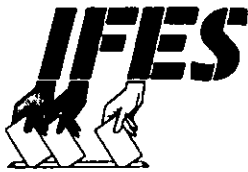


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International Foundation for Election Systems

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Republic of Indonesia

“MONEY POLITICS”

Regulation of Political Finance in Indonesia

Analysis and Recommendations

December 1, 1999

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INTRODUCTION

Indonesia's transition to an open and multi-party democracy is burdened by the legacy of widespread corruption that supported the prior authoritarian one-party rule. Indonesians call the broad issue of corrupting influences upon government "money politics." This term encompasses more than the giving of financial aid to candidates and parties during election campaigns. The expression includes the actual buying of voter support during elections, the less direct exchange of favorable government benefits or treatment for political support and the direct bribing of government officials throughout the processes of administration and governance.

Therefore, to analyze "money politics" in Indonesia, it is first necessary to distinguish separate manifestations of corruption or improper influence upon the political process, while recognizing their interrelationship. It is then possible to consider particular means for control and deterrence of each element. Some practices within the larger meaning of "money politics" are difficult to control by regulation, such as inherent advantages of incumbent public officials who can make promises or initiate policy or public works projects favored by the public. More direct forms of money's influence upon politics can be subject to administrative regulation or criminal sanction, or can at least be made more transparent and subject to political constraints.

The focus of this report is regulation of political finance in elections in Indonesia. At the outset, however, IFES notes the closely related issues of both election-related bribery and ethics rules for public officials.

Election bribery and fraud. The Law on General Elections that governed the elections for legislative assemblies held on June 7, 1999, included provisions making vote-buying and other forms of election fraud illegal. *Article 73* specifies eleven types of illegal conduct related to elections and provides for criminal sanctions for violations. Prohibited conduct includes:

- (3) Whoever during the election [held pursuant to the law] bribes someone with gifts or promises so that he will not exercise his right to vote or that he is asked to perform his right in certain ways will be sentenced with maximum three years in jail. That sentence will also be imposed upon electors who receive bribes or promises to [affect their right to vote].

Thus, vote-buying (and selling) is a specific type of election fraud subject to criminal penalty. Other forms of "money politics" affecting the election process, such as bribing election officials to improperly interfere with voter registration or voting, or to manipulate vote counting, are also illegal and can and should be punished directly under existing law.

IFES recommends these issues of criminal conduct related to elections be addressed in a comprehensive review and revision of election laws by the new People's Representative Council (DPR) as soon as possible. The review should specifically include how to improve the complaint adjudication process and strengthen law enforcement mechanisms (which will require redefining or redirecting the role and authority of *Panwas* supervisory commissions). The current criminal

prohibitions upon fraudulent and corrupt behavior in elections will not be effective, nor taken seriously by the public and by officials, until they are fully enforced.

Legislative ethics. The corrosive affect of money upon politics continues after elections. IFES recommends the new DPR address legislative ethics issues immediately, in advance of any longer-term review of election laws and processes. The DPR should establish clear prohibitions upon bribery or any form of improper financial influence of legislators or their staff. It should enact internal enforcement mechanisms and, importantly, financial disclosure requirements for legislators in order to facilitate efforts to discourage corruption.

New and comprehensive ethics rules for DPR members and staff are not only necessary for their own important deterrence of corruption, but also to fully complement and complete any regulation of political finance generally. While a reformed political finance system may not be airtight, it cannot sustain broad gaps and loopholes, including undisclosed financial support to parties and candidates between election campaigns or to officeholders or their intermediaries.

POLITICAL FINANCE REGULATION UNDER EXISTING LAW

Law on General Elections. The “political laws” approved by the People’s Representative Council (DPR) and signed by President Habibie early in 1999 addressed aspirations for controls upon political finance in general terms. The Law on General Elections (known as Law Number 3 of 1999) ultimately contained only two articles on this issue:

Article 48

- (1) Funds for election campaign of respective contesting political party can be obtained from:
 - a) Contesting political party;
 - b) Government, coming from State budget and Regional Budget;
 - c) Other independent groups such as private entities, companies, foundations or individuals.
- (2) Limit of campaign funds that may be accepted by contesting political parties is stipulated by KPU.
- (3) Foreign countries are not allowed to give funds and other aids for election campaigns.
- (4) Breaches of the regulation of campaign funds as referred to in paragraphs (1) and (2) are subject to sanction as referred to in Article 17, par. 2 and Article 18, par. 2 of Law Number 2 of 1999 on Political Parties.

