

## 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 its 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

<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](https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy_Note_ID222.pdf) – 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](https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy_Note_ID222.pdf) – 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](https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy_Note_ID222.pdf) – 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](https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy_Note_ID222.pdf) – 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.

**“Election mediation committees were established by the UEC, and the majority of political parties agreed to a code of conduct with a monitoring committee to assess compliance. Both of these were positive, voluntary mechanisms of electoral dispute resolution. Although the committees’ decisions are not legally binding, stakeholders found them effective in defusing tensions, encouraging dialogue, and building consensus.”**

Carter Center’s Preliminary Statement, 2020 Elections (November 2020)

**“Stakeholders found that election disputes during the campaign were solved promptly through the EMCs and rarely escalated beyond the township level. This is therefore a worthwhile initiative that successfully promotes mediation and compromise among stakeholders.”**

ANFREL (2020) Interim Report

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

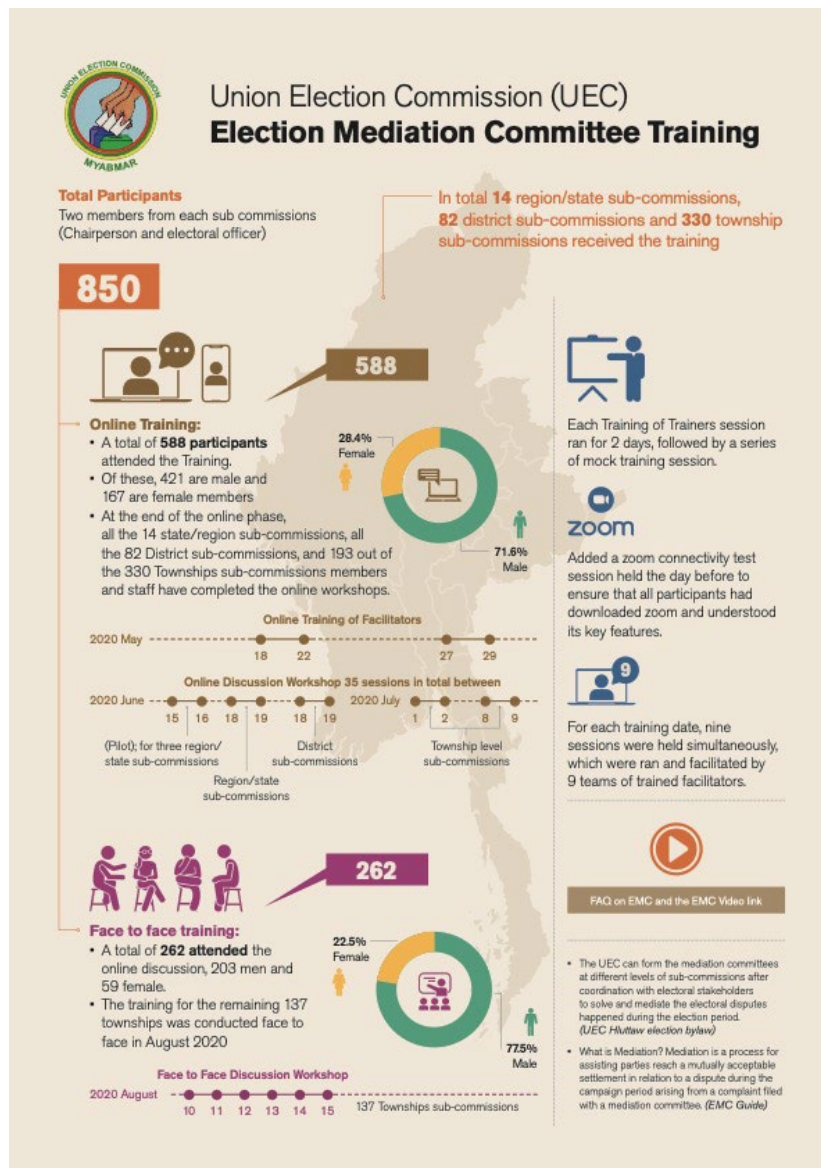
<sup>137</sup> Several organizations have led successful mediation projects at the community level in Myanmar. These include Mercy Corps, with which IFES partnered on the design of the EMC training curriculum and selection of trainers/mediators in 2020.

<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)



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 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

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

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 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.

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

<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/>

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. 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>144</sup> The manual enables disputants to understand the nature of the 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>145</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>146</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>147</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

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<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)

<sup>145</sup> Constitution of Kenya, 2010, Article 159(2)(c).

<sup>146</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>147</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/>

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 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>148</sup> The PPDT aims to limit lengthy proceedings and encourage parties to settle their intra-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>149</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.

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<sup>148</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 ORRP 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.

<sup>149</sup> Section 15 and 16 of PPDT draft regulations (procedure).

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. 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>150</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>151</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.

**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 Centres.

**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 (Div-ECMC)  
(\* If a complaint is filed at the National level, it will be forwarded to the relevant DECMC or Div-ECMC for consideration.)

**Who has the authority to address the complaint?**  
• DECMC and Div-ECMC 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 Div-ECMC.  
• If a complainant is not satisfied with the action/decision from DECMC or Div-ECMC, 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 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 interview 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 Div-ECMC 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>150</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>151</sup> Between 8 October and 14 November, the EC received 3,905 complaints. Only 27 were 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.

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>152</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>153</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' 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>154</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>155</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

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<sup>152</sup> Sri Lanka Government. *Mediation Board Commission*. <http://www.mediation.gov.lk/whoarewe>

<sup>153</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."

