaints, and enhance overall FEC enforcement.”<sup>66</sup> More than two decades on, the FEC offers this option for specific cases, which are assigned to the ADR office by commissioners or referred by the office of the general counsel, the report analysis division or the audit office.<sup>67</sup> The FEC has developed a guide for complainants, which explains the objective and details of this ADR process to ensure all stakeholders understand where they can file a complaint and where they have the opportunity to attempt to mediate a dispute.<sup>68</sup>

In **Malawi**, operating as a complementary mechanism to the conventional EDR process, Multi-Party Liaison Committees (MPLCs) have helped improve the legitimacy of elections through community dialogue and consensus-building. The legal director of the Malawi Election Commission noted that “ADR promoted by the EMB remain the most effective way of dealing with pre-polling electoral disputes in the Malawi context.” Yet the MPLCs face

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<sup>66</sup> Federal Election Commission. (2000, August 1). *FEC institutes pilot ADR program* [Press release]. Retrieved from <https://www.fec.gov/updates/fec-institutes-pilot-adr-program/>

<sup>67</sup> Federal Election Commission. (n.d.). *Alternative dispute resolution*. <https://www.fec.gov/legal-resources/enforcement/alternative-dispute-resolution/>

<sup>68</sup> Federal Election Commission. (2012, May). *Guidebook for complainants and respondents on the FEC enforcement process*. [https://www.fec.gov/resources/cms-content/documents/respondent\\_guide.pdf](https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf)

challenges: Their operation is not consistent across the country, with some meeting regularly, others only when a complaint is presented, due to lack of funding. Another challenge is that the MPLCs do not have a legal basis; they are established as an administrative arrangement by the Malawi Election Commission (MEC). As such, they do not have clear jurisdiction and procedures but act only on referrals from the MEC. The mechanism could be strengthened by new regulations and by greater liaison with and support from the national level body, the National Elections Consultative Forum, chaired and organized by the MEC, which mirrors the composition of the MPLCs at the national level.

## Lesson 2: The ADR mandate of an institution, and procedures used for ADR, should be clear and set in advance of elections

The legal or regulatory framework for elections needs to set out clear rules, procedures, and defined mandates for any ADR mechanisms. Otherwise, there is a risk of inconsistency, overlapping jurisdiction, and confusion between ADR and EDR. It is also crucial that the laws and regulations provide for the right of appeal to a court or tribunal following the ADR resolution. An expert on ADR in Africa wrote, “[L]egislation will elevate the status of ADR before a sceptical disputant, will build public confidence, and will further increase ADR utilisation and promote ethical practice. Legislation will also provide a framework for reference, review, and reform, as well as institutionalizing much needed education and professional training.”<sup>69</sup> It is also important that rules are published early in the process, giving time for all stakeholders to familiarize themselves with the process, to train or educate their networks, and to enable the EMB to provide public education.

**Kenya** and **Sri Lanka** are good examples of the need to establish rules in advance for non-binding and decentralized ADR mechanisms. While Peace Committees are provided for in the Kenyan Electoral Law to deal with disputes over the Code of Conduct, to date these mechanisms have not been set up with a clear mandate or procedures and have remained largely inoperative. The Independent Electoral and Boundaries Commission (IEBC) established Peace Committees in each constituency for the 2013 elections, to be chaired by returning officers. However, no specific rules were issued by the IEBC to govern the role, responsibilities, and functioning of the committees. This gap was not remedied for the 2017 elections. There were reports from both the 2013 and 2017 elections that the committees were set up in inconsistent ways, sometimes led by the returning officers, but sometimes usurped by county officials. There were no records of cases handled or decisions made, although sanctions were sometimes imposed—which is not the role of mediation. Clear regulation is crucial to avoid inconsistent resolution of disputes and potential abuse of authority, which could increase political tensions ahead of elections. In 2022, the IEBC adopted rules of procedure for its Election Dispute Resolution committee but did not issue specific guidelines for the Peace Committees, which could serve as a first avenue for addressing disputes over alleged Code of Conduct infractions. The mechanisms did not prevent any appeal before a court or a quasi-judicial body if mediation or conciliation failed.

As in Kenya, the **Sri Lankan** Election Commission (EC) established Complaints Management Centers as a decentralized ADR mechanism to complement the formal judicial process. The Complaints Management Centers received disputes for the first time in the 2015 elections and have enjoyed some success as a quick and decentralized

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<sup>69</sup> Uwazie, E. (Ed.). (2014). *Alternative dispute resolution and peace-building in Africa*. Cambridge Scholars Publishing.

way to resolve disputes instead of filing before the courts. But the law was silent about these complaint centers (beyond the general EDR mandate of the EC), and they were established with no mandate to adjudicate complaints or impose sanctions or remedies. Instead, election officials engage in discussion and mediate disputes raised by voters or parties and, as needed, refer complaints to the police. To date, Complaints Management Centers lack unified rules and timelines for handling complaints. In 2019, the EC made progress with the adoption of rules and voter education materials on how to file complaints. However, in its report on the 2019 elections, the EU Election Observation Mission (EOM) noted a lack of follow-up information about the outcomes of complaints and recommended that the EC issue clear, codified procedures and coordinate recordkeeping by the various bodies involved.

A lack of clear rules, as well as vulnerabilities in the design and execution of EDR mechanisms, can lead to ad hoc and inconsistent dispute resolution in practice and blur the line between formal EDR and informal ADR. For the 2021 elections in **Ethiopia**, the National Election Board of Ethiopia (NEBE) was mandated to establish Grievance Hearing Committees (GHCs) at all levels, from local to national. However, the GHCs were not established in most constituencies or in polling stations during the 2021 elections, due partly to the difficulty of finding thousands of volunteers willing to serve on them in an unpaid capacity. Furthermore, the NEBE did not finalize and adopt procedures for its own handling of disputes, and Parliament did not approve the draft regulation for the courts' handling of electoral disputes. In the absence of a fully functioning EDR system, NEBE and political parties used a variety of ad hoc methods to resolve disputes. The disadvantages of informal or ad hoc dispute resolution are that it may provide inconsistent outcomes for different parties (leading to claims of bias) and can lack transparency—unless the EMB publishes information about decisions taken. In some cases, parties raised complaints directly with NEBE headquarters, which resolved complaints informally (for example, by extending deadlines for voter and candidate registration, or by clarifying guidelines). The Political Parties Joint Forum coordinated by the NEBE was also a useful space for dialogue and dispute resolution, but in other cases parties took cases to court for formal resolution, with varying degrees of success. The disadvantages of informal or ad hoc dispute resolution are that it may provide inconsistent outcomes for different parties (leading to claims of bias) and can lack transparency—unless the EMB publishes information about decisions taken. It may also be unclear to those parties whose complaints were dealt with informally that they have a right to appeal the resolution to court and that they need a written decision to appeal against. Another potential disadvantage of an ad hoc approach is that some parties may not have had the knowledge or established relationships to raise disputes informally with NEBE headquarters, and therefore may have felt they had no option but to use the slower and more costly route of a court challenge. It is also important to be aware of the risk of forum-shopping, if multiple routes of dispute resolution are available to a party.

Some ADR mechanisms, such as arbitration or mediation, can include a binding resolution, as in **Ethiopia**; however, the parties involved in the dispute should expressly agree to that or it should be clear in the rules of the ADR body. While binding decisions can offer legal protections, a non-binding ADR resolution, if supported by political and social pressure, can be more effective than a binding decision that has a poor enforcement mechanism. It is important for the parties to the dispute to understand and consent to the use of ADR knowing that it will issue a binding decision.

The introduction of ADR in **Tanzania** was welcomed by stakeholders when first established, in particular because of the limitations on bringing a challenge to court to address election disputes. The National Election Commission (NEC) established Ethics Committees in each district and at the national level, made up of NEC officials and political party and government representatives, to resolve complaints about violations of the code of conduct. In 2015, the EU EOM assessed that the NECs had some effectiveness in resolving minor disputes. Still, other disputes bypassed committees and were resolved through direct negotiation between interested parties. This experience was repeated in the 2020 elections; however, important shortcomings in the process were noted. The Electoral Code of Conduct did not provide sufficient guidance on the composition or procedures of the Ethics Committees, and there was no detailed process for hearings or a clear mandate for the Ethics Committees. While the Ethics Committees were intended to be limited to Code of Conduct issues, some were addressing issues related to candidate nomination. Furthermore, there was a lack of transparency and reporting, including on the composition of the committees and participation of opposition politicians. These issues could be mitigated by adopting clear guidelines, training, stakeholder outreach, and transparency in the number and nature of disputes addressed through ADR.

### Lesson 3: It is important to account for the country's legal tradition, as well as relevant cultural traditions and practical factors, when designing an ADR mechanism for elections

To provide an effective and meaningful remedy, the process of resolving disputes through an ADR mechanism should consider the legal tradition, customs, and history of a country. Some cultures have a longstanding tradition of resolving disputes by dialogue and discussion rather than adversarial court proceedings. The case studies highlight the need to customize and decentralize the ADR structures and processes depending on the country context. For example, in **Somaliland**, it is customary to resolve conflicts through dialogue. International observers reported that the Eminent Group comported well with this tradition, working as an ad hoc mediation committee to resolve conflicts between parties in the 2017 elections.<sup>70</sup> There is also strong practice of mediation at the community level in fields other than elections in **Nepal** and growing practice in judicial proceedings aside from elections—opening the door for new opportunities for ADR in elections.<sup>71</sup>

The goals of providing for the peaceful resolution of disputes and avoiding violence and tension among ethnic communities are entrenched in the origins of ADR in elections in **South Africa** and **Kenya**. These cultures provide fertile ground for using ADR to resolve electoral disputes. In **Kenya**, ADR is mentioned in the Constitution, as well as in the Electoral and Political Parties Act, and both the IEBC and the Political Parties Disputes Tribunal are empowered to introduce mediation or conciliation as part of their EDR proceeding. However, these mechanisms are underutilized due to lack of information. This has also been the case in **El Salvador**, where voluntary, informal mediation helps to prevent conflicts by orienting voters and explaining election day procedures to them, promoting dialogue and peaceful resolution of problems between individuals, political parties, and polling station staff during the voting and counting

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<sup>70</sup> Walls, M., Heine, C., Klingel, A., Goggin, C., Farag, A., & Mwape, S. (2018). *The limits of consensus? Report on the Somaliland presidential election, 13th November 2017*. UCL Bartlett Development Planning Unit: London, UK. <https://discovery.ucl.ac.uk/id/eprint/10047014>

<sup>71</sup> The Asia Foundation has led successful mediation programs and trained mediators in several provinces, leading to resolving thousands of land or family disputes by local community mediators.

process. Although referred to as “mediation,” this initiative goes beyond what is usually understood by that term. It includes providing accurate on-the-spot information to all stakeholders about voting and counting procedures. This can be enough to clear up misunderstandings and resolve minor issues, thereby averting conflict and reducing the burden of complaints that the Supreme Electoral Tribunal (TSE) would otherwise need to deal with. This mechanism has also shown that the introduction of ADR can be initiated by other institutions (in this case the attorney general) and not necessarily the EMB.

In an early OSCE/ODIHR research paper on EDR, Denis Petit noted that “challenging an election, its conduct or its results, should...not be perceived as a reflection of weakness in the system, but as proof of the strength, vitality, and openness of the political system.”<sup>72</sup> An important cultural aspect to consider with respect to EDR is the fear of tarnishing the EMB’s reputation if too many complaints are filed. This perception led the EMB in **Myanmar** to establish informal ADR mechanisms to resolve disputes ahead of the formal adjudication process before the court. The impact of the establishment of Election Mediation Committees in Myanmar in the 2015 elections had a positive outcome on the resolution of disputes during the pre-election period.<sup>73</sup>

However, it should not be ignored that one of the practical objectives for an EMB introducing ADR in elections is also to reduce the number of disputes filed with the EMB or limit the backlog of cases presented before the courts. **Nigeria** has a long tradition of using ADR in other fields. Still, electoral stakeholders appeared reluctant to use ADR since the election



**“Our traditional forms of dispute resolution are still with us. We have simply failed to use them.”**

Nigeria, Hon. Nat. Commissioner, Prof  
Anthonia Okoosi-Simbine

commission (INEC) introduced it in 2008 to resolve electoral disputes. In 2011, the INEC established an AEDR Directorate composed of election officials. Despite continued efforts to promote the use of ADR to limit and triage the number of disputes, which overwhelmed the courts before and after the 2019 general elections, the ADR mechanism remains underutilized and under-funded. In parallel, some experts and academics are calling for reform to introduce ADR in the proceedings of the election court. IFES’s nationwide public opinion surveys indicated that 40 percent of respondents preferred the ability to engage in ADR over filing before the courts.<sup>74</sup> Based on the experience of previous elections, it is unlikely that Nigerian politicians will agree to voluntarily submit their disputes to a person or body outside the established judicial system and to accept the resolution or settlement of their dispute as binding.<sup>75</sup> The case in Nigeria has highlighted the need to distinguish and adapt solutions for local versus federal issues, and the importance of funding for outreach about the use of ADR. The willingness to submit disputes to mediation or conciliation during an election may vary among states and may also vary depending on whether it is a federal or provincial election. Therefore, a failure of stakeholders to use ADR at the central level does not necessarily mean that stakeholders would not use it in a municipal race or a particular county or province.

<sup>72</sup> Petit, D. (2000). *Resolving election disputes in the OSCE area: Towards a standard election dispute monitoring system*. OSCE Office for Democratic Institutions and Human Rights. [https://eos.cartercenter.org/uploads/document\\_file/path/402/17567.pdf](https://eos.cartercenter.org/uploads/document_file/path/402/17567.pdf)

<sup>73</sup> EU EOM Myanmar general elections 2015 - Final report. (n.d.). [https://www.eods.eu/library/myanmar\\_final\\_report\\_en.pdf](https://www.eods.eu/library/myanmar_final_report_en.pdf)

<sup>74</sup> IFES Nigeria. (2021). *Sustaining Electoral Reforms in Nigeria (2021–2026): Programming Options Paper*.

<sup>75</sup> Bello, A.A. & Aminu, R. (2009). Situating alternative dispute resolution (ADR) in the political sphere: Thoughts on mechanisms for pre-election political dispute resolution in Nigeria. <https://dx.doi.org/10.2139/ssrn.1369702>

Decentralizing election dispute resolution to have more local ownership and oversight, by directly linking the community to the EMB's EDR process, could also further the practical objectives of ADR mechanisms in elections. During the 2017 elections, the Election Commission of **Nepal** (ECN) established ad hoc EDR committees charged with issuing recommendations on alleged violations of the code of conduct to the commission. In addition, the ECN established a local-level code of conduct and campaign finance monitoring committees for the election. Both ADR mechanisms lack guidelines, training, and a clear mandate, and there is inconsistent practice, thereby blurring distinctions between monitoring, settlement, and adjudication of violations. The ECN could consider clarifying the mandate and functions of the ad hoc EDR committees, the local election officials, and the monitoring committees—to merge their roles or establish mediation committees with a clear mandate.

## Lesson 4: Multi-stakeholder coordination, led by the EMB, can help prevent conflict and fight impunity

Effective coordination among different agencies or actors responsible for electoral dispute prevention and resolution can play a positive role in reducing conflict and violence, thereby supporting the credibility of the elections.

During several recent elections, the EMB (the TSE) in **Guatemala** has led an Inter-Institutional Technical Working Group on Election Security. The working group brings together various public bodies to monitor, map, prevent, and resolve electoral conflicts. TSE inspectors at the national, departmental, and municipal levels are trained and take on a coordination role in the working group, working with TSE structures at all levels, the police, prosecutors, security forces, and other government agencies. Together, they monitor and map the risks of electoral conflicts, using information from their on-the-ground presence, media monitoring, and tracking where violations of the electoral law are alleged to have taken place. Through their coordination, the inspectors ensure the appropriate bodies are tasked as necessary. They seek to resolve conflicts before they become formal complaints that go through the established EDR system handled by TSE, thus it reduces the burden on the TSE as disputes are resolved at the local level. The multi-agency coordination has also helped tackle impunity for electoral crimes by quickly passing relevant cases to specialist electoral prosecutors. **El Salvador** provides another example of cooperation between the EMB and the Attorney General's Office to address voting and counting disputes.

The composition of ADR mechanisms need not involve only state actors but can also involve representatives of political parties and civil society, as they may be selected as members of ADR mechanisms. Such diverse composition requires cooperation, in particular to ensure timely appointment and training of members. As in several other African countries, **Malawi** has a culture of community-level ADR mechanisms rooted in its traditional institutions. This led to the formal requirement in the Malawi Constitution to adopt and implement mechanisms for settling disputes through negotiation, good offices, mediation, conciliation, and arbitration. The commitment to ADR is reflected in the election context in the role of MPLCs. The MPLCs, made up of local stakeholders including political parties, local authorities, civil society, and traditional leaders, can resolve disputes early and effectively, and they have gained the trust of stakeholders. They have succeeded in reducing the burden of pre-election disputes, mainly inter-party conflicts, for both the MEC and the courts. But, to be efficient, they need to be operational quickly.