Article 49

- (1) Funds for election campaigns as referred to in Article 50 are subject to auditing by a Public Accountant, and the results shall be reported by contesting political parties to the KPU 15 (fifteen) days before the polling day and 25 (twenty-five) days after.
- (2) Breaches on the regulation referred to in paragraph (1) are subject to administrative sanction in the form of the cessation of funds from the State/Regional Budget.
- (3) A contesting political party which breaks the campaign fund limits is subject to administrative sanction, meaning not to be allowed to participate in the following election.

These provisions of the election law regarding regulation of political finance, as approved by the prior DPR, were disappointing. Compared to the more comprehensive treatment afforded

these issues in the draft election law proposal of the Ministry of Home Affairs, *Articles 48 & 49* appear chopped up and truncated. *Article 49* even includes a mistaken reference to *Article 50* (which is now part of the law's next chapter on vote counting) instead of *Article 48*, an indication this section was hastily completed in the final DPR negotiations over the law in January 1999.

The jurisdictional scope of these provisions for political finance regulation in the 1999 elections was uncertain. The law's official campaign period was only three weeks (May 19 to June 5), but parties began campaign activities immediately upon being qualified to contest the elections in early March. Whether the political finance provisions would only apply to money raised and spent during the official period was unclear. As it turned out (discussed more fully in the next section), the first audited reports of political parties required by the National Election Commission (KPU) – and the only reports submitted prior to election day – covered only the period from March 5 through May 18, the day before the official campaign period began. But the rationale for the scope of the law was never fully clarified by the KPU.

Moreover, the interrelationship between regulation of party campaign funds under the election law and regulation of financial activity of parties generally under the political party law (discussed immediately below) remains ambiguous. The supplementary "Explanations" attached to the election law specifically distinguished general party funds raised pursuant to the political party law from the campaign funds regulated under the election law's *Article 48(2)*, but offered no further explanation of how and when the line is drawn.

The election law, in another example of leaving significant details of implementation to the KPU, provided that limitations upon campaign funds that could be accepted by contesting political parties were to be determined by the KPU. This provision was interpreted by the KPU to mean "spending caps" – limitations upon overall campaign spending by parties. On the day before the official campaign period began, the KPU announced by decree that parties' national spending limits would be set at one hundred and ten billion rupiah (US\$ 13.8 million). Specific limitations were also set at every level of party organization, ranging from 100 million rupiah (US\$ 12,550) at the provincial level down to one million rupiah (US\$ 125) at the village level. These limits clearly seem to contemplate national, top-heavy campaigns by the parties. They also seem to need clear reporting requirements and effective enforcement mechanisms for their implementation that are far beyond the capacity of the present election system.

The KPU did not specifically set limitations upon amounts of contributions from entities and individuals to political parties' campaign funds. Despite the distinction raised in the election law's "Explanations" regarding party funds, contribution limits were simply borrowed from the political party law regulating general party funds (discussed next).

Law on Political Parties. The political party law contained several provisions in Chapter VI related to political finance regulation:

Article 12

- (1) Finances of the political party are collected from:
 - a) contributions of members
 - b) donations

- c) other legal undertakings.
- (2) The political party receives annual assistance from the state budget, which is specified based on the total votes collected in the previous general election.
- (3) The specification on the annual assistance referred to in paragraph (2) is provided in a government regulation.
- (4) The political party is restricted from receiving donations and assistance from foreign organizations.

Article 13

- (1) The political party is a non-profit oriented organization.
- (2) To be consistent with paragraph (1), a political party is prohibited from establishing a corporation and/or owning shares in a corporation.

Article 14

- (1) The maximum total donation from each [individual] person receivable by the political party is fifteen million rupiah (US\$ 1875) within the period of one year.
- (2) The maximum total donation from a business company and other organizations receivable by a political party is one hundred and fifty million rupiah (US\$ 18,750) within the period of one year.
- (3) Donation in the form of articles is assessed according to the current market values and is treated similarly as the monetary donation.
- (4) The political party keeps the register of donors and the amount of donations, which is subject to auditing by a public accountant.