<sup>154</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>155</sup> The [NDI/IRI Limited Election Observation Mission for the Ethiopia June 21, 2021 National Elections](#) reported on page 27 the failure to establish grievance hearing committees except in a handful of places. The [EU Election Observation Mission](#) reported on page 26 on a similar problem in the 2010 elections.

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>156</sup> However, without clear procedures, it was unclear how this body operated in practice.

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>157</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>158</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.

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<sup>156</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.

<sup>157</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>158</sup> The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct, 2019, Article 151(4) (Proclamation No. 1162/2019).



## 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 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>159</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>160</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>161</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>162</sup> The lack of transparency was not specific to the ethics committees but applied to the overall election process.

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<sup>159</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>160</sup> In Tanzania, interviewees noted that only four cases were filed with the judiciary in the 2020 elections.

<sup>161</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>162</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.

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.

## 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>163</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>164</sup> The NPC did something similar in 2015, which stakeholders considered helpful. Less impactful in recent elections, the Inter-Party Advisory Committee (IPAC)<sup>165</sup> is

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<sup>163</sup> INEC. (2012). Draft AEDR Guide.

<sup>164</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>165</sup> The umbrella body of registered political parties in Nigeria.

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>166</sup> More recently, the EU EOM reported in 2019 that IPAC had held only quarterly meetings with INEC at the national level.<sup>167</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 over-filing before the courts.<sup>168</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>169</sup> “[I]t may take some time before these same politicians realize that political contest is not necessarily a zero-sum game.”<sup>170</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>171</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 a 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>172</sup> There were reportedly at least 644 pre-election challenges in the 2019

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<sup>166</sup> [African Union Election Observation Mission Report: Nigeria 2015](#), pp. 24-25

<sup>167</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>168</sup> IFES Nigeria, *Sustaining Electoral Reforms In Nigeria (2021-2026): Programming Options Paper* (USAID).

<sup>169</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>170</sup> *Ibid.*

<sup>171</sup> *Ibid.*

<sup>172</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/>

general elections, most related to party primary elections.<sup>173</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>174</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 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>175</sup> It is also possible that lawyers may oppose ADR, believing that it would decrease their income.<sup>176</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>177</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.

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<sup>173</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>174</sup> Ibid.

<sup>175</sup> Chief Registrar of the Court of Appeals of Nigeria, personal communication, September 1, 2021.

<sup>176</sup> Ibid.

<sup>177</sup> Mediation Council. <https://mediationcouncil.gov.np/>

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>178</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 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>179</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>180</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;

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<sup>178</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)

<sup>179</sup> Ibid.

<sup>180</sup> General Elections Law, 2012 (Law No. 8 /2012) (Indon.).

enforcement of election administrative law; and dispute resolution for the election process.<sup>181</sup> The law also specifically empowered Bawaslu<sup>182</sup> to use ADR mechanisms in its proceedings for disputes related to candidate nominations.<sup>183</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 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>184</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>185</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.

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<sup>181</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>182</sup> Indonesia has three institutions related to election management: the general election commission, the election supervisory body (Bawaslu), and the ethical honorary council.

<sup>183</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.

<sup>184</sup> Electoral Law, 2017, art. 466 (Law No. 7/2017) (Indon.).

<sup>185</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).

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.

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 [percent] of these cases that are filed with Bawaslu are completed and final after the mediation.”<sup>186</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.

## **EI Salvador**

*EI 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

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<sup>186</sup> F.E. Siregar, personal communication, July 2022.

Electoral Tribunal, or TSE) and a memorandum of understanding with political parties.<sup>187</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>188</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 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>189</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>190</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.

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<sup>187</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>188</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>

<sup>189</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>190</sup> *Memoria de Elecciones Generales 2019*. (2019). Tribunal Supremo Electoral Guatemala. <https://www.tse.org.gt/images/memoriaselec/me2019.pdf>



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.

## 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>191</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>192</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>193</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>194</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>195</sup> Similarly, the African Union EOM in 2019 reported on the functioning of the MPLCs, especially

<sup>191</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, South Africa). <http://hdl.handle.net/11427/9167>

<sup>192</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>193</sup> Senior Malawi Election Commission official, personal communication, December 2021.

<sup>194</sup> International donor community official, personal communication, December 2021.

<sup>195</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)

during the pre-election period.<sup>196</sup> At the district level, MPLCs are the lead electoral conflict resolution mechanism, making their mediation and community dialogue work very important.<sup>197</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>198</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 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>199</sup> The MEC provides conflict mitigation and mediation training to MPLC members.<sup>200</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>201</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>202</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>203</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.

<sup>196</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>197</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>198</sup> Malawi women’s rights activists and CSOs, personal communication, December 2021.

<sup>199</sup> MANA online, June 14, 2019, citing the Rumphu District Chairperson for Democratic People’s Congress.

<sup>200</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>201</sup> Senior Malawi Electoral Commission official, personal communication, December 2021.

<sup>202</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>203</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).

## 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 (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>204</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>205</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>206</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>207</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

<sup>204</sup> Global Americans. (2017, October 19). *Indigenous political representation in Mexico*.

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

<sup>205</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>206</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>207</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).

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>208</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.

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>209</sup> Many legal CSOs and mediation experts have also called for mediation to be more widely used in electoral disputes.<sup>210</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

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<sup>208</sup> Ibid.

<sup>209</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>210</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.

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>211</sup>

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.

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<sup>211</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)

## 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> Wellingtone 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>
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