## Lesson 5: The use of ADR in elections can provide an opportunity to enhance the role of women, youth and marginalized groups in electoral justice

Formal dispute resolution mechanisms—courts and other EDR bodies, including EMBs in their adjudication role—are often led by men. Traditional or customary ADR mechanisms are often dominated by elders and community or religious leaders, and therefore are also likely to be led by men. The same applies to mediation led by political party leaders. As such, these bodies are less likely to be gender-sensitive in their treatment of complainants and of the issues in dispute. Studies have shown that women tend to face greater barriers in their access to justice generally, due to their family and child care responsibilities, lesser economic resources making it harder for them to travel to major cities to access courts, lower levels of education, and social and language barriers.<sup>76</sup> Women who identify as part of other marginalized groups—women with disabilities; ethnic minority women; or women from the lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) community—face even greater barriers in their access to justice due to compounding discrimination that results from these intersecting identities.<sup>77</sup>

International law supports the elimination of discrimination and the equal treatment of women in dispute resolution bodies through the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), ratified by all but a handful of countries. CEDAW goes further than the principle of non-discrimination, providing that states have a positive obligation to take all appropriate measures to eliminate discrimination, including the use of temporary special measures (TSMs).<sup>78</sup> The TSMs may include affirmative actions, such as numerical quotas, to encourage women's participation in political and public life and achieve de facto equality. This could include targeted recruitment campaigns to encourage women to participate in ADR bodies and to join the judiciary and EMBs for conventional EDR.<sup>79</sup> Further support for increasing women's participation in ADR and EDR mechanisms comes from Goal 5 of the United Nations Sustainable Development Goals: "Achieve gender equality and empower all women and girls."<sup>80</sup>

ADR mechanisms can mitigate some of the challenges faced by women and other marginalized groups in accessing formal justice.<sup>81</sup> However, ADR also carries risks: Evidence from ADR bodies outside the electoral field shows that

<sup>76</sup> *Guaranteeing equal access of women to justice*. (n.d.). Council of Europe. Retrieved from <https://www.coe.int/en/web/genderequality/equal-access-of-women-to-justice>; *Report of the online roundtable on "framework to measure access to justice including specific challenges facing women"*. (2021). Council of Europe. <https://rm.coe.int/report-of-the-online-roundtable-on-framework-to-measure-access-to-justice/1680a33bc0>; Turquet, L. (2011). *Progress of the world's women 2011-2012: In pursuit of justice*. UN Women. <https://www.unwomen.org/en/digital-library/publications/2011/7/progress-of-the-world-s-women-in-pursuit-of-justice>

<sup>77</sup> High-level Group on Justice for Women. (2020). *Justice for women: High-level Group report*. <https://www.unwomen.org/en/digital-library/publications/2020/03/justice-for-women-high-level-group-report>

<sup>78</sup> United Nations Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, 1249 U.N.T.S. 13. (Multilateral). Art. 7: "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country ... in particular ... the right ... to hold public office and perform all public functions at all levels of government". Article 4 provides for "temporary special measures aimed at accelerating de facto equality." Article 15(2) provides that women shall be treated equally at all stages of courts and tribunals.

<sup>79</sup> Trends in women's representation on EMBs have improved but are still below equity expectations. See *Electoral Processes - Implementing a framework on gender policies for electoral management bodies* in International IDEA, *2020 outcome report*. <https://www.idea.int/2020-annual-report/implementing-framework-gender-policies-electoral-management-bodies>

<sup>80</sup> As part of this, Target 5.5 is to "[e]nsure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life."

<sup>81</sup> *Issue brief: Navigating complex pathways to justice: women and customary and informal justice systems*. (2020). International Development Law Organization. <https://www.idlo.int/publications/issue-brief-women-and-customary-and-informal-justice-systems>

they can favor patriarchal values, and they have often prioritized the goal of achieving resolution of the conflict without necessarily taking account of specific women's issues—in particular, gender-based or sexual violence.<sup>82</sup> More research is needed on how well ADR in electoral disputes works for women and other marginalized groups, especially for dealing with cases of threats, abuse, harassment, and violence. Research on ADR outside the electoral context shows it can be helpful to women, provided that:

- Women are represented on the ADR body and can bring women's perspectives, voices, and experiences to their work and, by example, show that this is an inclusive process.
- The ADR mechanism is designed carefully to empower women and protect women's rights and agency.
- ADR is voluntary, not mandatory, and the use of ADR is no bar to pursuing formal justice, including the ability to appeal the decision of the ADR body.
- The ADR body is trained specifically to deal with such cases, including being aware of societal power imbalances, and of the risks to those with less power.
- ADR is not used for serious criminal offenses or to allow the perpetrators of such crimes against women to avoid real penalties.<sup>83</sup>

These lessons and conditions also apply to the rights of ethnic, religious, and linguistic minorities. The International Convention on the Elimination of All Forms of Racial Discrimination mandates that states parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of rights including as the first one the right to equal treatment before the tribunals and all other organs administering justice.<sup>84</sup> In Indonesia, the Bawaslu (supervisory electoral body) conducts mediation at the local level, and mediators are usually from or close to the area of the pre-election dispute. The mediators are usually from the same ethnicity as the parties in dispute, which has helped in the positive resolution of these disputes according to former commissioners.<sup>85</sup>

In **Myanmar** in 2020, every EMC was required to include at least one woman. As a result, the representation of women increased significantly, with women making up 18 to 20 percent of EMC membership at different levels. This

<sup>82</sup> For example, the traditional community-based Gacaca courts used in Rwanda to try crimes committed during the genocide were ultimately used for crimes of sexual violence, despite expressly not being originally intended for that purpose, and researchers have found they were not sensitive to women's issues and not appropriate for sexual violence. See Costello, E.M. (2016). *Justice for whom? The gacaca courts and restorative justice for survivors of sexual violence in Rwanda* (Bachelor's Thesis, University of Michigan, Ann Arbor, USA).

<https://deepblue.lib.umich.edu/bitstream/handle/2027.42/120576/emcostel.pdf;jsessionid=435696821010EA52DF3A46A02BC191E9?sequence=1>; Amick, E. (2011). Trying international crimes on local lawns: The adjudication of genocide sexual violence crimes in Rwanda's gacaca courts. *Columbia Journal of Gender & Law*, 20(2). <http://cjl.cdrs.columbia.edu/article/trying-international-crimes-on-local-lawns-the-adjudication-of-genocide-sexual-violence-crimes-in-rwandas-gacaca-courts/>; Justice compromised: The legacy of Rwanda's community-based gacaca courts. (2011). Human Rights Watch. <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts>

<sup>83</sup> Heilman, B., Paul-Gera, N., Musuya, T., & Siebert, S. (2016). *Whose justice, whose alternative? - Locating women's voice and agency in alternative dispute resolution responses to intimate partner violence*. Beyond Borders, Center for Domestic Violence Prevention, and International Center for Research on Women. <https://www.icrw.org/wp-content/uploads/2016/10/ICRW-Mediation-Paper-FINAL.PDF>; *Injustice and impunity: Mediation of criminal offences of violence against women*. (2018). United Nations Assistance Mission in Afghanistan and the Office of the United Nations High Commissioner for Human Rights. [https://www.ohchr.org/sites/default/files/Documents/Countries/AF/UNAMA\\_OHCHR\\_EVAW\\_Report2018\\_InjusticeImpunity29May2018.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/AF/UNAMA_OHCHR_EVAW_Report2018_InjusticeImpunity29May2018.pdf); Committee on the Elimination of Discrimination Against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN Doc. CEDAW/C/GC/35, at 45 (July 14, 2017).

<sup>84</sup> United Nations International Convention for Elimination of All Forms of Racial Discrimination, December 21, 1965, 660 U.N.T.S. 195 (Multilateral)

<sup>85</sup> Dr. R. D. Pettalolo, personal communication, August 10, 2022.

contrasted favorably with the complete absence of women as members of the UEC or the election tribunals. Further research is needed to determine the impact of women's membership of the EMCs, but one positive impact is that women's role in ADR bodies during elections can build women's skills at grassroots level and set a precedent for an increased role for women in mediating other types of disputes outside election periods.

The presence of women in ADR bodies during elections could also empower and motivate other women to seek justice as complainants, because they would see that this is a space where women's voices can be heard. It is important that all aspects of the electoral process are inclusive, as that gives more legitimacy to the process. Additionally, consulting local women's organizations on this issue and on the design of the ADR mechanisms is critical. While not directly dealing with election disputes, a UN report from 2018 on mediation in **Libya** flagged that "the absence of youth and women from mediation efforts raises questions about the legitimacy of the agreements reached."<sup>86</sup> This is a common challenge raised by several actors and reports on mediation efforts globally. More inclusive membership of ADR bodies is crucial but not sufficient: The full body needs gender equality training and voter awareness in order to operate in a gender-sensitive and inclusive way.

In **Indonesia**, the Bawaslu has conducted extensive training on mediation. There are gender-related trainings for mediators, but these trainings remain limited. So far only 17 percent of the Bawaslu members/mediators are women. The 30 percent quota has not been met to date. During an interview, former Bawaslu commissioner and IFES She Leads alumna Dr. Ratna Dewi Pettalolo noted that, in addition to capacity building, there is a need to invest on advocacy to encourage women to become members, and thus act as mediators. Election management or supervisory bodies should also conduct advocacy with the political parties to increase the nomination of women as candidate and the participation in the leadership of the party. Indeed, Dr. Dewi stressed that the responsibility cannot rest solely with the mediators to protect the rights of women; other stakeholders should have a role in ensuring access for women to the EDR and ADR processes by raising awareness.

In Oaxaca, **Mexico**, mediation has been introduced by the state electoral institute (IEEPCO) to support the use of traditional practices by indigenous communities in the election of their local authorities. The UN Declaration on the Rights of Indigenous Peoples recognizes the right of indigenous communities to self-government according to their traditional customs. IEEPCO has developed detailed guidelines for mediation of such disputes, which include guiding principles to respect the indigenous traditions provided they are compatible with international human rights, respect legal pluralism, and find inclusive and consensual lasting resolution. IEEPCO plays a facilitator's role and leads mediation, together with representatives of the parties. In some cases, the whole community is represented and consulted throughout the mediation. The process must be translated into the relevant indigenous language, as needed.

In such contexts, it can be difficult to strike a balance between protecting indigenous culture and customs and protecting individual rights—in particular, women's rights. A recent case at Mexico's Upper Federal Electoral Tribunal concerning a dispute from an indigenous community in Oaxaca reiterated the importance of supporting indigenous

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<sup>86</sup> Vericat, J.S. & Hobrara, M. (2018). *From the ground up: UN support to local mediation in Libya*. International Peace Institute. <https://www.ipinst.org/2018/06/un-support-to-local-mediation-libya>

traditions and customs, and the IEEPCO-supported mediation, but at the same time ensuring that a gender perspective is incorporated into the process. The case demonstrates the importance in such contexts of training and sensitization on indigenous customs as well as gender issues for all involved in the mediation.

## Lesson 6: Court-ordered or judiciary-led ADR is an avenue worth exploring for pre-election disputes

Up to now, EMBs and other state actors, rather than the judiciary, have introduced ADR mechanisms into the resolution of election disputes. Outside the electoral field, the use of ADR by courts is growing worldwide in diverse fields including family, employment, consumer, and administrative law—and even criminal law. Mediation is a prerequisite to court proceedings in some countries and fields, and in others it is a voluntary option. The European Law Institute and the European Network of Councils for the Judiciary released a report on the relationship between courts and ADR. They formulated a set of best practices to consider when encouraging the use of ADR, including: “[t]o the extent permissible under the law of the Member State, Courts and Judges should seek to integrate ADR processes into the justice system, treating them as complementary systems ... Courts and Judges should inform parties and legal professionals about the availability and potential merits of available ADR processes and give them the opportunity to consider using such process before and during litigation.”<sup>87</sup> Nonetheless, judiciary-led ADR remains rare in the election field. During consultations on ADR led by IFES on the occasion of the Africa Electoral Justice Network meeting in July 2022, judges reached consensus that, while ADR use by the judiciary should be encouraged, it should be limited to pre-election disputes and also consider clear rules to define the scope of disputes and avoid issues related to bias or impartiality if judges are involved in the mediation and also at a later stage in the adjudication of the same dispute.

However, judicial views on the use of ADR in election disputes are changing, as stakeholders see its potential to address disputes quickly and thereby ease pressure on the courts. Experts and election practitioners in **Nigeria** have called for increasing use of ADR by the judiciary to resolve the delays and backlogs of the electoral courts. There were reportedly at least 644 pre-election challenges in the 2019 Nigerian general elections, mostly related to party primary elections. The courts often resolved these late due to overly long legal deadlines and the volume of cases. In many other fields of civil law, the Nigerian courts have incorporated ADR into their Rules of Court, which is carried out at court-annexed Mediation Centers. The chief registrar of the Court of Appeal highlighted the advantages of mediation: “that it saves time, cost and matters are resolved in a more friendly way.” He said that building on its success in other fields of the law, judges and other stakeholders could consider the introduction of mediation for pre-election disputes. A significant challenge for ADR in elections, however, is outreach to political parties and party lawyers, and he believes that the push for ADR in election disputes cannot come from the election commission, as they are a potential party to the disputes.<sup>88</sup>

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<sup>87</sup> *The relationship between formal and informal justice: the courts and informal dispute resolution: Report of the European Law Institute and of the European Network of Councils for the Judiciary.* (2018). European Law Institute. [https://www.europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/Publications/ADR\\_Statement.pdf](https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ADR_Statement.pdf)

<sup>88</sup> H. Isah, personal communication, September 1, 2021.

The Political Parties Dispute Tribunal (PPDT) in **Kenya** is composed of judges responsible for adjudicating inter- and intra-party disputes related to party nomination. The PPDT revised its regulations in preparation for the 2022 elections and is now offering mediation to disputants on a consensual basis. If ADR fails, the PPDT will hold a hearing and decide the case. The goal of offering mediation is to limit lengthy court proceedings and encourage parties to settle their intra-party disputes rather than involving judges in internal party politics. It is an initiative that, if successful, could present an example of judge-led mediation in electoral matters and expand to other pre-election complaints filed before the judiciary, such as hate speech or campaign-related disputes. A novelty of the 2022 election is that the Parliament amended the Political Parties Act to provide that the complainant should first attempt to raise disputes with the internal dispute resolution party mechanism prior to filing a dispute with the PPDT.<sup>89</sup>

For post-election disputes, **Senegal** features the use of mediation techniques by election officials, candidates' representatives, and judges during the verification and tabulation of results. The consensus-building techniques used by judges in their supervision of the results process enhance acceptance of the results by all candidates. The former president of the Senegalese Appeal Court noted that the low level of petitions filed against the results with the Constitutional Court since the introduction of this procedure shows the success of the procedures. Aside from the Senegalese example, the use of mediation by judges at the time of tabulation of results remains rare. But the reduction in post-election disputes filed before the courts may encourage EMBs or courts to adopt similar mediation procedures before publishing the preliminary results.

In **Malawi**, the civil procedure rules provide for ADR. While they support EMB led ADR mechanisms, some legal election experts interviewed by IFES expressed some skepticism about how these rules could be adapted to pre-election disputes by the courts. Some judges and electoral experts expressed concerns about judicially led mediation because of the need for speedy adjudication and voters' difficulties in accessing the courts for mediation. The legal director of MEC stated, "A court-led ADR process could defeat the true nature and purpose of ADR in pre-polling matters, which call for promptness in bringing the parties in dispute together." Courts are already facing an important backlog, and therefore introducing ADR in the election courts would create an additional burden on the judiciary to manage these ADR proceedings and will likely not lead to timely mediation. While judges appeared mostly supportive of the introduction of ADR in their courts during the Africa Electoral Jurisprudence Network consultation, others raised concerns about the timeliness of the mediation process and its impact on the election process. This divergence of opinions shows the need for clear timeline in the pre-election phase to determine disputes—whether through the formal or informal resolution mechanism.

The lack of a legal framework for ADR in elections may be another reason why so few judiciaries have introduced or piloted mediation in election disputes. While an EMB may be more used to flexibility and adaptability in its operations due to the broad nature of its mandate, it is more difficult for the judiciary to operate or pilot a mediation project without a clear legal framework. Discussing judicial mediation in **Ukraine**, a Council of Europe policy paper noted that some judges piloted mediation projects by drawing on the support of the presidents of their courts and general provisions allowing for settlement of a case, but emphasized that, "... many judges stated that they would feel more comfortable

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<sup>89</sup> The law used to state that the complainants were required to exhaust this internal remedy first. But in practice, they were either not aware of this requirement or their application remained unanswered. This practice created a challenge for the PPDT when assessing the validity of the dispute.

if mediation were directly encouraged by the law.”<sup>90</sup> The introduction of mediation in the electoral law or the judiciary’s rules of procedure, as well as the support of the judicial leadership, could give the necessary encouragement to the judiciary to introduce mediation as a first step to resolving election disputes.

In other countries, courts may be reluctant to introduce ADR practices due to the fundamental rights at stake in an election—whether the right to vote and stand for election or freedoms of assembly, association, and expression—and may wish to retain full control of the election dispute process. This reluctance may be well-founded for post-election disputes and issues directly tied to fundamental rights—such as candidate nomination. Indeed, election results petitions require speedy adjudication, can affect the stability of a country, and can involve drastic remedies, such as annulling the results of an election. Some interviewees also mentioned the concern for tight deadlines, notably in Europe, where the law provides 48 to 72 hours for administrative court or court of appeals to resolve election results petitions, making it impossible to introduce ADR without violating the legal deadline.<sup>91</sup> However, these concerns can be addressed by ensuring that a disputant retains the right to bring his or her case to court after using an ADR process and constraining these processes to tight deadlines. But for matters where the validity of the election results is questioned, the court should retain exclusive powers to make that determination. Nonetheless, in some countries, extraordinary mediation efforts during the post-election period, including by international actors, have shown positive outcomes when a results conflict is polarizing the country and potentially leading to political violence and bloodshed.

Considering the challenges and risks presented in this section, the legislature, EMB, and judiciary should carefully establish criteria and safeguards for a court-led ADR process that ensures the right to due process is not undermined, nor trust lost in the impartial, fair, and just resolution of pre-election disputes. These concerns can be mitigated by ensuring that a disputant retains the right to bring his or her case to court after using an ADR process—as an appeal or first instance, and by clarifying the proof needed to show the attempt or conduct of ADR as a first stage of the process. If necessary, legal deadlines for bringing a case to court should be stayed while ADR is being pursued in good faith, or strict deadlines should be set, as in **Indonesia**, where Bawaslu has a two-day period to mediate. The ADR process should also be designed to ensure a fair process and just outcome so that the judiciary can feel confident in it as a suitable complementary mechanism. Inter-institutional cooperation with the EMB to better understand existing mechanisms using mediation or conciliation of disputes in the pre-election period is also important. The Council of Europe has set out a Statement of European Best Practice related to courts’ interaction with ADR processes, which provides detailed guidance on the issues.<sup>92</sup>

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<sup>90</sup> Kyselova, T. (2017). Integration of mediation into Ukrainian court system: Policy paper. *Council of Europe*. <http://dx.doi.org/10.2139/ssrn.3054519>

<sup>91</sup> Romania, Bosnia and Herzegovina, North Macedonia, Albania.

<sup>92</sup> The relationship between formal and informal justice: the courts and informal dispute resolution: Report of the European Law Institute and of the European Network of Councils for the Judiciary. (2018). European Law Institute. [https://www.europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/Publications/ADR\\_Statement.pdf](https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ADR_Statement.pdf)

## Recommendations

Successful ADR requires effective design and the inclusion of key elements during the preparation and implementation phases. Based on lessons learned from this research, IFES has identified the recommendations below. They are primarily targeted at EMBs, although some recommendations involve other stakeholders. These recommendations can be used as a checklist for election officials, practitioners, or technical assistance partners.