Article 15

- (1) The political party is required to report the list as referred to in Article 14, par. 4, including its financial report at each end of the year and each 15 (fifteen) days prior to and 30 (thirty) days after the general election to the Supreme Court of the Republic of Indonesia.
- (2) The report as referred to in par. 1 may at any time be audited by the public accountant appointed by the Supreme Court of the Republic of Indonesia.

As noted above, the limits upon contributions to parties from individuals and entities for the election period were seemingly lifted from the party law's annual limits and applied without further clarification to campaign funds that were to be regulated by the KPU. Since the election law's "Explanations" specified that campaign funds of parties were separate from general party funds, it is unclear whether contributions made during the election period would count against the annual limitations for contributions to parties under the party law.

The election law was also silent as to the level of detail of information to be reported in party audits. As described in the next section, the contents and comprehensiveness of audited reports were ultimately determined (with some difficulty) by public accountants trying to apply normal professional standards for audits to the sketchy information provided them by parties.

It should also be noted the reporting regime under the party law is oddly inconsistent with the reporting requirements of the election law for post-election reports (30 days rather than 25). Moreover, the party law requires political party financial reports to be filed with the Indonesian Supreme Court. That particular idea probably resulted from a sense of the Court's neutrality.

However, that role puts the Court in an inappropriate position as an election administration body when the Court should instead be available as a neutral legal recourse for enforcement of the election law and for election disputes, including those regarding party finance reports.

However, the Supreme Court apparently felt obligated to implement the administrative policies, and to embrace its role, under the political party law – even in the midst of the election campaign. On May 20, the Court issued a Decree containing regulations regarding its oversight of political parties and its powers to sanction them for violating the political party law. The regulations included forms for parties to report political finance activity, including receipt of donations and making of expenditures. It does not appear the Supreme Court took any legal action against parties pursuant to its regulations, nor did parties appear to recognize a separate responsibility to report “campaign funds” to the Court.

Ultimately, without justification under the law, the KPU reconciled these two political finance reporting systems under the election law and political party laws by ignoring the laws’ reporting timelines and by sending copies to the Supreme Court of parties’ audited reports of campaign funds first submitted to the KPU (along with a copy of the KPU’s general summary). The KPU cast off responsibility for investigating or punishing any failures or violations relating to reporting requirements to the Court. As of this writing, the Supreme Court has not initiated or referred any enforcement actions against any party for breaches of political finance rules, but has complained that the KPU political finance reporting format is not consistent with the forms presented in the Court’s Decree of May 20.

Although mentioned by the political party law, the election law omitted the provision in the draft election law proposal of the Ministry of Home Affairs that explicitly recognized the providing of goods or services (“in-kind” donations) as limitable and reportable contributions. The concept was reintroduced in weaker form in the election law in supplemental “Explanations” for *Article 48(1)*. As discussed below regarding implementation of these provisions, this lack of attention to non-monetary support of parties and candidates was widely viewed by observers to be a significant “off-the-books” loophole in regulation of party campaign funds under the law.

The election law also omitted any provision to limit contributions to candidates directly (or candidate reporting requirements), which were included in the draft election law proposal of the Ministry of Home Affairs. This omission may simply have resulted from a sense those limits for candidates had been made unnecessary by the final law’s return to a party-based proportional representation voting system (the draft proposal contemplated a new modified “district” system). The omission may also have reflected incumbent DPR members’ aversion to limits or reporting obligations for candidates. However, the election law did not contain any direct restrictions upon candidates raising and spending money for campaign purposes, nor any requirements that such candidate financial activity be directed through their political party campaign funds or reported.

IMPLEMENTATION OF POLITICAL FINANCE REGULATION IN JUNE ELECTIONS

As described above, both the Law on General Elections and the Law on Political Parties require political parties to submit reports of their financial activity that have been audited by public accountants. For the election period, the KPU established a working group, Sub-

commission C, to supervise implementation of the requirements for pre-election and post-election financial reporting by political parties.

