

## 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 the 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 the 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 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 the 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 the 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 a settlement to avoid the perception of arbitrariness or unfairness.
40. **Collect and publish data on disputes** in order to conduct an 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 the 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.