### Feasibility and planning

1. Prior to introducing ADR, **assess the dispute resolution environment** for any shortcomings or areas that ADR could helpfully remedy or complement. Identify the existing mechanisms involved in the formal and informal resolution of election disputes, whether the EMB, courts or specialist tribunals, including their resources, the length of proceedings, the manner and timing for filing complaints, their accessibility and efficiency, and public trust in these institutions.
2. **Cooperate with the tribunal or courts** responsible for election disputes. When setting up an ADR mechanism, it is important for the EMB to engage in a discussion with the judiciary or other body responsible for EDR to clarify that the use of ADR will not prevent stakeholders from filing a challenge before the court and that the legal deadlines for EDR will be stayed (put on hold) during the ADR process.
3. **Consult with the different stakeholders** in the electoral process—not only the judiciary or EMB, but also political parties, community leaders, independent professions (bar association, national law society), conflict resolution organizations, and human rights activists to learn more about existing structures for traditional resolution of disputes at the local community level (e.g., peace mediation efforts), and how ADR could complement these processes. Assess whether there is easy access to lawyers and the cost of justice for complainants, and derive lessons from other country experience.
4. Consult or **partner with local or international organizations** that have led mediation projects at the community level in the country in other areas of disputes (outside elections).<sup>93</sup> They may provide guidelines and lessons that can be relevant to elections. They may already rely on a network of trained mediators.
5. Consider the **legal tradition and cultural context** of the country and identify potential opportunities for inclusion of vulnerable groups. Traditional structures can be an important part of indigenous and minority cultures and should be considered in the resolution of election disputes. There is no one-size-fits-all model of ADR, and the mechanism introduced in each country should be context-specific.
6. Provide **a specific budget** to ensure that ADR mechanisms have sufficient resources to conduct regular meetings and have the communication tools to report on resolution of disputes by ADR.
7. **Distinguish between rural and urban areas** and consider access to the EDR bodies and law enforcement and trust in the local administration and national government.

<sup>93</sup> Several organizations in Myanmar have led successful mediation projects at the community level. These include Mercy Corps, with which IFES partnered for the design of the EMC training curriculum and selection of trainers/mediators in 2020.

8. **Plan well in advance.** Many of the activities described in these recommendations need to be carried out long before Election Day—around a year in advance—to ensure that they are properly in place in time for the start of the electoral process.
9. **Consult with local women’s organizations when designing ADR bodies.** These organizations usually have the best sense of women’s main concerns and what the issues for the community, so they could make valuable contributions.
10. **Do no harm.** When designing an ADR mechanism, **ensure that it does not cause confusion** with the mandate of existing institutions or establish an unfair, discriminatory, or politically biased mode of dispute resolution (e.g., if safeguards are not in place regarding selection of conciliators or mediators, and sensitization training is insufficient).

## Legal basis

11. **Set out the legal framework** with the following elements, at a minimum:
  - *Composition, term, and mandate of the EDR and ADR bodies*
  - *Appointment process, including gender and minority representation*
  - *Type of ADR: mediation, arbitration, conciliation, negotiation*
  - *Whether the process is binding or non-binding*
  - *Where it is mandatory or voluntary*
  - *Relationship with the formal/conventional EDR conducted by the EMB, electoral tribunal, or courts*
  - *Types of disputes within the mandate*
12. **Define the mandate, role, and powers** to avoid confusion with the EDR process—whether EDR is led by the EMB or the courts only. This will ensure that the ADR mechanism complements rather than creates confusion in the handling of disputes and provides clear expectation for disputants.
13. **Consider timelines** for mediation or conciliation proceedings, to avoid delaying key electoral events for the EMB, such as the announcement of the final list of candidates or the election results.
14. **Guarantee the right to appeal to a court or tribunal.** Whether the ADR succeeds or fails, a disputant should always be allowed to file a challenge before a court of law.
15. **Establish clear rules of procedure.** Because of the flexible nature of ADR, creating clear rules of procedure for the conduct of ADR is important for ensuring confidence in the process.

## Structure and composition

16. Define the **appointment mechanism and duration** of appointment for members of the ADR body and for selection of its chairperson.
17. **Define the core qualifications for selection of mediators.** Core skills of a mediator include active listening, neutrality and impartiality, respect, professionalism, constructive problem-solving, and trustworthiness. Select mediators with a high degree of integrity, independence, impartiality, and ethics.

18. Consider **gender and ethnicity** for inclusive and equitable representation. If working with traditional structures and practices, such as with elders and community leaders, ensure that space is increased to include voices of youth, women, minority ethnic groups, and others.
19. Whether membership consists of one mediator/arbitrator or a panel, ensure that the **number of members** is sufficient to be effective in carrying out its mandate, but not so high that it is difficult to manage or resource.
20. **Define the role** of the parties to the dispute in the mediation.
21. **Limit the influence of the ruling political party** (members from local or national government structures), as otherwise impartiality and neutrality may be put at risk. While party or candidate representatives may be included as members, there should be a balance with other members from civil society, traditional or religious leadership, or civil service. Training should also emphasize the core quality of neutrality for the chairperson of these committees.
22. **Decentralize the ADR process**, taking into consideration population density, geography, structure of the local government and resources available. If decentralized, set up an efficient reporting mechanism to allow for oversight and accountability.
23. **Define remuneration** in the rules. Some members may already receive a salary from the government if they are active members of the civil service or election officials. In this case, there should not be additional remuneration aside from cost reimbursement (in case of travel). Remuneration may contribute to the commitment or seriousness of the members acting as mediators. In Ethiopia, the absence of remuneration for Grievance Hearing Committee members created an obstacle for recruitment of its members. In Zambia, the stipend paid to members of the Conflict Management Committee encouraged quality contributions and hard work, according to those interviewed.

## Training and outreach

24. **Train arbiters and mediators** to ensure that they can cultivate trustworthiness and resolve disputes professionally and quickly. The ADR body needs to be trained on how the election process and the EDR mechanisms work, including sessions on neutrality, impartiality, and how to resist political influence.
25. **Train EDR bodies and election officials** on the newly established ADR mechanism.
26. Ensure **inter-institutional cooperation** between the judiciary and the EMB to share information on the procedural aspects of their respective use of ADR in elections (if relevant).
27. **Provide gender equality and gender sensitization training** for the ADR body, the EMB, and the courts. This training should include issues that may have a particular gender dimension, like hate speech and online abuse, harassment, and threats, as well as information on how to work safely with survivors of violence and prevent re-traumatization.
28. **Draft a manual or guidelines** setting out the detailed process for informing election officials and stakeholders. Guidelines and training materials should be available in minority languages, as ADR is often conducted at the local level.
29. **Ensure promotion of ADR /mediation techniques**, not only to parties, candidates, voters, and CSOs but also to legal professionals and professional groups (judges, lawyers, law enforcement, and

prosecutors, bar association, and, in some countries, certified mediators). Brochures, posters, animated videos, and radio spots on mediation could be developed and disseminated close to an election.

30. **Consider developing digital educational/training tools** to address the need to quickly train EMB members who may be appointed shortly prior to the election or for stakeholders to raise awareness on mediation.

## Implementation

31. **Seek consent from parties to the dispute.** It is important to make sure both parties to the dispute give their informed consent to the ADR process and commit to its rules and outcomes, especially when decisions are binding. The parties to the dispute should agree to mediation of the dispute. However, the concept of choosing or agreeing on the mediators involved in the ADR body can be diluted in the context of elections due to the fact that the members of the mediation body have already been selected by the time the disputes arise.
32. **Inform parties to the disputes of their right to file before a court or tribunal.** Whether ADR succeeds or not, mediators or conciliators should remind parties to the dispute that they can still file a case in court if not satisfied with the process or the agreement reached.
33. When feasible, conclude **agreements in writing**. A written agreement can enhance compliance and enforcement but, in some instances, it may be difficult due to lack of time.
34. **Set up a standardized reporting and documentation system.** Guidelines or rules on ADR could provide a standardized form for the settlement of disputes to ensure consistent reporting and documentation of the resolution for some types of election cases. It will enable the courts or the EMB to identify trends and engage in preventing election disputes. When resources are available, the EMB or the court could design an electronic case management system or e-reporting mechanism for these disputes.
35. **Ensure transparency while also respecting confidentiality.** Mediation often requires confidentiality to foster frank and honest discussions. However, due to the high stakes and public nature of elections, in some circumstances ADR processes could be open, giving the public the opportunity to attend the meetings. This approach could build trust and raise awareness about ADR. If that degree of publicity is not possible, the EMB should, at a minimum, release some information about the disputes (or a summary), even if personal data is withheld. It is important to balance the need for confidential discussions between the parties and the mediator with the need for the public and stakeholders to obtain some information about the ADR processes.
36. **Establish a gender equality policy** to inform the work of the ADR body, and use that policy to monitor implementation.
37. **Ensure meetings are accessible.** The venues should be easily accessible for persons with disabilities.
38. To increase **accessibility for women**, locate the ADR body close to the community it seeks to serve, in accessible locations (for those with limited mobility), and ensure it is open at times that fit with women's household and childcare responsibilities. Other features that might be important to women include allowing them to bring children to "hearings" and/or providing dedicated childcare services and allowing proceedings to be conducted in various local languages.

39. Through **training and oversight**, the central body should ensure consistent conduct of mediation to reach settlement to avoid perception of arbitrariness or unfairness.
40. **Collect and publish data on disputes** in order to conduct analysis of the use, successes, and shortcomings of ADR. This also allows the EMB to quickly identify where potential issues and disputes are arising and whether it needs to take action—even in the absence of formal complaints. Data and statistics about disputes arising at the local level will also contribute to transparency and help build trust if the EMB can release data about successful resolution of disputes.
41. **Collect and analyze gender-disaggregated data** to evaluate the ADR body's success in implementing its gender equality policy, among other metrics.
42. **Consider language and literacy.** Mediators and conciliators should try to conduct the process in local languages, particularly in diverse nations, and in simplified language that does not pose a barrier to people with low literacy and education.
43. **Ensure integration and cooperation** with other conflict prevention and resolution efforts. Conflict and peacebuilding programs and election dispute mechanisms should be cooperative and mutually reinforcing; the former programs should promote and publicize ADR mechanisms to resolve election disputes, and ADR should support broader peacebuilding efforts. Cooperation can also help to identify members in the community with the credibility and peacebuilding skills to serve effectively as mediators or conciliators and/or networks of trained mediators who could support the ADR body to resolve election disputes.
44. **Cooperation between law enforcement agencies** and ADR bodies is also important during the pre-election period to ensure alleged election offenses and related crimes do not remain unpunished. If such a dispute is raised before the ADR body, while it is not within the scope, the ADR body can inform disputants or refer these disputes to the police or other law enforcement bodies.

## Conclusions

The experiences described above and in the case studies that follow illustrate that there are significant opportunities to use ADR mechanisms to resolve certain types of pre-election disputes. The beneficial characteristics of ADR in elections include the speed and relatively low cost of ADR, greater community involvement, enhanced opportunities for the participation of women and traditionally marginalized groups, and its potential for reducing tensions. On the other hand, there are risks in implementing ADR in elections—especially if they are not carefully planned, appropriately defined in the law, or given adequate resources and training. Risks include confusion between the ADR mechanism and conventional EDR processes, inconsistent outcomes, failure to account for power imbalances, a lack of impartiality and neutrality, challenges to fairness and due process, and dilution or over-delegation of the EMB's responsibility. IFES will continue to develop training resources and educational materials on ADR to assist EMBs and other stakeholders in the planning, design, implementation, and improvement of ADR mechanisms in elections. There is also a clear need for further research and reporting on existing ADR efforts to build on this promising area of dispute resolution in elections. We encourage election academics, practitioners, and observers to collect and share information on the use of ADR in elections, as this remains one of the biggest challenges to learning from and strengthening informal justice mechanisms.

## Annex I: Case Studies

### South Africa

*As a pioneer of ADR in elections, the Election Commission (IEC) in South Africa has used various ADR mechanisms over different election cycles. These have evolved with the socio-political context and have been helpful in preventing and resolving disputes. South Africa's experience shows the importance of clearly defined ADR structures that are representative of local electoral stakeholders and enjoy their trust and confidence, as well as the importance of good training for those carrying out ADR work. One weakness in the South African experience is the failure to collect data on the ADR work that could be published to increase transparency and public trust.*

In 1999, the IEC created Conflict Management Committees (CMCs) and mediation panels in political hotspots with the support of the Electoral Institute of South Africa (EISA).<sup>94</sup> Special monitors were selected at the local level and provided with mediation training. The CMCs were headed by the provincial election officer and were made up of political party liaison representatives, local NGOs, security forces, and members of the mediation panels. Due to their success, the following year the IEC expanded these structures to all South African provinces. The CMCs and mediation panels reportedly deterred conflict and violence, and the number of disputes before the IEC decreased over the years (although general progress in institutionalizing democratic practices also contributed to the decrease).<sup>95</sup> The IEC has broad statutory power to attempt mediation to resolve any objection or appeal that the commission or its officers are required to decide on under the code (Electoral Act of 1998 Art 103), extended in 2003 to include complaints about infringements of the Code of Conduct.<sup>96</sup> Over time, the nature of the complaints has shifted from election violence and intimidation to procedural issues. In the 2004 elections, 253 disputes were brought to the IEC.<sup>97</sup> If the outcome of mediation is not satisfactory to any of the parties, they may take their case to the Electoral Court for a review or application for leave to appeal.<sup>98</sup>

Over the years, the IEC has modified the conflict management structures. In each province, the IEC now has a panel of conflict management experts who are deployed to intervene in conflicts as they arise.<sup>99</sup> The provincial panels are assisted in their work by community panelists at the local level, so they can deal with local conflicts at the source.<sup>100</sup> The panelists are managed by a provincial conflict management coordinator based at the provincial electoral office.<sup>101</sup>

<sup>94</sup> Orozco-Henríquez, J. (2010). *Electoral justice: The International IDEA handbook*. International Institute for Democracy and Electoral Assistance. <https://www.idea.int/sites/default/files/publications/electoral-justice-handbook.pdf>; Jackson, R. (2013). *Using conflict management panels to resolve tension in the second post-apartheid election: South Africa, 1999-2000. Innovations for Successful Societies* – Princeton University. <https://lawsdocbox.com/81640205-Politics/Using-conflict-management-panels-to-resolve-tension-in-the-second-post-apartheid-election-south-africa.html>

<sup>95</sup> In the 1994 elections, before the program was implemented, there were 3,558 disputes. Mediation was in place for the 1999 elections, and the number of disputes fell to 1,113.

<sup>96</sup> Insertion of Sec. 103A to Electoral Laws Amendment Act, 2003 (No. 34 of 2003) (S. Afr.); Tip, I. (2011). Do No Harm: Conflict Sensitive Election Design. In A. Iff (Ed.), *Ballots or Bullets: Potentials and Limitations of Elections in Conflict Contexts* (pp. 42-51). swisspeace. [https://www.swisspeace.ch/fileadmin/user\\_upload/Media/Publications/Conference\\_Paper\\_2010.pdf](https://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Conference_Paper_2010.pdf)

<sup>97</sup> EISA. (n.d.). *South Africa: Conflict prevention and management*. African Democracy Encyclopaedia Project. <https://www.eisa.org/wep/souconflict.html>

<sup>98</sup> The Electoral Court has final jurisdiction in respect of all electoral disputes and complaints about infringements of the Code, Sec. 96 of the Electoral Act, 1998. The Court's jurisdiction to review or hear an appeal against an IEC decision is also set out in Sec. 20 of the Electoral Commission Act, 1996.

<sup>99</sup> Project to Prevent, Mitigate and Manage Election-Related Conflict and Potential Violence in South Africa (PEV-RSA). (2018). *Holding the electoral space: A toolkit on election conflict for the Electoral Commission of South Africa*.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

They are trained to identify and mediate electoral and Code of Conduct disputes. Panelists are approved by the local party liaison committees and enjoy the respect and trust of political parties and the community. The panelists and coordinators work together to ensure that threats and risks of conflict are mitigated, with the panelists working directly to prevent violence. Despite general apprehension that the 2014 elections risked devolving into widespread violence, there was no large-scale violence around those elections or the 2019 elections, which was attributed to the panelists and their "...success [in mitigating these conflicts] by simply listening to people."<sup>102</sup>

Electoral violence and disputes with criminal elements are dealt with by the criminal justice system. If a conflict panelist is dispatched to a situation where there is a grave or criminal violation of the Electoral Code of Conduct, the panelist will advise on a referral of the violation and how to access the criminal or Electoral Court. Panelists can also bring a matter to the attention of the IEC. The legal department of the IEC will then review the issue and refer it to the court if it is sufficiently serious.

Some changes were made to the deployment of conflict panelists in the November 2021 elections. Panelists were deployed full-time, in contrast to their previous deployment on an as-needed basis. Additionally, coordinators were integrated into Joint Operation Centers (JOCs), which are bodies composed of emergency personnel and members of the police and defense forces. These centers were instructed to provide the necessary support to the IEC during emergency situations during the elections.<sup>103</sup> Working with the local party liaison committees, panelists can flag issues that are then fed into the JOC. These are then reported to the provincial JOCs and forwarded to the national JOC, allowing for all security infrastructures to be aware of risks of electoral conflict. In terms of reporting, conflict panelists are not required to submit reports in written form,<sup>104</sup> leading to much of the panelists' work occurring without being recorded in any significant way.<sup>105</sup> During the 2021 elections, the IEC launched an electoral justice online application portal to inform people of the available dispute resolution processes and make it easier to report Code of Conduct infringements. However, IFES was not able to find information on the number or type of disputes where the IEC or conflict panels used conciliation or mediation in the last elections. Some interviewees considered that the IEC should move toward digital collection and management of data as part of an early warning system to detect potential conflicts. The nature of conflict has changed in South Africa since the 1990s, with many pointing to the unrest in July 2021 as a measure of this change. Collection and analysis of local data could inform IEC decisions in identifying threats and in mitigating and handling conflict.<sup>106</sup> This could include decisions to deploy panelists and other relevant structures to affected communities. Data collection about the panels' work could be made public to increase transparency and public trust.

Despite their successes, the IEC budget and investments in the panels have decreased over the years. Some commentators recommend that the IEC ensure the panelists have the structure to be retained long-term and facilitate

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<sup>102</sup> Senior IEC manager, personal communication, November–December 2021.