Pre-election audited reports. The election law specified that pre-election reports of parties were to be submitted fifteen days before the election. The KPU arbitrarily extended the pre-election deadline to seven days before the election, openly acknowledging that parties had not submitted reports on schedule due to a lack of time to prepare them. According to initial reports from Sub-commission C, as of the new May 31 deadline, forty of forty-eight parties qualified to contest the election had submitted financial reports. Seven more submitted reports by mid-June, after the election. One party, which won no seats in the national DPR, did not submit a report at all. Subsequent KPU documentation is inconsistent with that description, however, and suggests even less responsiveness from parties in the first reporting phase. And, as noted above, this first set of audited reports of political parties – the only reports submitted prior to election day – covered only the period from March 5 through May 18, the day before the official campaign period began.

Public accountants who audited political party financial records were selected and paid by the KPU. Recruitment of auditors by the KPU began with an open public request to all CPA firms in Jakarta in May, but only thirty firms responded (all large accounting firms apparently declined to participate). Further help was solicited from the Indonesian Institute of Accountants to recruit the additional eighteen auditors. Accountants selected were required to swear they did not belong to a political party.

Based on information from KPU officials and accountants involved in this process, the audit work during this first phase of reporting was clearly superficial. Auditors examined only records provided by the political party to which they were assigned, and these records generally lacked significant detail or supporting documentation. Each auditor looked within the party's campaign fund records for obvious discrepancies and violations, such as for contributions from individuals or entities that exceeded the proscribed limitations. Auditors had no powers to investigate problems or demand further documentation from lower party committees or outside sources, such as television stations or other vendors.

Pre-election financial disclosure efforts by KPU. On June 2, within 48 hours of receiving most political parties' reports, the KPU's Sub-commission C issued a cursory summary (less than 15 pages) of parties' financial activity based upon audited reports. This report summarized data and did not contain analysis or conclusions. The report was distributed to KPU members and the news media, but generated little news coverage or political attention. A few journalists, students and groups (such as Indonesian Corruption Watch) examined the Sub-commission's report or individual party reports. However, since the party audits and KPU report were general and lacked significant detail or supporting documentation, the limited attention given to the reported information produced more questions and speculation than analysis. For this pre-election period audit – despite weeks of undisguised campaign activity – no party acknowledged spending over the 110 billion rupiah spending limitation set by the KPU (which was not announced by the KPU until the end of this period and may technically have applied only to the official election campaign period that followed). Golkar reported the highest amount of spending, at 75 billion rupiah (US\$ 9,375,000).

The Sub-commission's first summary report was submitted to the Supreme Court and to *Panwaspus* (the quasi-adjudicative Supervisory Commission at the national level) in mid-June. The KPU received no official response from either body. A report from *Panwaspus* to the KPU in late July with regard to allegations of election irregularities, during the political struggle at the KPU to certify the vote count, did not mention the Sub-commission's report or political finance problems (apart from allegations of vote-buying and other blatant forms of "money politics"). And it does not appear, at this writing, that any of the approximately two dozen cases that have gone to courts regarding election law violations involve breaches of rules governing political finance restrictions or reporting requirements.

Post-election audited reports. The schedule for submitting the post-election reports under the law was 25 days after the election, but the KPU's adherence to this reporting deadline was even more lax than for the first report. After the election, the protracted vote counting and certification process, internal wrangling over charges of vote irregularities, disputes over allocation of seats and, ultimately, general disinterest in reporting by parties after the election (especially losing parties) contributed to an ignoring of this legal responsibility by the KPU. Finally, in mid-September, the KPU voted to require post-election audited reports of political parties be submitted by the end of the month, and decided to have these reports cover the period of May 19 (the start of the official campaign period) through June 30. The same accountants were used for each party's post-election audited report as for the pre-election report. By October 1, however, only 15 parties had filed the post-election audited reports with the KPU, and the KPU extended the deadline for filing this second report – the only reporting of receipts and expenditures of the parties during the official election campaign period – into mid-November.

The second, post-election audited reports of the political parties probably benefited from a collective effort of the accountants to bring some uniformity to the audit process – at least in presentation of data – during the second phase. Even more importantly, in a November summary report, Sub-commission C provided a more frank (if no more complete or coherent) view of political finance regulation in the June elections. The report reviewed financial information from the first audited reports as well as the second, and offered some general and specific observations that serve as self-criticisms of the weak political finance system in Indonesia in 1999.