<sup>103</sup> South African Government. (2021, October 27). MEC Lenah Miga visits the provincial joint operation centre ahead of local government elections, 28 Oct [Press release]. Retrieved from <https://www.gov.za/speeches/mec-miga-visits-provincial-joint-operation-centre-ahead-local-government-elections-28-oct>

<sup>104</sup> Project to Prevent, Mitigate and Manage Election-Related Conflict and Potential Violence in South Africa (PEV-RSA). (2018). *Holding the electoral space: A toolkit on election conflict for the Electoral Commission of South Africa*.

<sup>105</sup> Senior IEC manager, personal communication, November–December 2021.

<sup>106</sup> Ibid.

conversations that build local trust, foster dialogue, and allow communities to take part in critical decision-making processes, but this is against the backdrop of the IEC's dwindling budget.

South Africa is also an example of a country where political party liaison committees (PLCs) have worked well in averting or resolving electoral conflicts.<sup>107</sup> They were introduced in 1999 and are required by law to be established by the IEC at the national, provincial, and municipal levels. They act as a forum for consultation and dialogue between the IEC and the parties, and this has been particularly successful at the national-level PLC. While the PLCs were not intended to be an ADR mechanism,<sup>108</sup> in practice they have found ad hoc resolution to operational problems as they arise, been consulted on law reform, and have helped complainants by educating them on options for referral to appropriate bodies.<sup>109</sup> PLC members also participate in the conflict management structures described above. In the 2019 elections, the IEC used the national PLC to convene Commissioners and parties and agree on how to deal with a suspected multiple voting issue uncovered on Election Day. The IEC established a sample audit in conjunction with the Council of Scientific and Industrial Research—an organization agreed on by most of the party representatives. Ultimately, the audit found no widespread multiple voting. This was a good example of dialogue between the IEC and parties where they had an opportunity to develop a solution and agree on a way forward collaboratively.

## Zambia

*This case study features a positive initiative by the Electoral Commission of Zambia (ECZ) to establish an ADR mechanism to prevent or resolve electoral disputes. The inclusion of religious and community members, together with party representatives, created local ownership. The decentralized structure and comprehensive training allowed members with direct knowledge of the context and the actors involved to resolve disputes quickly through mediation and conciliation. However, some challenges remain. In particular, insufficient training and funding lead to inconsistent reporting and variable approaches to the ADR process.*

Before 2011, under Zambian law, only courts were empowered to adjudicate violations of electoral law. No redress mechanism was available before Election Day, so there was no possibility for a quick remedy for violations during the campaign period that could tamp down tensions. Necessitated by growing tensions during the 2001 election campaign, and influenced by the South African model, the ECZ introduced Conflict Management Committees (CMCs) to resolve electoral disputes via mediation. CMCs were established at the national level—the National Conflict Management Committee (NCMC)—and later in 72 districts (DCMCs) across the country to tackle local issues.<sup>110</sup> Their membership comprised various stakeholders, including political party representatives, law enforcement and other government agencies, religious leaders,<sup>111</sup> and representatives of civil society. After the successful pilot of this

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<sup>107</sup> Napier, C.J. (2015). Political party liaison committees as conflict resolution mechanisms – The South African experience. *Journal for Contemporary History*, 40(2), pp. 156–175.

[https://scholar.ufs.ac.za/bitstream/handle/11660/3340/contemp\\_v40\\_n2\\_a8.pdf?sequence=1&isAllowed=y](https://scholar.ufs.ac.za/bitstream/handle/11660/3340/contemp_v40_n2_a8.pdf?sequence=1&isAllowed=y)

<sup>108</sup> Senior IEC manager, personal communication, November–December 2021.

<sup>109</sup> EISA. (2014). *Election Update: South Africa 2014*. <https://aceproject.org/ero-en/regions/africa/ZA/south-africa-eisa-election-update-compendium-2014>

<sup>110</sup> Until 2011, there were 72 districts in Zambia. Now there are 118.

<sup>111</sup> There is currently a proposal to include traditional leaders in the membership of the committees based on the political gravitas that they will bring to the committees and their social standing in society.

ADR mechanism, the legislature formalized the mandate of the CMCs<sup>112</sup> to resolve electoral conflicts through mediation or conciliation in 2006.<sup>113</sup>

The chair of the ECZ appoints the chair of the NCMC,<sup>114</sup> and the CEO of the ECZ sits on the NCMC. The committee members at district level appoint their own chair to encourage increased local ownership. District electoral officers (DEOs)<sup>115</sup> play a key role in the DCMCs, including constituting the committees. Membership in the committees is voluntary, and members receive an allowance while serving on the committee. From the start, the ECZ provided CMC members with guidelines and training on mediation, which contributed to the success of this ADR mechanism and the reduction in the number of petitions filed in the court.

Complaints to be resolved by the DCMCs are written and submitted to the DEOs, who determine whether the committee should convene and handle the dispute. Within 24 hours of receipt, the committee meets to decide under the guidance of the DEO whether the complaint should be handled by the DCMC (for minor, local disputes), or referred to law enforcement agencies or the national CMC.<sup>116</sup> The DEO selects the members of the DCMC to mediate a given dispute. Complaints before the district CMCs primarily result from minor violations during the campaign period, including destruction or defacing of campaign posters, insults traded between candidates, and disputes over campaign venues. Where the district CMC concludes it cannot address disputes, including major disputes between political parties, abuse of state resources, and results disputes, it refers the disputes to the national CMC.

The CMCs have no power to compel parties to participate in mediation or conciliation, requiring consent from the disputants and aiming to reach a voluntary solution or settlement rather than imposing an enforceable sanction. If the complainant/respondent is not satisfied with the outcome of the mediation, the dispute can be brought to the national CMC or ECZ before further consideration by the court, although disputants do not usually take a minor violation to court.<sup>117</sup> Alternatively, the DEO or ECZ can present a report of the dispute and its resolution to the court if they are not satisfied with the result at the DCMC level. During the 2016 elections, the High Court refused to consider a case that had not been brought first to a CMC,<sup>118</sup> in line with the courts' power to promote ADR.<sup>119</sup>

<sup>112</sup> Electoral Act, 2006 (No. 12 of 2006) § 110 (1) (Zam.): Whenever the Commission, the Director of Elections, an election officer or any person is required under this Act to decide an objection, dispute, complaint or an appeal, the Commission or that person may attempt to resolve the issue, that is the subject of the objection, dispute, complaint or appeal, through conciliation or mediation.

<sup>113</sup> The amendment to the Electoral Act, 2006 was drafted in 2003 and passed by the National Assembly in 2006; Jackson, R. (2013). *Creating avenues to resolve election disputes: conflict management committees in Zambia, 2001 – 2011. Innovations for Successful Societies* – Princeton University. [https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy\\_Note\\_ID222.pdf](https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy_Note_ID222.pdf)

<sup>114</sup> The Electoral Process Act, 2016 (No. 35 of 2016) § 113(3) (Zam.).

<sup>115</sup> The DEO is a permanent employee of local government, leading some to question their impartiality and call for a broader membership of the DCMCs.

<sup>116</sup> Electoral Commission of Zambia. *Conflict Management*. <https://www.elections.org.zm/conflict-management/>

<sup>117</sup> Cases that a disputant might bring to court tend to involve election administration issues such as voter registration, candidate registration, abuse of state resources and results disputes.

<sup>118</sup> The United Party for National Development filed a case against the Zambia National Broadcasting Corporation, which was dismissed by the High Court on July 22, 2016. See The Carter Center. (2016). *The Carter Center's experts' mission to the Zambian presidential and parliamentary elections 2016 – Final report*. [https://aceproject.org/ero-en/regions/africa/ZM/zambia-final-report-limited-observation-mission-to/view?set\\_language=en](https://aceproject.org/ero-en/regions/africa/ZM/zambia-final-report-limited-observation-mission-to/view?set_language=en)

<sup>119</sup> See also §118(2)(d) of the Constitution of Zambia: In exercising judicial authority, the courts shall be guided by the following principles: alternative forms of dispute resolution, including traditional dispute resolution mechanisms, shall be promoted, subject to clause (3).

The CMCs were criticized by EMB and political party officials as being merely an “academic” exercise without “sanctions or formal findings of wrongdoing.”<sup>120</sup> To address this deficiency, in 2016 the ECZ<sup>121</sup> gave district CMCs an added mandate<sup>122</sup> to recommend the suspension from campaigning or the disqualification of any political party or candidate who violates the Code of Conduct. The NCMC considers the merits of the recommendation and submits its views to the ECZ, which considers the case and takes the decision. The new mandate has been well-received by members of the district CMCs, who view it as increasing political parties’ respect for their decisions and recommendations. However, awareness of this new mandate remains low, and it was not widely used in the 2021 elections. Some experts believe it is appropriate that the DCMCs only have the power to recommend, rather than impose, sanctions. “The DCMCs were not created to punish parties to a dispute; instead, they were designed to promote cohesion between political parties and the communities.”<sup>123</sup> Other experts take a different view and argue that the CMCs’ lack of enforcement powers limits their effectiveness and impact.<sup>124</sup> But this was how the CMCs were designed: “The ECZ established the committees to be advisory, not punitive.”<sup>125</sup> Such ADR mechanisms are meant to complement, not replace, judicial or other dispute resolution and law enforcement mechanisms.

Despite a positive start, the impact of the CMCs has been mixed. Between 2001 and 2011, the ECZ and international observers agreed that they helped reduce violence and tension during campaigns.<sup>126</sup> However, international observers pointed to challenging timeframes and lack of training at the district level,<sup>127</sup> and the ECZ found that many rural districts did not follow the mediation rules and recordkeeping requirements, with training inadequacies appearing to be the problem.<sup>128</sup> The view of the CMCs began to turn around from the 2011 elections, with the 2011 EU Election Observation Mission (EOM) report noting that the CMCs were “very active in places where the electoral contests were particularly hard fought, and they served a valuable role in resolving matters such as disputes about posters, insults traded between candidates, and threats of violence.”<sup>129</sup> Similarly, the EU EOM in 2016 observed that “in many districts, CMC mediation helped diffuse tensions and solve minor disputes<sup>130</sup> between parties...,” and the CMCs were “useful as a discussion platform for political parties.”<sup>131</sup> The EISA Election Observation Mission (EOM) from 2016

<sup>120</sup> Jackson, R. (2013). *Creating avenues to resolve election disputes: conflict management committees in Zambia, 2001–2011*. *Innovations for Successful Societies* – Princeton University.

[https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy\\_Note\\_ID222.pdf](https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy_Note_ID222.pdf)

<sup>121</sup> The Electoral Process Act, 2016 (No. 35 of 2016) §110(2) (Zam.).

<sup>122</sup> Electoral Process (Code of Conduct) (Enforcement) (Amendment) Regulations, 2020 (Statutory Instrument No. 35 of 2020), GOVERNMENT GAZETTE (SI). Electoral Act No. 2 (1991) Government Gazette (Acts) § 3A(4) and 4(1) (Zam.).

<sup>123</sup> IFES Zambia, personal communication, September 2021.

<sup>124</sup> Magasu, O., Banda, D. & Muleya, G. (2020). An evaluation of the challenges in the management of electoral conflicts in Zambia: A case study of Lusaka conflict management committees. *Zambian Journal of Educational Management, Administration and Leadership*, 1(1), 59–69. <https://web.unza.zm/index.php/ZJEMAL/article/view/214/194>

<sup>125</sup> Jackson, R. (2013). *Creating avenues to resolve election disputes: conflict management committees in Zambia, 2001–2011*. *Innovations for Successful Societies* – Princeton University.

[https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy\\_Note\\_ID222.pdf](https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy_Note_ID222.pdf)

<sup>126</sup> Centre for Public Impact. (2017, December 13). *Conflict management during Zambian elections*.

<https://www.centreforpublicimpact.org/case-study/conflict-management-elections-zambian>

<sup>127</sup> Jackson, R. (2013). *Creating avenues to resolve election disputes: conflict management committees in Zambia, 2001–2011*. *Innovations for Successful Societies* – Princeton University.

[https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy\\_Note\\_ID222.pdf](https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy_Note_ID222.pdf). See also Chasulwa, P. An evaluation of the effectiveness of conflict management committees (CMCs) in the management of electoral conflicts in Zambia. *The International Journal of Multi-Disciplinary Research*. <http://www.multiresearch.net/cms/publications/CFP8882018.pdf>

<sup>128</sup> Jackson, R. (2013). *Creating avenues to resolve election disputes: conflict management committees in Zambia, 2001–2011*. *Innovations for Successful Societies* – Princeton University.

[https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy\\_Note\\_ID222.pdf](https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy_Note_ID222.pdf)

<sup>129</sup> European Union election observation mission final report: Zambia – General elections 20 September 2011. (2011).

[https://www.eods.eu/library/FR%20ZAMBIA%202011\\_en.pdf](https://www.eods.eu/library/FR%20ZAMBIA%202011_en.pdf)

<sup>130</sup> The most common complaints dealt with were destruction of campaign material, inflammatory language, and personal insults.

<sup>131</sup> European Union election observation mission final report: Republic of Zambia – General elections and referendum 11 August 2016. (2016). [https://www.eods.eu/library/final\\_report\\_eu\\_eom\\_zambia.pdf](https://www.eods.eu/library/final_report_eu_eom_zambia.pdf)

noted “with satisfaction the efforts made by the ECZ to defuse tensions by using the Conflict Management Committees...to resolve political party violence...”<sup>132</sup> However, the 2016 EU EOM also pointed out that “their performance and effectiveness greatly varied,” and they had “limited transparency.”<sup>133</sup> The Carter Center Report on the 2016 elections noted the lack of transparency, in that CMC decisions were not published and their hearings were not public.<sup>134</sup>

To date, the perception of the CMCs’ impact remains mixed, and donor support is relatively low. The CMCs are seen as a low-profile local activity, in contrast to high-profile, high-tech activities like electronic results transmission that feature in many electoral support projects. The DCMCs face several challenges, including reporting, which is key to transparency. Data on the number of disputes filed, handled by CMCs, and resolved, or filed in the courts, is difficult to obtain. This information is typically received by the ECZ after the election period and not while the campaign period is ongoing,<sup>135</sup> indicating a significant gap in reporting among DCMCs, and possibly poor coordination and recordkeeping at the ECZ.

Accessibility of DCMCs remains a challenge, primarily due to geographic distance for people in rural areas. The size of some districts makes it difficult to travel to the district center to file complaints and attend mediation sessions. As a result, many cases are not brought before the committees. The volume of complaints received by the DCMCs also has implications for their funding, with districts that receive fewer complaints receiving less funding, and then being mandated to meet only once or twice to hear disputes. The relocation or transfer of committee members at the rural DCMC level to other areas also leads to weakened efficiency and the need for further training. The size of some districts presents a challenge by overwhelming the DCMCs and limiting their capacity to effectively address all the disputes brought before them. For example, Lusaka’s over 3 million people, 33 wards, and seven outside constituencies leave the Lusaka CMC unable to deal with the volume and complexity of electoral disputes effectively.<sup>136</sup> While challenges remain, these committees have had a positive impact in reducing conflict and tensions.

## Myanmar

*Myanmar presents an example of the importance of establishing rules and providing training for election officials on mediation techniques and education for stakeholders. These elements ensure that there is a defined and consistent process and practice. Myanmar’s experience in 2020 also shows the importance of reporting and communicating on the ADR process to enhance public trust with the Union Election Commission (UEC) and the entire election process. The unconstitutional and illegal actions of the military in the post-election period irrefutably tainted the 2020 election process and the perception of EDR and ADR mechanisms. While these ADR mechanisms could not have prevented*

<sup>132</sup> EISA election observer mission to the 11 August 2016 general elections and referendum in the Republic of Zambia - Preliminary Statement. (2016, August 13). <https://www.eisa.org/pdf/zam2016eom0.pdf>

<sup>133</sup> European Union election observation mission final report: Republic of Zambia – General elections and referendum 11 August 2016. (2016). [https://www.eods.eu/library/final\\_report\\_eu\\_eom\\_zambia.pdf](https://www.eods.eu/library/final_report_eu_eom_zambia.pdf)

<sup>134</sup> The Carter Center. (2016). *The Carter Center’s experts’ mission to the Zambian presidential and parliamentary elections 2016 – Final report*. [https://aceproject.org/ero-en/regions/africa/ZM/zambia-final-report-limited-observation-mission-to/view?set\\_language=en](https://aceproject.org/ero-en/regions/africa/ZM/zambia-final-report-limited-observation-mission-to/view?set_language=en)

<sup>135</sup> United Nations Development Programme Zambia. (n.d.). Consolidation of the Electoral Process in Zambia: Support to the 2015–2017 Electoral Cycle - Project Document. [https://info.undp.org/docs/pdc/Documents/ZMB/Final%20Draft%20Prodoc18\\_06.doc](https://info.undp.org/docs/pdc/Documents/ZMB/Final%20Draft%20Prodoc18_06.doc)

<sup>136</sup> Chasulwa, P. An evaluation of the effectiveness of conflict management committees (CMCs) in the management of electoral conflicts in Zambia. *The International Journal of Multi-Disciplinary Research*. <http://www.multiresearch.net/cms/publications/CFP8882018.pdf>

*a military coup, their use should still be encouraged to resolve local community disputes in Myanmar, outside of elections. The participation of women and the enthusiasm of mediators in taking part in dialogue and reaching settlement confirmed to IFES the importance of expanding mediation in Myanmar.*<sup>137</sup>

In Myanmar, with the exception of voter registration and candidate nomination objections, the EDR process is centralized in the capital, Naypyidaw. The system for resolution of election results petitions does not provide for an independent and impartial arbiter, nor for judicial review of UEC or Election Tribunal decisions. In an effort to defuse tensions during the pre-election period and address the lack of decentralized adjudication mechanisms, the UEC established election mediation committees (EMCs) for the first time in 2015. The commission issued a notification at the start of the campaign period, which did not include many details about the mandate or the roles and responsibilities of the committees. The absence of rules or training in 2015 left the door open for inconsistency across the Myanmar's regions and states. In some instances of mediation, the major political parties reached a resolution to the detriment of the weaker party or independent candidates by means of an unequal process in which the weaker party did not have a fair opportunity to contribute its views.

In 2020, the UEC adopted an amendment to its regulations to institutionalize EMCs for pre-election disputes. The challenges mentioned above were partly remedied in the 2020 general election preparations through the training of more than 850 election officials—chairs of EMCs—at the township, district, and regional levels. The UEC, with the support of IFES, developed an [EMC guidebook](#) and a voter education poster on the role of mediation committees; produced an EMC training [video](#); and disseminated [frequently asked questions](#) to inform candidates, political parties, and voters of this mechanism for dealing with disputes from the start of the campaign up to Election Day. EMCs played a prominent role in resolving disputes in the pre-election period, which was commended by observers (see text box and graphic, next page).<sup>138</sup> Similarly, the Asian Network for Free Elections (ANFREL) reported that stakeholders found EMCs resolved election disputes promptly during the campaign and that the disputes escalated beyond the township level. As EMCs played a vital role in Myanmar's elections, it is essential to monitor their progress in mediating political party disputes, identify gaps and challenges, and consider improvements to EMCs for future elections. Unfortunately, the UEC did not gather official data on EMCs' resolution of disputes and failed to communicate to the public information on the outcomes of the mediation process and the nature of the disputes addressed. Increased transparency about this encouraging mode of resolution of pre-election disputes could have helped build trust in the UEC.

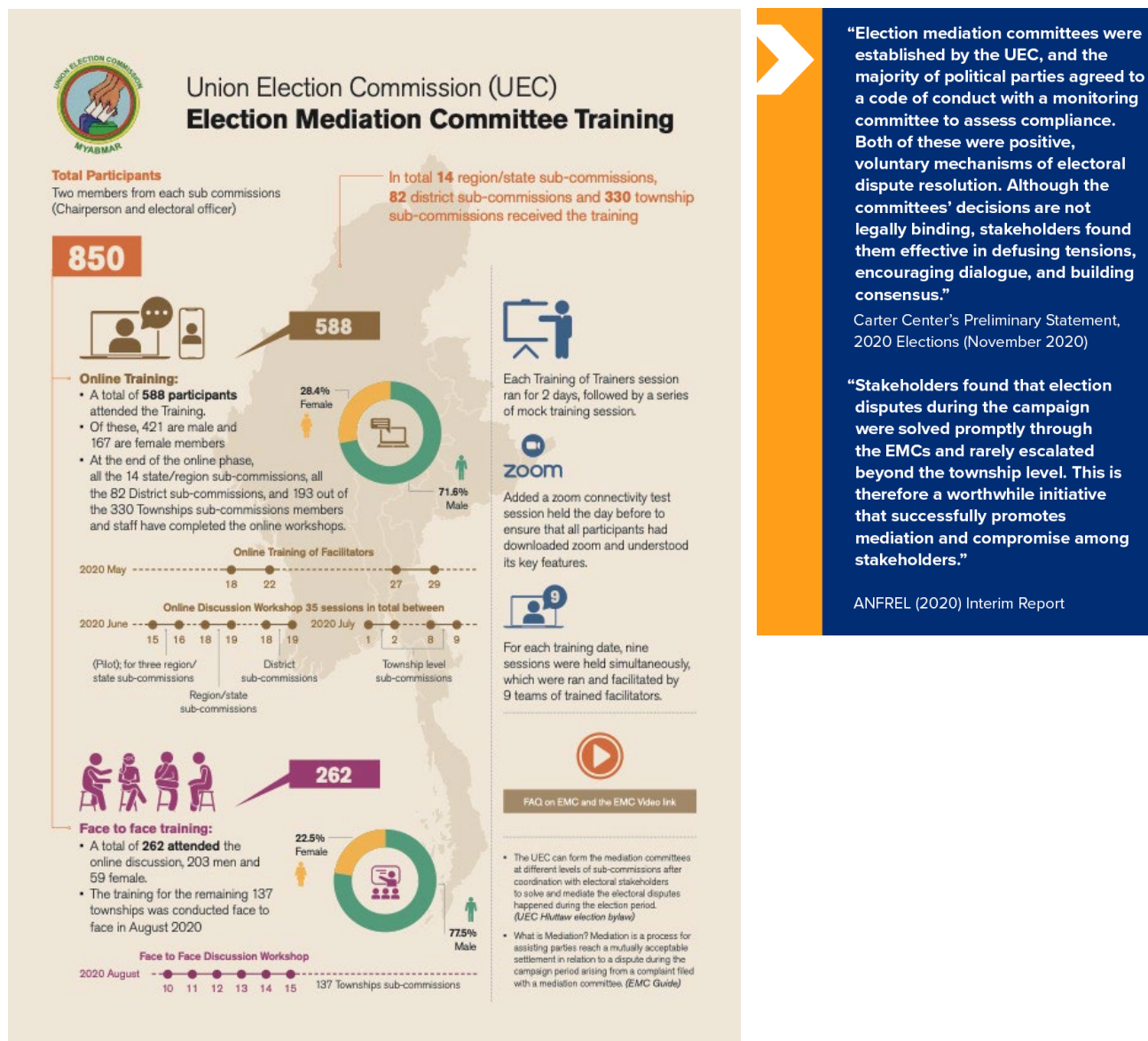
In 2020, the EMC handbook included a requirement to include at least one woman on every committee. When the UEC requested that relevant institutions nominate representatives to form the mediation committee, it insisted on the need for gender inclusion. As a result, the representation of women increased significantly on these committees, with the UEC reporting a total of 18 percent to 20 percent women per EMC formed at the township, district, and regional

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<sup>137</sup> Several organizations have led successful mediation projects at the community level in Myanmar. These include Mercy Corps, with which IFES partnered on the design of the EMC training curriculum and selection of trainers/mediators in 2020.

<sup>138</sup> The Carter Center. (2020, November 10). *Election observation mission Myanmar, general election, November 8, 2020: Preliminary statement*. [https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/myanmar-preliminary-statement-112020.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/myanmar-preliminary-statement-112020.pdf)

levels. This contrasted favorably with the complete absence of women as members of the UEC or the Election Tribunals in 2020.<sup>139</sup>



Further research is needed to determine the impact of women's membership on the EMCs in the community. One positive potential impact is that participation in ADR bodies during elections can build women's skills at the local level and enhance community involvement in the dispute resolution part of the election process. Women's involvement in ADR mechanisms can also set a precedent for their increased roles in mediating other types of disputes outside election periods.

An internal monitoring report compiled by IFES<sup>140</sup> after the 2020 elections indicated noted a total of 1,010 EMC meetings. Most of the EMCs (90 percent) from the region/state, district, and township levels reported holding at least

<sup>139</sup> IFES Myanmar. EMC 2020 elections [Internal report].

<sup>140</sup> *The role of election mediation committees in the 2020 general elections in Myanmar* [unpublished manuscript].

one meeting; 601 disputes were submitted to EMCs across Myanmar. The number of disputes received per EMC ranged from one to 25. Of 397 EMCs, 180 (45 percent) received disputes. Even when EMCs did not receive any disputes, most held at least an introductory meeting to explain the role of EMCs and the applicable laws and rules during the campaign.<sup>141</sup>

## United States

*The U.S. experience shows how a successful pilot program by the Federal Election Commission (FEC) became an established practice with clear rules and guidelines on mediation established prior to the adjudication of disputes. This case study provides a good example of effective training and voter education materials. The FEC provides valuable information on its website on the use of mediation and developed a manual to guide complainants and respondents in the process.*

In 2000, the FEC initiated a pilot program to promote compliance with the Federal Election Campaigning Act and FEC regulations on campaign finance, with the following explicit goals: "... to expedite resolution of some enforcement matters, reduce the cost of processing complaints, and enhance overall FEC enforcement."<sup>142</sup> The FEC set up a dedicated ADR team, enabling parties to a dispute to enter into direct negotiation or mediate the issue. Following an evaluation of the first year of the program, evaluators found that "the ADR Office processed 61 cases, of which 47 were concluded with negotiated agreements. The independent evaluation interviewed respondents and members of the election bar and concluded that 90 percent of respondents believed they saved time and money using the ADR Program."<sup>143</sup>

The success of this program led to the institutionalization of ADR at the FEC for the U.S. elections in 2002. In addition to the initial strategic goal, the then-chairman, David Mason, also noted that "The ADR Program has proven to be an important contributor to the FEC's civil law enforcement efforts. ADR has expanded the reach of our enforcement efforts, resolved complaints quickly and promoted compliance with campaign finance laws through an emphasis on remedial and preventative action." The FEC found that the attorneys on its teams are able to concentrate on more important or complex cases.

Two decades later, the FEC still offers this option for specific cases, which are assigned to the ADR office by commissioners or referred by the Office of the General Counsel, the Report Analysis Division, or the Audit Office.<sup>144</sup> The FEC also provides educational information on its website and developed a guide for complainants, which explains the objective and details of this ADR process.<sup>145</sup> The manual enables disputants to understand the nature of the

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<sup>141</sup> Some EMCs indicated that some disputes were mediated on Election Day or during field visits, and therefore meetings were held or disputes submitted by telephone or on the spot. Some meetings were therefore not recorded.

<sup>142</sup> Federal Elections Commission. (2000, August 1). *FEC institutes pilot ADR program* [Press release]. Retrieved from <https://www.fec.gov/updates/fec-institutes-pilot-adr-program/>

<sup>143</sup> Federal Election Commission. (2002, October 3). *Commission's pilot ADR program made permanent* [Press release]. Retrieved from <https://www.fec.gov/updates/commissions-pilot-adr-program-made-permanent/>

<sup>144</sup> Federal Election Commission. (2012, May). *Guidebook for complainants and respondents on the FEC enforcement process*. [https://www.fec.gov/resources/cms-content/documents/respondent\\_guide.pdf](https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf)

process, whether it is binding, the relevant timeline, and what to expect from this process. The FEC also provides detailed information on the history of the ADR pilot program.

## Kenya

*The experience of the Peace Committees, established by the EMB as a decentralized ADR body, demonstrates the need for an ADR body to have a clear mandate and procedures established in advance. Otherwise, it risks inconsistency in its composition and practices. Kenya also demonstrates the use of ADR by a tribunal composed of magistrates and professionals as a first step in the adjudication of disputes, including inter- and intra-party disputes and party nominations, and the provision of an avenue to file an appeal.*

Article 159(2) of Kenya's Constitution encourages the use of ADR mechanisms (although not specifically for EDR), including reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms.<sup>146</sup> The Code of Conduct for elections (Schedule II of the Election Act) provides that the Independent Electoral and Boundaries Commission (IEBC) will establish Peace Committees composed of election officials, religious leaders, party representatives, and government officials. The intent was to channel disputes through the Peace Committees for mediation, conciliation, and negotiation prior to filing a complaint with the Code of Conduct Enforcement Committee at the IEBC in Nairobi, which had quasi-judicial powers. But in the 2017 elections, these mechanisms were not properly set up with a clear mandate or rules, and they have remained largely inoperative and ineffective.

During the 2013 elections, the IEBC established Peace Committees<sup>147</sup> in each constituency, chaired by the returning officers appointed by the IEBC chair. These committees could issue warnings or liaise with other agencies, such as the prosecutor's office or security agencies. However, the IEBC issued no specific rules to govern the operation of the Peace Committees.<sup>148</sup> Similarly, in the 2017 elections, the IEBC did not adopt any rules or guidelines to define the roles, responsibilities, or functioning of the Peace Committees. While the Code of Conduct (incorporated in the Elections Act) provides that the IEBC establishes the committees and the returning officer leads them, the IEBC reported that, in some places, county officials took ownership, undermining the role of the election officials and contravening the law. These committees were not established in a consistent manner across Kenya in either 2013 or 2017. For the 2022 elections, IEBC is now considering regulating the Peace Committees to provide a first avenue for addressing disputes about the Code of Conduct through mediation or conciliation, rather than filing disputes directly at the central level with the EDR committee or with the Code of Conduct enforcement committee in Nairobi.

In addition to the Peace Committees lacking defined authority during the 2013 and 2017 elections, there are no records of the cases the committees handled or of decisions they made. In the 2017 elections, due to the lack of training, some returning officers reported taking decisions and imposing sanctions on candidates for breaches of the

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<sup>146</sup> Constitution of Kenya, 2010, Article 159(2)(c).

<sup>147</sup> The Elections Act, 2011 (No. 24 OF 2011), Second Schedule §17 (Kenya): "(1) The Commission may establish peace committees in every constituency during an election and referendum period. (2) Every political party, referendum committee, candidate, official and agent shall- (a) acknowledge the activity of peace committee established at the constituency level by the Commission (...)"

<sup>148</sup> *Pre-election dispute management: Between judicial and administrative dispute management mechanisms*. (2012, September 17). <http://kenyalaw.org/kenyalawblog/pre-election-dispute-management-between-judicial-and-administrative-dispute-management-mechanisms/>

Code of Conduct. The sanctions reflected limited understanding of the role of mediation and were both excessive and disproportionate. It can be a challenge to build mediation skills for election officials such as returning officers and their deputies, who are used to making decisions on election matters. For the 2022 elections, the IEBC, with IFES's support, developed guidelines and a brochure on the Peace Committees to clarify their composition, roles, and responsibilities, and explaining to stakeholders the appropriate avenue for a dispute or grievance should the ADR process fail. The IEBC also trained all returning officers in ADR prior to the 2022 elections. It is crucial to avoid inconsistent resolution of disputes and to clarify the mandate of each mechanism and potential abuse of authority by members to avoid further increasing political tensions during the pre-election phase.



The Political Parties Dispute Tribunal (PPDT), composed of *permanent and ad hoc* magistrates, advocates, and professionals, is responsible for adjudicating inter- and intra-party disputes relating to party primaries. It also offers mediation to disputants on a consensual basis. If this initiative is successful, it could present an example of judge-led mediation in pre-electoral disputes.

Political parties are required by law to establish an internal mechanism for dispute resolution (IDRM), but they are free to decide on the types of IDRM in their party's internal rules. Early in 2022, the Political Parties Act (2011) was amended; it now requires an attempt to file a dispute through this internal mechanism prior to filing with the PPDT (the law previously required resolution through the IDRM). During the 2017 elections, political parties were required to attempt to resolve their disputes internally but, rarely did so, creating a challenge for PPDT when considering the validity of the disputes.<sup>149</sup> The PPDT aims to limit lengthy proceedings and encourage parties to settle their intra-

<sup>149</sup> The PPDT provided some guidelines and issued model rules in the 2017 elections to guide political parties' internal dispute resolution processes. The Office of the Registrar of Political Parties (ORPP) and the PPDT reported to IFES that political parties often failed to set up these first-step ADR mechanisms, preferring to go directly to the magistrates on the PPDT or the commissioners at the IEBC. The PPDT and ORPP are committed to educating parties further on ADR and encouraging them to establish and use their internal dispute resolution mechanisms for the upcoming 2022 elections.

party disputes, rather than involving judges. It aims to limit the role of judges in internal party politics and therefore limit increased political pressure on them. Despite model rules adopted by the PPDT to guide the parties and candidates, the parties' lack of awareness limited the use of ADR in the 2017 elections.

In preparation for the 2022 presidential and general elections, the PPDT reviewed its regulations and guidelines with the support of IFES and further clarified the use of mediation as a first step prior to the adjudication of a dispute. As a guiding principle, "alternative forms of dispute resolution including reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms shall be promoted" by tribunal members. The regulations state that the PPDT can offer mediation or conciliation to the parties to a dispute. Consent is required from parties or candidates before mediation is attempted. The regulations are then more specific, providing that, after close of pleadings, the Tribunal "may hold a scheduling conference to determine the possibility of alternative dispute resolution." If ADR fails, the tribunal will fix a date for the hearing and decide the case.<sup>150</sup>

The PPDT is an interesting initiative, as the members of the tribunal include a judge as a chair and is established by the judiciary; therefore, this could present a successful example of judicial mediation in pre-electoral matters for intra- and inter-party disputes. If successfully implemented, this practice could expand to pre-election complaints filed before the judiciary, including hate speech or campaign-related disputes.

## Sri Lanka

*Sri Lanka is an example of the need for a clear distinction between EDR and ADR mechanisms to avoid confusion or misplaced stakeholder expectations. This case study also shows the benefits of ADR in providing a quick and decentralized mechanism to complement the formal judicial process. It stresses the importance of voter education to ensure stakeholders are aware of how to use this mechanism and what to expect, and the need for systematic record-keeping.*

The Sri Lankan election legal framework provides that the police investigate and the courts hear election violations (defined as offenses and corrupt and illegal practices). Accordingly, the powers of the Election Commission (EC) limited to resolving problems informally and preventing election violations that arise during the election period. The law does not explicitly provide the EC with quasi-judicial functions, nor does the EC have the power to impose remedies or sanctions over election disputes. The district courts, the High Court, the Court of Appeal, and the Supreme Court are in charge of voter registration, candidate registration, election results petitions, and election offenses, respectively.

In the absence of a clear legal mandate to adjudicate disputes, the EC proactively established Complaints Centers to receive disputes for the first time in the 2015 elections. The composition, powers, and complaint handling procedures of the Complaints Centers cannot be classified as EDR proceedings, but rather as an ADR mechanism. Indeed, the Complaints Centers were used as a mechanism for election officials to engage in discussion and mediate disputes raised by voters or parties and, when needed, to refer complaints to the courts or law enforcement.

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<sup>150</sup> Section 15 and 16 of PPDT draft regulations (procedure).

Complainants often expected the Complaints Centers to issue decisions and impose remedies, although they lacked the power to do so. For the 2019 election, the EC established 25 district election complaints management centers (DECMCs) and a national complaint center at its headquarters.<sup>151</sup> The EC made some data available to observers, as the EU Election Observation Mission (EOM) noted that 3,905 complaints had been reported.<sup>152</sup> The EC also developed a number of voter education materials to make stakeholders aware of this ADR mechanism, producing a flowchart, a leaflet, and videos. These documents clearly explain the powers of the DECMC to refer complaints to relevant institutions or to mediate disputes. The EU EOM report noted that complaints to the EC and DECMCs “were responded to in various ways, including through letters of investigation to other state authorities, the removal of non-permitted campaign material and mediation in minor disputes.” In the 2019 election, the role of Complaints Centers appears to have moved closer to that of a conventional EDR mechanism, with the adoption of rules stipulating the referral, but the DECMC and the EC still lack adjudication powers. The EU report noted a lack of follow-up information about the outcomes of complaints and a lack of unified rules and timelines in the handling of complaints. The EU EOM recommends that the EC issue clear, codified procedures and coordinate recordkeeping by the various bodies involved.

It is worth noting that Sri Lanka successfully introduced mediation as a mode for resolving disputes at the grassroots level three decades ago. The country adopted the Mediation Board Act and established a Mediation Board Commission to lead mediation programs with the policy and administrative support of the Ministry of Justice.<sup>153</sup> Mediation has been a successful practice in Sri Lanka; with a large number of trained mediators, this is now part of the legal tradition. It is therefore important for the EC to continue institutionalizing and strengthening the capacity of election officials to act as mediators during the elections.<sup>154</sup>

This example shows the need to clearly define the scope and mandate of EDR and ADR bodies to avoid confusion and to manage complainants’

**What is the Mandate of the Election Complaints Management Centers?**  
The Election Complaints Management Centers (ECMCs) are established to assist the Election Commission to fulfil its mandate to secure the enforcement of the laws for elections and referendums. These Complaint Centres (CC) address disputes or problems and prevent violations. Management of election complaints are handled by these Election Complaints Management Centers.