The KPU report acknowledged that most political parties did not have an appropriate bookkeeping system. Accountants familiar with the audit process described the reports as likely constituting only a fraction of political financial activity conducted by or associated with many if not most of the parties. Most parties did not record or report receipt of "in-kind" donations (goods or services), and failed to include spending by organizations that sponsored or supported parties. No party admitted spending over the KPU's campaign spending limit, although some reported contributions exceeding legal limits.

Excessive contributions. In the first report, despite the annual limit upon contributions from individual donors of fifteen million rupiah, Golkar acknowledged receiving two anonymous personal donations of fifty million rupiah each, and one for twenty-five million rupiah. Despite the annual limit upon contributions from business entities and organizations of one hundred and fifty million rupiah, Golkar also reported receiving three contributions from corporations of (or

nearly) two hundred million rupiah (although Golkar informed the KPU the contributions came from separate subsidiaries of these companies, so as not to violate the limit). The Indonesian Democratic Party of Struggle (PDI-P) reported 304 unidentified donors, received three donations from individuals that exceeded the legal limit and received a four hundred million rupiah loan from an individual. The National Awakening Party (PKB) reported receiving two donations from individuals that exceeded the legal limit and four excessive contributions from business entities; the National Mandate Party (PAN) reported receiving one individual donation that exceeded the legal limit; the National Labor Party (PBN) reported receiving loans (or loans and contributions) from five individuals that exceeded the legal limit. Most of the 582,550,000 rupiah reported to have been received by the Justice and Unity Party (PKP) came from unidentified donors.

A few of the more noteworthy items noted in the KPU's review of the second audited reports include: five additional excessive contributions from individuals to PDI-P, plus six more excessive donations among 282 unidentified donors; donations to the United Development Party (PPP) from 168 party executives amounted to nearly fourteen billion rupiah, all exceeding the legal limit of fifteen million rupiah (ranging from twenty million rupiah to one billion, two hundred and fifty million rupiah). The KPU report for the second round of party audited reports, covering the official campaign period, notes that the auditor did not attach a list of donors to Golkar's report at the request of the party's executive board.

Lack of enforcement efforts. Despite the KPU's reports of acknowledged violations of contribution limitations and reporting requirements, and deep suspicions about unreported political finance activity, neither the KPU, *Panwas*, the Supreme Court or any prosecutors appear to have initiated or contemplate initiating any enforcement actions against the political parties, persons or entities involved. No cases involving specific political finance violations appear to be in progress or expected in the courts.

RECOMMENDATIONS

1. Regulation of political finance under the Law on General Elections and Law on Political Parties must be reviewed, revised and coordinated within a comprehensive effort towards reform of Indonesia's election laws and election administration bodies. That effort will require action by the People's Representative Council (DPR), in cooperation with the National Election Commission (KPU) and supported by civil society reform groups. The KPU has the legal mandate under *Article 11* of the election law to conduct an evaluation of the election process within three years. However, the DPR should also appoint a special committee to examine the election and party laws and seek to benefit immediately from the experience gained in the June election process. While the KPU may facilitate this review, genuine reform of the election system may demand changes in the powers, operations and composition of the KPU itself. A comprehensive electoral reform effort should avoid partisan or institutional self-interest, and should be initiated as soon as possible.
2. Comprehensive review and revision of election laws by the new DPR will also need to address those provisions regarding criminal conduct related to elections that involve "money

politics” beyond political finance regulation, such as vote buying, bribery of election officials and other forms of electoral fraud and corruption.