**Who are the members of the ECMC and when are they appointed?**  
The ECMC are established from the date of the notice of the proclamation of elections are issued till:  
• At National Level (One month after the date of the declaration of results)  
• At District Level (One week after the date of the declaration of results) and  
• At Divisional Level - Established when necessary  
They ECMC mainly comprise of:  
• Election Officials • Government Officials • Police  
The Election Commission (EC) appoints members to the National Election Complaints Management Centre. For the District and Divisional ECMCs, the EC appoints members as per the recommendation of the District Returning Officers (RO) and Deputy/Assistant Commissioner.

**What are the types of complaints that can be submitted/filed?**  
Examples: illegal display of posters, intimidation of voters and candidates, media violations, illegal campaigning, misuse of state resources, intra-party disputes, violence against women or minorities in elections etc.

**Who can complain?**  
Any citizen or a group of citizens (example: candidates, voters, political party agents, accredited observer groups, etc.)

**Where is the complaint filed?**  
• National Elections Complaints Management Centre (NECMC)  
• District Elections Complaints Management Centre (DECMC)  
• If established, at Divisional Elections Complaints Management Centre (DivECMC)  
(\* If the complaint is filed at the National level, it will be forwarded to the relevant DECMC or DivECMC for consideration.)

**Who has the authority to address the complaint?**  
• DECMC and DivECMC will address complaints as the first instance. But in specific circumstances such as widespread or severe violations, the NECMC can address the complaint first. If a complainant is not satisfied with the action or decisions from the CC, the complainant can file an appeal before the Commission at the district or central election office.  
• NECMC will address any cases referred by the DECMC and DivECMC.  
• If a complainant is not satisfied with the action/decision from DECMC or DivECMC, the complainant can appeal to the NECMC or the Election Commission.

**Who has the authority to address the complaint?**  
• Any aggrieved party who is not satisfied with the decision made by the District and Divisional ECMC, an appeal can be directed to the NECMC or the EC.  
• The Commission will regularly publish reports and decisions relating complaints and actions taken on its official website and in the media.

**What is the format for Complaints?**  
The complainant may file his/her complaint using a standardised form made available at all complaints centers, or on the Election Commission website, free of charge. The form can be filled out in any one of the three languages (Sinhala, Tamil or English), and can be submitted in person, electronically, by post, fax or verbally. If no form is available, the complainant may file on a blank paper including all the required details.  
Upon request, reasonable accommodations shall be provided by the CC to persons with disabilities to fill the complaint form.

**If evidence is available, the complaint may include:**  
The Commission encourages the complainant to include the type of violation, description of the incident, date, time, place, district and police area, perpetrator (if known), evidence (photos, videos, audio, official documents, witness statements, etc.), contact information of the complainant (which will be kept confidential by the CC).

**What is the process upon receiving a complaint?**  
The CC will immediately register the complaint, and provide a receipt when possible. The CC will determine the severity, urgency, and the nature of the disputes and decide whether to conduct an investigation. The CC can contact parties involved, seek support from the police to identify voters or officials, and conduct interviews or on-site visits to collect evidence.

**What type of action can the ECMC take?**  
Depending on the nature of the allegation, NECMC, DECMC or DivECMC will take the following decisions/actions pursuant to the prevailing laws:  
a. Refer the alleged violation, including cases of election violence, to the police, depending on the nature of the violation; or  
b. Refer the case to the relevant authorities (e.g. relevant ministries, etc.), or  
c. Solve the problem through mediation, or by requesting police to take prompt actions according to its mandate.

For more information, please visit - [www.elections.gov.lk](http://www.elections.gov.lk)

<sup>151</sup> European Union election observation mission final report: Democratic Socialist Republic of Sri Lanka – Presidential election, 16 November 2019. (2020). [https://www.eods.eu/library/sl2019\\_final\\_report\\_24\\_january\\_2020.pdf](https://www.eods.eu/library/sl2019_final_report_24_january_2020.pdf)

<sup>152</sup> Between 8 October and 14 November, the EC received 3,905 complaints. Only 27 related to violent incidents. The police deployed 173 personnel for elections under the direction and control of the EC and played a prominent role in the coordination and investigation of complaints and allegations.

<sup>153</sup> Sri Lanka Government. *Mediation Board Commission*. <http://www.mediation.gov.lk/whoarewe>

<sup>154</sup> Ibid. “Considering the success rate of mediated settlements to varying disputes through the use of mediation services in Sri Lanka over the last 3 decades, it is evident that mediation has become a largely popular method of conflict resolution widely available in the country.”

expectations. Training and coordination with relevant institutions such as the police and prosecutors should be encouraged to clearly understand the scope of their respective mandates. Indeed, while ADR should be encouraged, it is not always the appropriate forum to address severe violations.

## Ethiopia

*Ethiopia is an example of how vulnerabilities in the design and execution of EDR mechanisms can lead to ad hoc and inconsistent dispute resolution in practice, as well as a blurring of the line between formal EDR and informal ADR. This can cause confusion for stakeholders and also lead to forum-shopping. On the positive side, at the central level, the political parties' joint forum, coordinated by the EMB, had some success as an ADR mechanism for dialogue and the prevention and resolution of disputes, including inter-party disputes.*

The Ethiopian Electoral Law provides for EDR mechanisms to be established by the EMB (the National Election Board of Ethiopia, or NEBE), in the form of grievance hearing committees (GHCs) at all levels, with an appeal to the courts.<sup>155</sup> The NEBE Management Board also has a role in resolving certain categories of disputes, notably counting and results disputes, with an appeal to court. The GHCs are EMB-led complaint bodies, each staffed by an election official and members of the public serving in an unpaid capacity. Their composition and operations make them potentially akin to an ADR mechanism in that the members of the public who serve on them are selected by voters from the local area, the proceedings are intended to be informal and accessible to all without needing a lawyer, complaints can be presented verbally rather than in writing, and their decisions must be rendered within a few days. But, under the law, they are a formal part of the EDR appeals process. Although the GHCs were intended to be established at all levels, this did not happen in most constituencies or polling stations during the 2021 elections, due partly to the difficulty of finding thousands of volunteers willing to serve on them.<sup>156</sup>

Furthermore, the NEBE did not adopt procedures for the handling of disputes, and Parliament did not approve the draft regulation for the courts' handling of electoral disputes (including those that came to the courts on appeal from GHCs). In the absence of a fully functioning EDR system, some parties raised their disputes and complaints directly with diverse departments at NEBE headquarters, creating even more confusion and expectations that their disputes would be addressed. There must be clarity as to the available mechanisms and their procedures—whether formal or informal modes of resolution. And ADR should not eclipse formal EDR mechanisms, especially for legitimate grievances that may require a legal remedy rather than a practical resolution (or both). An Inquiry Council (a panel of experts appointed by NEBE and envisaged in the Electoral Law) was established to investigate voter registration complaints from the Somali region.<sup>157</sup> However, without clear procedures, it was unclear how this body operated in practice.

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<sup>155</sup> Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct (Proclamation No 1162/2019), articles 13(7), 15(10) and 151(5) provide for GHCs.

<sup>156</sup> The [NDI/IRI Limited Election Observation Mission for the Ethiopia June 21, 2021 National Elections](#) reported at page 27 the failure to establish grievance hearing committees except in a handful of places. The [EU Election Observation Mission](#) reported at page 26 on a similar problem in the 2010 elections.

<sup>157</sup> The 2019 Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct (Proclamation No. 1162/2019), Article 151(10) provides for an inquiry council.

The disadvantages of informal or ad hoc dispute resolution are that it may provide inconsistent outcomes for different parties (leading to claims of bias), and it can lack transparency unless the EMB rigorously and promptly publishes information about decisions taken. Throughout the electoral process, the NEBE published information on its social media platforms about its mediation efforts with parties and changes to procedures and the electoral timetable. However, no systematic information was available about the number of disputes addressed by the ADR mechanism, or the number of formal complaints received and how each one was resolved. Another potential disadvantage is that some parties may not have had the knowledge or established relationships to raise their disputes informally with the Political Party department of NEBE and therefore may have felt they had no option but to use the potentially slower and more costly route of court challenge. While informal resolution of complaints can be an effective and speedy way to deal with operational problems, it is less suited to addressing violations of the law that should receive criminal sanction (as alleged during voter registration in the Somali region). It may also have been unclear to those parties whose complaints were dealt with informally by ad hoc means that they have a right to appeal the resolution to court, and that they need a written decision against which to appeal.

On the positive side, during the 2021 elections, the ADR mechanisms established by the Electoral Law to resolve inter-party disputes had some success in providing a space for dialogue and the prevention of pre-election disputes. These mechanisms are the political parties' joint forum, set up to enable the resolution of disputes through dialogue and agreement, based only on the consent of interested parties, and the joint council of political parties, to amicably resolve implementation, democracy, and human rights issues arising during the electoral process.<sup>158</sup> The law is clear that pursuing these ADR routes does not preclude a party from lodging a complaint with the formally established EDR bodies.<sup>159</sup> However, there was some overlap between these ADR mechanisms, the informal ad hoc resolution of disputes described above, and the conventional EDR system during the 2021 elections. EDR mechanisms usually have fixed timelines, and their decisions are binding, whereas ADR mechanisms tend not to be. Therefore, it is important for stakeholders to understand the distinction and to make informed decisions on which route to follow and what to expect as an outcome. It is also important to be aware of the risk of forum-shopping if multiple routes of dispute resolution are available to a party.

## Tanzania

*This case study shows how a positive ADR initiative at the district and central levels was used to remedy the lack of an accessible EDR process before the EMB and the judiciary. It also shows that, without proper rules, training, voter education, and transparency, this mechanism will likely provide inconsistent outcomes and will not gain stakeholders' trust.*

The National Election Commission (NEC) establishes an ethics committee in each district and at the national level to resolve complaints about violations of the code of conduct using ADR techniques. The committees are made up of NEC officials and representatives from political parties and the government. The Returning Officer leads this ADR

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<sup>158</sup> The 2019 Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct (Proclamation No. 1162/2019) provides for the NEBE to establish the Political Parties Joint Forum at every level (Article 151) and for political parties to establish a joint council (Article 141).

<sup>159</sup> The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct, 2019, Article 151(4) (Proclamation No. 1162/2019).

mechanism, and there is no cost attached to the filing of disputes. In 2015, the EU Election Observation Mission noted that the committees achieved some success in resolving minor disputes, but other disputes bypassed them and were resolved through direct negotiation between the parties.<sup>160</sup> The introduction of ADR in Tanzania was welcomed, notably due to limitations on bringing a challenge to court to address election disputes. This experience was repeated in the 2020 elections.<sup>161</sup>

Electoral stakeholders noted shortcomings in the ADR process in 2020, in particular that the Electoral Code of Conduct did not provide sufficient guidance on the composition or procedures of the ethics committees, or a clear mandate for their work. There was no detailed process for hearings. IFES was not able to obtain information on guidelines or training programs designed by NEC for the ethics committees. A legal NGO attempted to support drafting of rules, but this initiative did not succeed. While the Code of Conduct should have limited the authority of Ethics Committees to campaign issues or pre-election disputes, parties and candidates reported that the committees also addressed issues related to candidate nomination. The lack of rules can undermine the consistency and fairness of the ADR process and blur the lines between ADR and EDR processes. In the 2020 elections, based on our interviews, stakeholders noted that ethics committees were not considered effective, particularly at the district level. However, they demonstrated some effectiveness at the central level, with the National Ethics Committee providing remedies to 67 of 98 primarily opposition candidates whose nominations were rejected by returning officers.<sup>162</sup> The nominations of hundreds of other would-be candidates were rejected, but only a few filed with the ethics committees.

Because the ethics committees' recordkeeping has been patchy, the process lacks transparency and data about the composition of the committees is limited—in particular, how many opposition politicians were members (the numbers are thought to be very low) and the type and nature of disputes that the committees have resolved.<sup>163</sup> The lack of transparency was not specific to the ethics committees but applied to the overall election process.

These problems, due in part to the lack of a legal framework for ADR, could be remedied through adoption of guidelines, training, and transparency. The NEC's introduction of ADR is a positive initiative that should be strengthened, in particular due to the low trust in the judiciary to address election disputes in Tanzania (often considered ineffective by lawyers themselves). An alternative mode of dispute resolution in elections is even more important in Tanzania following a recent change in the law restricting legal standing. Cases filed before the courts in the country are limited to individuals directly affected by the violations, therefore preventing NGOs or associations from filing on behalf of voters and vulnerable groups to challenge the results.

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<sup>160</sup> *European Union election observation mission final report: United Republic of Tanzania – General Elections*. 2015. (2015). [https://www.eods.eu/library/eu-eom-tz-2015-fr\\_en.pdf](https://www.eods.eu/library/eu-eom-tz-2015-fr_en.pdf)

<sup>161</sup> In Tanzania, interviewees noted that only four cases were filed with the judiciary in the 2020 elections.

<sup>162</sup> National Electoral Commission. Report on the 2020 presidential, parliamentary and counselors' elections. (2021). <https://www.nec.go.tz/uploads/documents/en/1630322400-GENERAL%20ELECTION%202020%20REPORT.pdf>

<sup>163</sup> In its 2020 election report, the NEC did not mention the work of the ethics committees or number of appeals (the only number quoted was for the national ethics committee—164 appeals, mainly about exclusion of candidate nomination). This report seems to indicate that the NEC did not collect information from the ethics committees at the district level.

## Nigeria

*Nigeria's cultural approach to election disputes shows that candidates, parties, and lawyers resist using ADR in pre-election disputes when introduced by the EMB. These parties tend to perceive the disputes as a zero-sum game, and that the courts are better and more objective decision-makers than the EMB. The Nigeria case study also highlights the need to distinguish and adapt solutions for local versus federal issues and the importance of funding for outreach about the use of ADR. The case study features calls for reforms that would position the judiciary to introduce ADR for pre-election disputes, in line with expanding use of ADR in the courts in Nigeria.*

Nigeria has a longstanding practice of traditional ADR in other fields, but electoral stakeholders have appeared reluctant to use ADR since the election commission (INEC) introduced it in 2008 as a means of resolving electoral disputes. In 2011, the INEC established the Alternative Election Dispute Resolution (AEDR) Directorate, composed of election officials. The objective was for the staff of this unit within the INEC to “act as a third-party neutral which can confidentially address the resolution of intra-political party disputes, electoral issues before, during and after elections,” and “assist the courts in timely addressing electoral cases ... and the public and parties in fact finding, early warning monitoring and in the mediation of electoral disputes.”<sup>164</sup> Despite continued efforts to promote the use of ADR to limit and triage the number of disputes, which overwhelmed courts before and after the 2019 general elections, the ADR mechanism in INEC remains under-used and under-funded. In the last election, the AEDR unit limited its mandate to addressing internal disputes within the workplace and was not used as an ADR mechanism for the election process itself.

Another ADR mechanism that works more successfully with INEC is the National Peace Committee (NPC). The NPC facilitated the signing of two national-level accords by the main candidates during the 2019 elections to conduct lawful campaigns and to respect the results. The Commonwealth Observer Group noted that these accords “may have contributed to the generally peaceful atmosphere of the campaign,” and the EU Election Observation Mission (EOM) noted that the accords “enhanced confidence in the process.”<sup>165</sup> The NPC did something similar in 2015, which stakeholders considered helpful. Less impactful in recent elections, the Inter-Party Advisory Committee (IPAC)<sup>166</sup> is a consultative forum for INEC and political parties. According to the 2015 African Union EOM, although the Political Parties Code of Conduct mandates the IPAC to monitor and regulate parties and to sanction offenders of the Code, it appeared lack the capacity to address code violations.<sup>167</sup> More recently, the EU EOM reported in 2019 that IPAC had held only quarterly meetings with INEC at the national level.<sup>168</sup>

In parallel, some experts and academics are calling for introducing ADR in the proceedings of the election court. IFES's nationwide public opinion surveys found that 40 percent of respondents preferred the ability to engage in ADR

<sup>164</sup> INEC. (2012). Draft AEDR Guide.

<sup>165</sup> Report of the Commonwealth Observer Group: Nigeria General Elections, 23 February 2019. (2019). page 23. The Commonwealth. <https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/migrated/inline/NigeriaCOGFullReport.pdf>. See also *European Union election observation mission final report: Nigeria 2019 – General Elections*. (2019). [https://www.eods.eu/library/nigeria\\_2019\\_eu\\_eom\\_final\\_report-web.pdf](https://www.eods.eu/library/nigeria_2019_eu_eom_final_report-web.pdf) and International Republican Institute & National Democratic Institute, 2019, p. 25.

<sup>166</sup> The umbrella body of registered political parties in Nigeria.

<sup>167</sup> *African Union Election Observation Mission Report: Nigeria 2015*, pp. 24-25

<sup>168</sup> *European Union election observation mission final report: Nigeria 2019 – General Elections*. (2019). [https://www.eods.eu/library/nigeria\\_2019\\_eu\\_eom\\_final\\_report-web.pdf](https://www.eods.eu/library/nigeria_2019_eu_eom_final_report-web.pdf)

over-filing before the courts.<sup>169</sup> Based on the experience of previous elections, Nigerian politicians are unlikely to agree to submit their disputes voluntarily to a person or body outside the established judicial system and to accept the resolution or settlement of those disputes as binding.<sup>170</sup> “[I]t may take some time before these same politicians realize that political contest is not necessarily a zero-sum game.”<sup>171</sup> Other election stakeholders also exhibit reluctance to accept dispute resolution by actors outside the judiciary, particularly INEC. Because many electoral disputes involve INEC—either as a party or an actor close to the dispute—disputants do not perceive the ADR structure within INEC to be fully impartial and objective.

Moreover, a distinction should be made regarding the level at which ADR is introduced and the types of disputes it addresses. Willingness to submit disputes to mediation or conciliation during an election may vary among states and depend on whether the election is at the federal or provincial level. A candidate for presidential election may prefer to file directly with the EDR body or the court, whereas a candidate for municipal election may prefer to try mediation with his or her opponent at the local level prior to filing with the central EDR body in the capital. “The Nigerian state is made up of thirty-six states and a federal capital territory and ... no two states exhibit the same tendencies with the same potential to produce pre-election political dispute[s].”<sup>172</sup> Therefore, a failed experience of ADR at the central level or for general elections may not reflect ADR outcomes for a municipal race or for a particular county or province, depending on history and ethnic divisions. Additionally, with stronger outreach to political parties and candidates, and with active encouragement from the courts, ADR could still be a positive initiative to reduce the backlog in Nigeria’s courts at the time of elections.

*As judicially led ADR has proved helpful in other fields of law, its use in election disputes could be explored to ease the backlog of cases in the courts and provide swift resolution.*

Several experts and election practitioners in Nigeria have called for increased use of ADR by the judiciary to resolve delays and backlogs in the electoral courts.<sup>173</sup> There were reportedly at least 644 pre-election challenges in the 2019 general elections, most related to party primary elections.<sup>174</sup> The courts often resolved these late, due to overly long legal deadlines and the volume of cases. The same issues occurred in previous elections; in 2011, the EU EOM recommended the use of ADR to reduce the volume of protracted litigation, suggesting that ADR mechanisms should be referenced political party constitutions.<sup>175</sup> But despite these calls, no ADR mechanisms for election disputes have been set up or piloted within the judiciary.

Judges are generally proponents of ADR, given that it would reduce the burden on the courts, and most jurisdictions of the civil courts have incorporated ADR into their rules of court. At that level, ADR is carried out in court-annexed

<sup>169</sup> IFES Nigeria, Sustaining Electoral Reforms In Nigeria (2021-2026): Programming Options Paper (USAID).

<sup>170</sup> Bello, A.A. & Aminu, R. (2009). Situating alternative dispute resolution (ADR) in the political sphere: Thoughts on mechanisms for pre-election political dispute resolution in Nigeria. <https://dx.doi.org/10.2139/ssrn.1369702>

<sup>171</sup> Ibid.

<sup>172</sup> Ibid.

<sup>173</sup> Gov. Wike advocates Arbitration, ADR for electoral disputes. (2016, November 3). Business Day.

<https://businessday.ng/uncategorized/article/gov-wike-advocates-arbitration-and-adr-for-electoral-disputes/>; Onyekwere, J. (2017, June 6). LMDC advocates ADR for election disputes. The Guardian. <https://guardian.ng/features/lmdc-advocates-adr-for-election-disputes/>

<sup>174</sup> European Union election observation mission final report: Nigeria 2019 – General Elections. (2019). [https://www.eods.eu/library/nigeria\\_2019\\_eu\\_eom\\_final\\_report-web.pdf](https://www.eods.eu/library/nigeria_2019_eu_eom_final_report-web.pdf)

<sup>175</sup> Ibid.

mediation centers. Under the current rules, a court can mandate mediation, or one or both of the parties can apply for it, although the courts recognize that the willing participation of the parties is key to making ADR work. In 2021, the Court of Appeal established a mediation center for appellate-level cases, the first in sub-Saharan Africa.

The chief registrar of the Court of Appeal highlighted the advantages of mediation: “that it saves time, cost and matters are resolved in a more friendly way.” He said that, building on mediation’s success in other fields of the law, judges and other stakeholders could consider its introduction in courts for pre-election disputes. He considers that a significant challenge for ADR in elections is outreach, and he believes that the push for ADR in election disputes cannot come from INEC, as it is a potential party to the disputes.<sup>176</sup> It is also possible that lawyers may oppose ADR, believing that it would decrease their income.<sup>177</sup> A pilot project would need to include outreach to parties and party lawyers as well as training of judges and lawyers in mediation.

## Nepal

*This case study shows the importance of institutionalizing an existing decentralized practice of mediation or conciliation into its rules, rather than relying solely on a heavily centralized formal complaints mechanisms, which is seldom used. The Nepal example also features the challenge of poorly defined mandates of multiple EDR actors, which created confusion in the mandate and limited the efficiency of adjudication processes.*

In Nepal, in fields other than elections, there is a strong practice of mediation at the community level and a growing practice in judicial proceedings. The Constitution provides that ADR should be encouraged, and the government is making ongoing efforts to establish mediation as an essential component of justice-seeking at the local level. Nepal enacted the Mediation Act and established a Mediation Council that is responsible for issuing certification of mediators.<sup>178</sup> The Asia Foundation has led successful mediation programs and trained mediators in several provinces, leading to the resolution of thousands of land or family disputes by local community mediators. Building upon this successful experience, the Election Commission (ECN) could consider introducing mediation or other ADR mechanisms for election disputes.

During the 2017 elections, the ECN established ad hoc EDR committees composed of high-ranking public officials and election officials from the Secretariat of the ECN. The EDR committee at the central level is made up of high-level government officials, over-represented by those from the ruling party. The committees address allegations of violations of the Code of Conduct and issue a recommendation to the ECN. The board of commissioners of ECN then decides on the complaints. The EDR directive establishing the ad hoc EDR committees was published less than three weeks before the 2017 elections,<sup>179</sup> and the effectiveness of the committees was very limited. In addition, the ECN established local-level Code of Conduct Monitoring Committees for the elections. Although the committees were not primarily tasked with resolving disputes, in practice, they appeared to resolve disputes in an informal way during the campaign and on Election Day through conciliation or mediation. The EU Election Observation Mission (EOM) 2017

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<sup>176</sup> Chief Registrar of the Court of Appeals of Nigeria, personal communication, September 1, 2021.

<sup>177</sup> Ibid.

<sup>178</sup> Mediation Council. <https://mediationcouncil.gov.np/>

<sup>179</sup> European Union election observation mission final report: Nepal 2017 - House of Representatives and Provincial Assembly Elections. (2017). [https://www.eods.eu/library/final\\_report\\_eu\\_eom\\_nepal\\_2017\\_23\\_march2018.pdf](https://www.eods.eu/library/final_report_eu_eom_nepal_2017_23_march2018.pdf)

reported that the ECN dealt with complaints about campaign violations “in a largely informal manner.” It appears that there was a practice of mediating disputes at the local level, but it is not codified (neither the election acts nor the EDR procedures refer to mediation). The ECN had little information on the number of disputes that were resolved informally; the local election officers who handled them did not report on the disputes to the central level.

This range of ADR mechanisms lacks guidelines, training, and a clear mandate, and practice is inconsistent. The results are blurred lines between monitoring, settlement, and adjudication. The ECN could consider clarifying the mandate and functions of the ad hoc EDR committees, local election officials, and monitoring committees to merge their roles or establish mediation committees with a clear mandate. Proactive mediation committees could defuse tensions among candidates, parties, and local authorities. This could deter fraudulent acts and mitigate election violence without requiring formal ECN or court proceedings that voters and stakeholders have been reluctant to initiate, notably due to the length of the proceedings in courts and the lack of information on ECN proceedings. The EU EOM reported fewer than 100 complaints formally submitted during the 2017 elections, and no sanctions imposed.<sup>180</sup> The ECN could consider institutionalizing the locally managed ADR system during the pre-election phase, building on existing skills and traditional practices to enhance understanding of the election process and respect for its integrity. This could help address political intimidation, hate speech, and widespread violations of campaign rules.

## Indonesia

*The Indonesia case study features a successful mediation practice that was later introduced in the law and, through important training efforts, resulted in a significant decrease in formal adjudication of pre-election disputes. This example also shows the importance of setting clear deadlines for the mediation process so as not to derail the overall election process, and the central institution's need for reporting mechanisms from decentralized to ensure consistency and oversight.*

In 2012, the Indonesian electoral law<sup>181</sup> granted the Election Supervisory Body of the Republic of Indonesia (Bawaslu) the authority to take actions related to prevention, supervision, and enforcement of election criminal law violations; enforcement of election administrative law; and dispute resolution for the election process.<sup>182</sup> The law also specifically empowered Bawaslu<sup>183</sup> to use ADR mechanisms in its proceedings for disputes related to candidate nominations.<sup>184</sup>

Initially, the law specified no timeline and no regulations for each stage of the ADR process, which created confusion regarding the deadline for introducing and concluding mediation processes. These absences and the resulting confusion had the potential to negatively impact the election process. The 2014 election cycle evidenced that the

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<sup>180</sup> Ibid.

<sup>181</sup> General Elections Law, 2012 (Law No. 8 /2012) (Indon.).

<sup>182</sup> Of the five authorities, only the authority to resolve disputes over the electoral process has two stages of the process, namely deliberation (alternative dispute resolution) and adjudication (electoral dispute resolution).

<sup>183</sup> Indonesia has three institutions related to election management: the general election commission, the election supervisory body (Bawaslu) and the ethical honorary council.

<sup>184</sup> According to Law No. 8 /2012, three stages are required in resolving election disputes: 1) BAWASLU invites the parties to consult to reach a mutual agreement in deliberation; 2) if no agreement is reached, BAWASLU will ask the parties to appoint a mediator to establish a way for the parties to agree; 3) if there is still no agreement, then BAWASLU will act as an arbitrator whose decision must be implemented.

timeline for mediation of disputes was lengthy and that, by the time the parties settled their nomination or registration disputes, ballot papers had already been printed, rendering their agreement void. Bawaslu then advocated for reform and, in 2017, the legislature introduced new provisions detailing what is considered a criminal offense, administrative violation, and electoral process dispute. The legislature also stated that Bawaslu could initiate mediation in case of disputes relating to candidates' registration in the elections and set a three-day timeframe from the time of receipt for attempting to resolve an election dispute through ADR. The entire process, from registration to the decision, must be completed within 12 working days.<sup>185</sup> These amendments to the law were welcomed by Bawaslu, giving it the discretion to design its mediation process.

The law and regulations also provided for the settlement of disputes between campaign teams at the district level during the campaign period. For instance, Bawaslu mediated disputes related to the number of members who need to sign endorsements to be eligible to run a candidate, or disputes related to the implementation of gender rules in party lists. Bawaslu further elaborated the conduct of mediation in its Bawaslu Regulations. For instance, the regulations provide that, once the parties to a dispute reach a conclusion, Bawaslu will provide a written statement about the settlement. If a settlement is not reached after the two-day deliberation process, the parties will continue the adjudication process in which an assembly led by Bawaslu members act as an arbitrator and reach a binding decision.<sup>186</sup> But despite this clear procedure, the institution faced legal challenges in practice. Bawaslu had to determine the value of a formal settlement or award reached during the mediation and whether mediators could approve a decision during the ADR process that is against the law, notably regarding the gender quota.

In terms of the capacity of mediators, Bawaslu is well equipped to carry out its mediation function. Only 13 percent of its members hold law degrees, but training strengthened officers' capacity to conduct mediation. A total of 2,300 Bawaslu officials were trained to build their skills as mediators. Former Bawaslu commissioner Fritz Edward Siregar noted the important financial investment from the institution to conduct these trainings at all levels.

Bawaslu has conducted extensive training on mediation and is committed to its objective of having 30 percent of members/mediators be women, an increase over the current 17 percent. Bawaslu conducts gender-related trainings for mediators, although these remain limited. During an interview with IFES, former Bawaslu commissioner and IFES She Leads alumna Dr. Ratna Dewi Pettalolo noted that, in addition to capacity building, there is a need to invest in advocacy to encourage women to become members of Bawaslu and serve as mediators. Indeed, disputants sought Bawaslu's support regarding candidacy eligibility criteria and resolving this case with the election commission. For instance, many parties to the nomination process have problems fulfilling the legal requirement of one-third female candidates in the list. As a result of mediation, the settlement included an extension of the deadline to help parties to convince women to become candidates.

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<sup>185</sup> Electoral Law, 2017, art. 466 (Law No. 7/2017) (Indon.).

<sup>186</sup> Bawaslu's decision regarding dispute resolution in the election process is final and binding, except for electoral process disputes related to verification of political parties participating in the election, determination of the list of permanent candidates for legislative members and determination of presidential and vice-presidential candidates (Article 469 paragraph (1) of the Electoral Law). Furthermore, the district administrative court will accept an appeal against the BAWASLU decision (Article 470, Section (1) of the Electoral Law, 2017).

Another challenge faced by Bawaslu, as noted by interviewees, was the consistency of decisions across Indonesia—a country with 34 provinces and 514 municipalities/cities and 190 million registered voters. In the 2019 elections, there were challenges in the implementation of ADR processes to ensure consistency in certain disputes, including gender quotas for candidacy. Coordination from the national Bawaslu to the district/city level must be carried out intensively to ensure that every decision or agreement is consistent across regions. Even with precise arrangements and training, arbitrariness or intimidation may be apparent in mediation settlements.

Former Bawaslu commissioner Fritz Edward Siregar mentioned the challenge of Bawaslu remaining an objective arbitrator and the need to address disputes both as a mediator and potentially as an adjudicator in the future. Bawaslu established clear procedures for who presides over a matter and who serves as secretary. The members of Bawaslu can meet as a panel or in plenary and developed rules to ensure a fair process. These include providing for mediation by two or three members of Bawaslu at the local level, followed by an appeals process with a full bench.

In the 2019 elections, Bawaslu addressed more than 800 disputes over the electoral process. A former Bawaslu commissioner noted that “50.9% of these cases that are filed with Bawaslu are completed and final after the mediation.”<sup>187</sup> Most cases involved political parties and the Election Commission. Data show the successful use of mediation in the Indonesian election context. Records of all electoral process dispute processes are maintained in the Dispute Resolution Information System, which Bawaslu offices throughout Indonesia can access. Through this digital system, Bawaslu can monitor ongoing electoral dispute resolution processes, improving mediation practices from one cycle to the next.

## El Salvador

*El Salvador features an example of voluntary informal mediation, with trained mediators helping to prevent conflicts by orienting voters, explaining Election Day procedures to them, and promoting dialogue and peaceful resolution of problems during the voting and counting process.*

Since 2009, the Attorney General’s Office (PGR) has worked on the mediation of electoral conflicts, drawing on its experience of mediation in other fields. The PGR signs a Cooperation Agreement with the EMB (the Supreme Electoral Tribunal, or TSE) and a memorandum of understanding with political parties.<sup>188</sup> On Election Day, the PGR deploys trained mediators to every department of the country to mediate between individuals, political parties, and polling station staff. In 2021, the PGR deployed 172 mediators to 99 voting centers and resolved 532 cases, many of them concerning problems with voter identification, voter registration, and conflicts between parties (including those related to voter intimidation).<sup>189</sup> The PGR mediators explain Election Day procedures to voters and other stakeholders, and they provide a space for dialogue to find immediate solutions to problems. The PGR also deploys a team to the counting center for 15 days, where they work to ensure that information is shared and that all

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<sup>187</sup> F.E. Siregar, personal communication, July 2022.

<sup>188</sup> El Salvador Attorney General’s Office, [Report on Election Day 2018 \(in Spanish\)](#). [TSE and PGR sign a cooperation agreement on the mediation of electoral conflicts](#) (in Spanish) [Video]. (2018, March), YouTube.

<sup>189</sup> Procuraduría General de la República. (2021, March 10). *Jornada de Mediación exitosa de la PGR* [Video]. Facebook. <https://web.facebook.com/watch/?v=3917263591655110>

stakeholders understand the process. In 2021 the PGR introduced an app to enable information about the cases they were mediating to be made public, in the interests of transparency.<sup>190</sup>

Although referred to as “mediation,” this initiative goes beyond what is usually understood by that term as it includes the provision of on-the-spot, accurate information to all stakeholders about voting and counting procedures. This can be enough to clear up misunderstandings and resolve some problems, thereby averting conflict and reducing the burden of complaints that the TSE would otherwise need to deal with. The fact that the PGR mediators are from a separate institution and are not TSE staff can also help them serve a third-party role in brokering discussion and dialogue. The reach of this initiative is relatively small (covering 99 out of 1,595 voting centers); with more funding, it could be expanded to include campaign disputes as well as greater geographical coverage.

## Guatemala

*This case study shows how a targeted ADR-type initiative led by the EMB (here, specifically for security issues) and good inter-institutional coordination can be valuable resources to prevent conflict and fight impunity in elections.*

During several recent elections, the EMB (the Supreme Electoral Tribunal, or TSE) has led the Inter-Institutional Technical Working Group on Election Security. The working group brings together various public bodies to monitor, map, prevent, and resolve electoral conflicts.<sup>191</sup> It covers the close of voter registration, candidate registration, and materials delivery, as well as voting and counting. Trained TSE inspectors at the national, departmental, and municipal levels take on a coordination role in the working group together, with TSE structures at all levels, the police, prosecutors, security forces, and other government agencies. Together they monitor and map the risks of electoral conflicts using information from their on-the-ground presence, media monitoring, and tracking where violations of the electoral law are alleged to have taken place. In 2019, an app was launched, allowing members of the public to report violations to the working groups, including unlawful campaign materials. The majority of the cases are localized community disputes between rival parties and their supporters.

The inspectors coordinate the prevention and resolution of all such conflicts, ensuring the appropriate bodies are tasked as necessary. The inspectors are trained in mediation, analysis and transformation of conflicts, and constructive communication techniques. They seek to resolve conflicts before they become formal complaints that go through the established EDR system (in which complaints are determined by different levels of the TSE), thus reducing the burden on the TSE. The multi-agency coordination has also been helpful in tackling impunity for electoral crimes, by ensuring that relevant cases are passed to the specialist electoral prosecutors quickly.