3. Even prior to review and revision of the laws governing political finance, and in order to fully complement such regulation, the new DPR should address legislative ethics issues by establishing clear prohibitions upon bribery or improper financial influence of legislators, internal enforcement mechanisms and financial disclosure requirements for legislators.
4. The Law on General Elections and the Political Party Law must be expanded in their scope and detail regarding political finance regulation and made more consistent, particularly as to financial reporting. They should clearly delineate when and with respect to what particular political activity the jurisdictions of the election law and party law apply. Fundamental concepts must be defined. These include election campaign activity, campaign funds, and what constitutes expenditures or receipts by political parties or their candidates, particularly as to activities by other persons or groups who openly support them. In order to facilitate enforcement of restrictions upon political party campaign funds and their full disclosure through audited reports, IFES recommends the following type of language be included in the election law:
 - All spending by a political party or its representatives for election campaign purposes, or to raise money for such purposes, must be conducted out of the party’s official audited campaign fund. Political parties or their candidates may not use other funds or resources for election campaign purposes. Parties or their candidates may not cause, authorize or consent to spending of other funds by other persons or entities for election campaign purposes in support of their party or its candidates, unless such spending is treated as a contribution to that party’s official campaign fund and reported on the next required audited report of that party.
 - All funds collected or spent for election campaign purposes by a candidate must be directed through the official audited campaign fund of the political party by whom the candidate has been nominated and reported on the next required audited report of that party. Candidates may not use any other funds for election campaign purposes, except that candidates may use their own personal funds for minor personal expenses related to election campaign activity, and must report any such expenditures over [rupiah amount] on the next required audited report of their party.
 - Donations received by a political party in the form of goods or services, whether directly or indirectly, are equivalent to monetary contributions and are valued according to current market value. Providing of goods or services to, or in support of, a political party or candidate without payment, or for payment of less than full market value, is a contribution. Persons may volunteer their personal time to support a party or candidate without such time being viewed as a contribution, as long as such persons are not paid for their time by any other person or entity.
 - If a contribution is received by a political party that is prohibited or excessive in amount under the law, such contribution shall be returned to the donor in its entirety or in the

amount that exceeds the limitation within 48 hours. The recipient political party shall enter a record of the circumstances of the returned contribution in its audited report.

- Anonymous, undocumented or cash contributions exceeding [rupiah amount] are prohibited. Anonymous contributions include any for which the full name of the contributor is not identified.
 - Donations directed through (falsely made in the name of) another person or entity are prohibited. It is impermissible for a person making a contribution, and who is identified as the contributor in the audited report of the recipient party, to be provided money or reimbursed by another person or entity for the contribution.
5. The election law and party law should clearly state that it is prohibited to use any state funds, personnel, facilities, supplies, materiel, equipment or any other state or government resources in support of any political party or candidate, except as authorized by law.
 6. The election law should specifically identify contribution limitations for campaign funds of political parties, as distinguished from donations to parties under the party law. In both laws, limitations upon contributions or total expenditures should be set reasonably and sufficiently high to permit parties to raise and spend adequate campaign funds and to discourage evasion of limitations and “off-the-books” financial activity.
 7. In order to promote full and accurate reporting of political finance activity of political parties through audited reports, IFES recommends the following steps or requirements be added to the election law and political party laws:
 - Political parties should be required to designate an officer of the party to be responsible for compliance with political finance regulations, including recordkeeping and reporting, and to employ professional bookkeepers to maintain proper records and documentation.
 - The KPU should develop standards consistent with professional accounting principles for recording transactions of political parties, and should provide training to political party officers and bookkeepers involved in compliance with political finance regulations.
 - Political parties should be required to record all transactions involving their campaign funds in the central national office in a timely manner (maintain a consolidated report of receipts and expenditures for auditing purposes), and maintain documentation to support such records.
 - Consideration should be given to providing national and provincial offices of political parties with computers dedicated to political finance recordkeeping and reporting, with specially designed software and internet links (perhaps with international donor support).
 8. The KPU should develop library services to facilitate meaningful disclosure of political party audited reports. Such services should offer access to reports and supporting documentation for the news media, academia, civil society or any interested persons.

9. A system of graduated monetary fines, administrative sanctions and criminal penalties should be established to appropriately fit the seriousness of particular violations of the law and political finance regulations, including requirements for full and accurate reporting of political party receipts and expenditures. Obviously, the entire system of political finance regulation is useless without effective and fair enforcement of restrictions and requirements.
10. Comprehensive review and revision of the Law on General Elections should reconsider the role of *Panwas* as a supervisory and quasi-adjudicative body. The DPR should seek new structures and approaches to adjudication of complaints, resolution of disputes and referrals of alleged violations to police or prosecutors. A revised system must include clear lines of authority and enforcement powers for administrative or adjudicative bodies. It must provide clear procedures, requirements and timetables for filing complaints and for administrative or adjudicative action on such matters.
11. Comprehensive review and revision of the Law on Political Parties should eliminate the administrative role of the Supreme Court in regulating parties and receiving audit reports. The Court is not an administrative body, and its perceived "neutrality" should not be compromised. The court system generally should perform a more conventional adjudicative role, including final appellate jurisdiction by the Supreme Court over election disputes and complaints.