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<sup>190</sup> Amaya, L.F. (2021, February 19). *PGR launches an app to record conflicts in the 2021 elections* [in Spanish]. La Prensa Gráfica. <https://www.laprensagrafica.com/elsalvador/PGR-lanza-app-para-registrar-conflictos-en-elecciones-2021-20210218-0115.html>

<sup>191</sup> *Memoria de Elecciones Generales 2019*. (2019). Tribunal Supremo Electoral Guatemala. <https://www.tse.org.gt/images/memoriaselec/me2019.pdf>

## Malawi

*This case study presents a positive example of targeted multi-actor coordination led by the EMB, which can help prevent conflict and fight impunity and has gained the trust of stakeholders. However, its informality can be a disadvantage in that it does not have a legal basis or clear rules but depends on ad hoc referrals, and the mechanism does not operate consistently across the country.*

Like a number of other African countries, Malawi has a culture of community-level ADR mechanisms rooted in its traditional institutions. This led to a formal requirement in Malawi's Constitution to adopt and implement mechanisms for settling disputes through negotiation, good offices, mediation, conciliation, and arbitration.<sup>192</sup> This commitment to ADR is reflected in the election context in the role of Multi-Party Liaison Committees (MPLCs). In 2000, the Malawi Electoral Commission (MEC), which is mandated to address complaints of irregularities, established the MPLCs to promote dialogue to prevent and resolve election-related disputes at the district level. MPLCs are made up of local stakeholders, including representatives of political parties, local authorities and civil society, and traditional leaders.<sup>193</sup> They address pre-election disputes, including conflicts over venues for rallies, alleged campaign violations, and conflicts between supporters of rival candidates. The MPLCs can be very effective at resolving disputes early, having succeeded in reducing the burden of pre-election disputes (mainly inter-party conflicts) for both the MEC and the courts.<sup>194</sup>

Operating as a complementary mechanism to the conventional EDR process, MPLCs have helped improve the legitimacy and acceptance of elections by stakeholders through their ability to facilitate dialogue and build consensus.<sup>195</sup> In 2019, the EU Election Observation Mission (EOM) reported that stakeholders supported the MPLCs and “expressed satisfaction with their role in addressing localized concerns, minimizing risks of violence, and resolving disputes.”<sup>196</sup> Similarly, the African Union EOM in 2019 reported on the functioning of the MPLCs, especially during the pre-election period.<sup>197</sup> At the district level, MPLCs are the lead electoral conflict resolution mechanism, making their mediation and community dialogue work very important.<sup>198</sup> The MPLCs have been helpful for women, as they are more accessible at local level, no lawyer is needed, and they are speedy—although it would be helpful to increase women's membership in MPLCs.<sup>199</sup> From May to June 2019, in six closed-door sessions, the MPLCs mediated special cases in which political conflicts were highly sensitive, involving high-level political actors or with

<sup>192</sup> Malawi Constitution ch. III, § 13(I); Kapanda, F. E. (2013). *A critical evaluation of judicial mediation in Malawi*. (Master's thesis, University of Cape Town Cape Town, South Africa). <http://hdl.handle.net/11427/9167>

<sup>193</sup> In terms of political party membership of MPLC members, interlocutors emphasized the importance of ensuring diverse representation, not only the strongest parties in the area. This requires building the capacity of all party members and, indeed, all members.

<sup>194</sup> Senior Malawi Election Commission official, personal communication, December 2021.

<sup>195</sup> International donor community official, personal communication, December 2021.

<sup>196</sup> *European Union election observation mission final report: Malawi 2019 - Tripartite elections*. (2019). <https://www.eods.eu/library/EU%20EOM%20MWI%202019%20FR.pdf>. Similarly, in the 2014 elections, the EU EOM reported that MPLCs were the preferred tool for conflict resolution in almost all districts, hampered in a few by lack of funding. *European Union election observation mission final report: Malawi 2014 - Tripartite elections: presidential, parliamentary and local council*. (2014). [https://www.eods.eu/library/EUEOM%20FR%20MALAWI%2020-05-2014\\_en.pdf](https://www.eods.eu/library/EUEOM%20FR%20MALAWI%2020-05-2014_en.pdf)

<sup>197</sup> *African Union election observation mission to the 21 May 2019 tripartite elections in the Republic of Malawi - Final report*. (n.d.). African Union. [https://au.int/sites/default/files/documents/38117-doc-report\\_of\\_the\\_african\\_union\\_election\\_observation\\_mission\\_to\\_the\\_21\\_may\\_2019\\_tripartite\\_elections\\_in\\_the\\_republic\\_of\\_malawi.pdf](https://au.int/sites/default/files/documents/38117-doc-report_of_the_african_union_election_observation_mission_to_the_21_may_2019_tripartite_elections_in_the_republic_of_malawi.pdf)

<sup>198</sup> The MPLCs' work is supported by partner CSOs that worked in 2019 on early warnings and early responses to electoral conflict and violence.

<sup>199</sup> Malawi women's rights activists and CSOs, personal communication, December 2021.

the potential for wider community fallout. This work was commended by a local party chair: “chaos and violence were averted in a lot of political campaign rallies because MPLCs were able to pro-actively intervene and resolve any tensions between political parties due to the training on conflict resolution that they had received.”<sup>200</sup> The MEC provides conflict mitigation and mediation training to MPLC members.<sup>201</sup>

The MPLCs face certain challenges. The 2019 EU EOM report noted that the operation of MPLCs was not consistent across the country, with some meeting regularly, others only when a complaint was presented. A lack of funding contributed to the inconsistency. The EU and other stakeholders recommended that funding and procedures be put in place well in advance to ensure consistent functioning. Another challenge is that the MPLCs do not have a legal basis; they are established as an administrative arrangement by the MEC.<sup>202</sup> As such, they do not have clear jurisdiction and procedures but act only on referrals from the MEC. The MPLCs’ resolutions are not binding, and they do not have sanctioning powers. Enforcement of their resolutions depends on the consent of the parties. This could be strengthened by closer liaison with and support from the national-level body, the National Elections Consultative Forum, chaired and organized by MEC, which mirrors the composition of the MPLCs at national level. In terms of reporting, the disputes dealt with by the MPLCs should be recorded at the district level, although this data is not consistently collected and sent to the MEC, perhaps due to the lack of funding. Some interlocutors argue that the MPLCs would be strengthened if they became permanent structures and linked more closely to the National Peace Architecture, as part of the National Peace Policy, launched in 2017.<sup>203</sup> This initiative shows the appetite for mediation or conciliation as a successful mode of dispute resolution. The legal director of MEC also stressed the importance of clarifying the duty of private and public entities to cooperate with the MPLC<sup>204</sup> and to coordinate with law enforcement agencies to strengthen enforcement, for instance by ensuring specialized training of law enforcement agencies on election disputes and offenses.

## Mexico

*Mexico is an example of how ADR can make the electoral justice system more inclusive for diverse and marginalized sectors of the community. ADR is used in electoral disputes in traditional Indigenous communities in Oaxaca. However, disputes in the context of Indigenous women can manifest tensions between collective and individual rights for women, and the Mexican courts have recently grappled with these issues.*

In Oaxaca, Mexico, the state electoral institute (IEEPCO) has introduced mediation to support the use of traditional practices by Indigenous communities in the election of their local authorities. Most of the municipalities in Oaxaca

<sup>200</sup> MANA online, June 14, 2019, citing the Rumphi District Chairperson for Democratic People’s Congress.

<sup>201</sup> Cascade training supported by the United Nations Development Program and IFES/Consortium for Elections and Political Process Strengthening was employed to train MPLC committee members in 2019 in understanding conflict, common electoral conflicts, electoral conflict transformation, mediation and negotiation in electoral conflict, and the role of MPLCs in electoral conflict mitigation.

<sup>202</sup> Senior Malawi Electoral Commission official, personal communication, December 2021.

<sup>203</sup> Nyasa Times Reporter. (2020, October 6). *Mtambo touts his ministry’s success in 100 days - Share 10 milestones*. AllAfrica. <https://allafrica.com/stories/202010060657.html>; The National Peace Architecture was developed as a response to political and economic tension and conflict and included developing early warning systems to identify triggers for conflict and building conflict resolution mechanisms. It includes district Peace Committees that have a broad non-electoral scope, covering issues such as neighbor or property disputes. Kamakanda-Mana, G. (2017, November 28). *Malawi to launch national peace policy, commemorates international day of peace*. <https://www.nyasatimes.com/malawi-launch-national-peace-policy-commemorates-international-day-peace/>

<sup>204</sup> The Electoral Commission Act already has some provisions that may be relied upon for this purpose through subsidiary legislation. See Electoral Commission (Amendment) Act, 2017 (Act 32 of 2018), art. 19 (Malawi).

(417 out of 520) use traditional practices to elect local authorities. The practices often consist of a community assembly with voting by a show of hands or by marking a blackboard rather than in secret, and community service (*tequios*) can be a prerequisite for eligibility as a candidate.<sup>205</sup> The Mexican Constitution and international treaties, including the UN Declaration on the Rights of Indigenous Peoples, recognize the right of Indigenous communities to self-government according to their traditional customs.<sup>206</sup> IEEPCO has developed detailed guidelines for the mediation of such disputes, which include guiding principles to respect Indigenous traditions provided they are compatible with international human rights law, respect legal pluralism, and find inclusive and consensual lasting resolution.<sup>207</sup> IEEPCO plays a facilitator's role and leads the mediation, usually with one mediator and representatives of the parties. In some cases, the full community is represented and consulted throughout the mediation. The process must be translated into the relevant Indigenous language, as needed.

In such contexts, it can be difficult to strike a balance between protecting Indigenous culture and customs and protecting individual rights—in particular, women's rights. A recent case at Mexico's Upper Federal Electoral Tribunal concerning a dispute from an Indigenous community in Oaxaca reiterated the importance of supporting Indigenous traditions and customs, and emphasized that conciliation efforts in the community, including IEEPCO-supported mediation, should be exhausted before bringing a case to court.<sup>208</sup> The court also referred to the criteria in the Electoral Law and the mediation guidelines for resolving disputes. These provide that, in case of a conflict between collective and individual rights, there must be an analysis of the values protected by the Indigenous norms, and how the Indigenous culture can incorporate rights without risking the preservation of its culture. They also refer to the need for the mediator to take special measures to ensure that a gender perspective is incorporated into the process. The case was brought by several men who had been elected to positions in a community assembly in which women were not freely able to participate as voters. The community subsequently formed another assembly in which women were able to stand, and several were elected. The men argued that the second assembly should be set aside, but the court rejected that argument on the grounds that the second assembly reflected the values of the community, was an exercise in self-determination and was lawful and constitutional.<sup>209</sup>

These difficulties do not mean that ADR should not be attempted in these contexts. However, they demonstrate the importance of training and sensitization on Indigenous customs as well as gender issues for all involved in the mediation, and the need for the mediator to be aware of power inequalities and the need for an appeal to court so an independent external body can consider the issues.

<sup>205</sup> Global Americans. (2017, October 19). *Indigenous political representation in Mexico*.

<https://theglobalamericans.org/2017/10/indigenous-political-representation-mexico/>

<sup>206</sup> Article 2(A) of the Federal [Mexican Constitution](#) sets out Indigenous peoples' right to elect their local authorities in accordance with customary norms, provided that no citizen's rights can be limited by these traditional practices and that applicable gender parity laws are respected. The [UN Declaration on the Rights of Indigenous Peoples](#) provides for the right to self-determination and self-government at local level in Articles 3–5. See also the American Declaration on the Rights of Indigenous Peoples, Article 3, June 15, 2016, AG/RES.2888 (XLVI-O/16). (Multilateral). [http://cdn7.iitc.org/wp-content/uploads/AG07150E06\\_web.pdf](http://cdn7.iitc.org/wp-content/uploads/AG07150E06_web.pdf). ILO [Convention 169](#) sets out Indigenous peoples' right to their own customs and institutions in Articles 5 and 8.

<sup>207</sup> Oaxaca State Electoral and Citizen Participation Institute (IEEPCO). (n.d.). Guidelines and methodology for mediation of electoral disputes in municipalities governed by customary norms (in Spanish only). <https://www.ieepco.org.mx/acuerdos/2013/CG59ANEX.pdf>

<sup>208</sup> [Upper Chamber of the Federal Electoral Tribunal](#), Filiberto Rufino Aquino and others, petition for reconsideration, SUP-REC-77/2020, pp. 33-35 (in Spanish).

<sup>209</sup> *Ibid.*

More generally, ADR is recognized and encouraged by the Mexican Constitution (Article 17) and has become increasingly common in diverse fields of law to reduce the burden on courts and prosecutors and to save time and costs. The Organization of American States recommended in its report on the 2021 Mexican elections that some electoral disputes should be resolved by alternative mechanisms because the electoral court system is overwhelmed by thousands of cases.<sup>210</sup> Many legal CSOs and mediation experts have also called for mediation to be more widely used in electoral disputes.<sup>211</sup>

## Senegal

*For post-election disputes, Senegal features the use of judge-led mediation and consensus building in the verification and tabulation of results. This has enhanced acceptance of the results by all candidates. The low number of petitions filed against the results with the Constitutional Court since the introduction of this procedure points to its success.*

Senegal features the use of mediation techniques led by judges and involving election officials and candidates' representatives during the compilation of results. The judiciary is responsible for protecting the integrity of the vote by deploying judges (*délégués*) on Election Day to control polling and counting operations up to the transfer from the polling station to the relevant commission (*Commissions départementales de recensement des votes*, or *CDRV*). The magistrates also control and supervise the results tabulation process at the departmental and national-level commissions (the *CDRVs* and the *CNRV*). As chairs of these commissions, the judges lead the process of establishing preliminary results prior to the certification of final results by the Constitutional Court. The *CNRV* includes representatives from the election commission and from all candidates, and it operates on a consensus basis.

The role of the national commission is to review the results sheets (*procès-verbaux*) sent from all the departmental commissions, correct potential errors in the results and review any observations or comments included on the results sheet. During an interview with IFES, the former first president of the Appeal Court explained his role in the national commission. He saw the judges' role as mediators of counting disputes to enhance acceptance of the result by all candidates and, ultimately, to avoid petitions being filed before the Constitutional Court. He described the mediation techniques used in the case of disputes during the results process and said that if mediation failed to reach an agreement, he would take a decision and note the observation on the results sheet. The party or candidate is then free to lodge an appeal before the courts if they wish to. He noted that the low number of petitions filed against the results with the Constitutional Court since the introduction of this procedure in Senegal shows the success of the procedures. Additionally, the transparency of the process was noted by EU Election Observation Mission observers in their 2019 report, when referring to the presence of all candidates' representatives as well as observers and CSOs.<sup>212</sup>

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<sup>210</sup> *Preliminary report of the mission of foreign visitors of the Organization of American States on the federal and local elections in Mexico.* (2021, June 8). Organization of American States Electoral Observation Missions and Recommendations Database. <http://www.oas.org/eomdatabase/MoeReport.aspx?Lang=en&Id=434&MissionId=516>

<sup>211</sup> The experts suggest that the general mediation centers that have been established by each state's attorney general's office could be used to support the mediation of electoral disputes.

<sup>212</sup> Union européenne Mission d'observation électorale rapport final Sénégal 2019 - Élection présidentielle. (n.d.). [https://www.eods.eu/library/senegal\\_moe\\_ue\\_2019\\_rapport\\_final.pdf](https://www.eods.eu/library/senegal_moe_ue_2019_rapport_final.pdf)

Aside from this Senegalese example, the use of mediation by judges at the time of tabulation of results remains rare. But the reduction in the post-election disputes filed before the courts may encourage EMBs or courts to adopt similar mediation procedures prior to the publication of preliminary results.

## Annex II: An ADR Success Story



### ADR SUCCESS STORY – A COUNTRY IN SOUTHERN AFRICA

From the start of the campaign period, there were constant clashes between supporters of two parliamentary candidates in a rural constituency: a high-level representative from the ruling party (Mr. ABC) and a member of this party (Mrs. XYZ). The genesis of the conflict lay in the party primaries. The ruling party held a strong position in the constituency, and it was taken for granted that whoever won the party primary election would likely win the parliamentary seat. As a result, the primaries were hotly contested. However, due to poor management of the party primaries, there were widespread claims of rigging and other irregularities. When Mr. ABC won the party nomination, supporters of Mrs. XYZ claimed that she lost due to rigging and immediately petitioned the party for a rerun of the primaries. When the party failed to do so, Mrs. XYZ left the party and registered to contest as an independent candidate. This move angered supporters of Mr. ABC, who claimed that Mrs. XYZ was out to divide the party votes, which might lead to the party losing the parliamentary seat.

The political tensions between the two candidates and their supporters resulted in repeated incidents of violence whenever the two groups met. There were constant campaign disruptions, street battles and property damage as the two groups clashed. They also divided the constituency into strongholds, each barring the other from their respective controlled areas, which further added to the violence.

With the rising incidence of violence, the electoral ADR body decided to mediate between the two conflicting groups. A closed-door mediation meeting convened close to Election Day brought together the two candidates and their agents. At the end of the meeting, the two parties agreed to abide by a number of resolutions during their campaigns. These included immediately convening a meeting with their campaign agents to instruct them not to harass their opponents' supporters, as well as making a public appeal to their supporters to shun violence; agreeing that the campaign teams would consult each other to avoid clashes over venues; renouncing the division of the constituency and allowing the other group to campaign in their strongholds. The parties also agreed in the meeting that the police and the ADR body would be the guarantors of this peace agreement, closely following its adherence by the parties. The parties agreed that there would be sanctions on whoever broke the agreement, including legal action against them.

Following the mediation, campaign violence between the two groups ceased, and the rest of the campaign activities were conducted peacefully. The mediation exercise was supported by a Consortium for Elections and Political Process Strengthening/IFES-sponsored CSO in a specific district. (Names have been changed in this example.)

## Annex III: List of Contributors

Contributors included current and former election officials, judges, or independent experts. IFES is grateful for their participation in interviews or for sharing written comments on the case studies from their relevant country.

Country	
<b>Kenya</b>	Hon. Rosalyn Aganyo, <i>Political Parties Disputes Tribunal, Secretary and Member of Judicial Committee on Elections</i>
<b>Malawi</b>	Justice Dr. Chifundo Kachale, <i>Chairman of Malawi Electoral Commission (MEC) and High Court Judge</i> David Matumika Banda, <i>Legal Director, MEC</i> King Rudi, <i>Acting Human Resources Director, MEC</i> Wellington Katantha, <i>Acting Electoral Services Director, MEC</i> Andrew Mpesi, <i>Program Management Specialist, Governance, USAID</i> Viwemi Chavula, <i>Executive Director, 50-50 Campaign</i> Leon Matanda, <i>Program Director, Corruption and Rights Watch</i> Barbara Banda, <i>Chair, NGO Gender Coordination Network</i>
<b>Nigeria</b>	Hafiz Isah, <i>Chief Registrar, Federal Court of Appeal</i> Dr. Aminu Adamu Bello, <i>former Nigeria Deputy Director, Alternative Election Dispute Resolution Directorate, Independent National Electoral Commission</i>
<b>Senegal</b>	Demba Kandji, <i>Former President of Court of Appeal of Dakar</i>
<b>South Africa</b>	Judge Mbha, <i>Chair of Electoral Court of South Africa</i> Eldred De Klerk, <i>Project Manager, Independent Electoral Commission of South Africa</i> Granville Abrahams, <i>General Manager Electoral Matters, Independent Electoral Commission of South Africa</i> Grant Masterson, <i>Head of Programme, Political Institutions and Processes, Electoral Institute for Sustainable Democracy in Africa</i>
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**Nepal** Pascaline Krone, *Country Director*

**Indonesia** Isach Zulfikar Karmiadji, *Head of Programs*

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El Salvador** Maximo Zaldivar, *Regional Director, Americas*

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