

**ELECTORAL DISPUTE RESOLUTION SYSTEMS:  
TOWARDS A HANDBOOK AND RELATED MATERIAL**

**Summary of**

**CONCEPT PAPER**

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## **CONTENTS**

- I. Background
  - 1. Context
  - 2. History
  - 3. Comparative theoretical overview
- II. Products and beneficiaries
  - 1. Products
  - 2. Beneficiaries
- III. Bibliography

## **Introduction**

Electoral dispute resolution (EDR) is a critical issue which impacts on the extent to which elections are considered as free and fair. Since disputes are inherent in elections all over the world, EDR mechanisms that are put in place should be effective to deal with any challenge that arises during any stage of the electoral process.

This concept paper aims to provide a methodological framework for a comparative global study on contemporary electoral dispute resolution mechanisms or systems. The development of this concept paper has been facilitated by the Electoral Tribunal of the Judicial Branch of the Federation (TEPJF/Mexico) within the context of an existing cooperation agreement between TEPJF and International IDEA.

### **I. Background**

1. *Context.* There is growing international consensus, particularly in political and legal circles, that the principle of free and fair elections is a core value of electoral democracy. In fact, this principle is contained in key international instruments and also regional protocols which deal with issues of promoting human rights, democracy, and good governance. In addition, the principle has been incorporated, albeit with different expressions, in national constitutions and other domestic laws. Thus, as electoral democracy has extended to various continents and regions of the

globe, the principle of free and fair elections has emerged as the standard for evaluating the extent to which democracy has been attained and entrenched in each part of the world.

However, this principle does not operate in a vacuum. On the contrary, in contemporary democratic states, the principle of free and fair elections can only find practical expression through a series of interrelated principles, institutions, guarantees, and rules provided for in the legal order. Such interrelated principles include constitutionality and the rule of law; universal, free, and secret ballot; separation of powers; representative and participatory democracy; judicial independence and impartiality; freedom of information and free press; political pluralism; transparent and accountable governance, among others, all of which represent values without which free and fair elections would not be possible.

Equally, free and fair elections will not be possible, as documented experiences have shown, without credible and effective institutions such as electoral commissions which are supported by a well-trained and professional staff.

Beside these elements, there is also a general understanding that effective electoral dispute resolution mechanisms and processes are *sine qua non* for free and fair elections. Such EDR systems should serve as the ultimate guarantor of the principle of free and fair elections. To fulfill this requirement, the EDR systems should uphold, among others, values of independence, impartiality, and the rule of law.

In contemporary democracies, EDR systems play a decisive role in ensuring the stability of the political system and the regular operation of a society's legal machinery. Accordingly, they make a clear contribution to ensuring the implementation of fundamental political-electoral rights and the sustainability of democratic governance.

2. *History*: The function of electoral dispute resolution has gained importance in

recent years, not only in emerging democracies, but also in mature and advanced democracies

While in the first stage of European and American democratic constitutionalism the EDR function was the domain of the legislative organs, through the electoral colleges, a gradual reorientation ensued whereby this came to be seen more as a judicial function.

To cite some examples, in Latin America, the Electoral Court (Corte Electoral) of Uruguay and the Tribunal for Qualifying Elections (Tribunal Calificador de Elecciones) of Chile were established in 1924 and 1925, respectively, whereas their counterpart entities in the various countries of the region became common in subsequent decades, especially in the second half of the 20th century, and, in the context of the “third wave,” in the last quarter.

In Europe, that function was taken up in England as of 1879 by two judges of the King’s (Queen’s) Bench Division of the High Court of Justice; whereas in Austria, under the Weimar Constitution of 1919, that authority was vested in the Constitutional Court of Justice; in France, it was vested in the Constitutional Council as of 1958; and in Spain, in the Constitutional Court in 1978. In Mexico, the Electoral Tribunal of the Judicial Branch of the Federation was established in 1996 (Orozco Henríquez, 2000), and in Indonesia the Constitutional Court assumed that function in 2003.

The central role that these entities – in charge of constitutional and statutory review of elections – have played since the year 2000 is illustrated by the importance of some of the disputes they have resolved:

They voided elections for governor (in Tabasco in 2001, and in Colima in 2003), and imposed historical sanctions on the leading political parties (2003), the first decreed by and the second ratified by the TEPJF/Mexico, in recent years; the resolution of the Supreme Court of Justice of Argentina voiding the primary

elections in the Partido Justicialista (2003); and the judgment of the Electoral Tribunal of Paraguay adjusting the percentage and placement of electronic polling places to be used in the general elections (2003). Also relevant in this vein are the judgments of the electoral-judicial bodies of Guatemala regarding the presidential candidacy of Efraín Ríos Montt (2003), and those handed down by the electoral-judicial entities of the Bolivarian Republic of Venezuela around the referendum to recall the president, still under way (2003-2004).

In other contexts, special mention should be made of the decisive role of the United States Supreme Court in the last presidential election (2000); the decisions of the Supreme Court (Tribunal Supremo) and the Constitutional Court (Tribunal Constitucional) of Spain in relation to the illegality and unconstitutionality of political parties with possible ties to terrorism (2003), as well as the role of the Central Elections Board (Junta Electoral Central) of Spain from March 11 until election day, three days later (2004); and the judgment of the Supreme Court of Justice of the Russian Federation drawing a distinction between general information disseminated by television and election publicity (2003-2004).

These precedents clearly underline the legal and political significance that has been attained through the constitutional jurisdiction of electoral oversight authority, and guarantees of electoral legality in the context of the new democracies of the 21st century.

*3. Theoretical framework and comparative perspective:* While electoral democracy and election systems in general, and the entities entrusted with organizing the elections, in particular, have been studied and documented in a broad, profound, specialized, and professional international and even global bibliography (e.g. IDEA, 1999; López Pintor, 2000), the same cannot be said of the EDR systems.

The information available on the EDR systems shows three main lines of research: in the European context, in 1997 IDEA initiated a project to pull together a handbook on EDR systems, with a global perspective. Second, in the inter-

American context, the multi-institutional efforts of IDEA, IFES, UNDP, and the Mexican institutions Instituto de Investigaciones Jurídicas, IFE, and TEPJF – which organized a seminar in Mexico City in 1999 – yielded a first volume that classified various electoral justice systems in Central, Eastern, and Western Europe, as well as the Americas (see Orozco Henríquez, 2001, based on a conceptualization and typology by Héctor Fix-Zamudio and Judge José de Jesús Orozco Henríquez, 2001). In addition, a second seminar was held in San José, Costa Rica, in 2000, with additional support from the Tribunal Supremo de Elecciones of Costa Rica, and the Inter-American Institute of Human Rights, which looked further into specific experiences of EDR systems in Central America, Mexico, and the Dominican Republic, and which produced a second volume (2000).

Secondly, the compendium Administration and Cost of Elections (1999 and 2003), and the project Electoral Process Information Collection (EPIC) (2002) contain only brief indicative references to EDR.

Thirdly, some EDR-related work has been done by the Office for Democratic Institutions and Human Rights (ODIHR) during 2000 in central and eastern Europe and culminated in the production of “Handbook on Resolving Disputes in the OSCE Area” (ODIHR, 2000).

Apart from these pioneer efforts in the literature, there is clearly no work that sets forth the principles, structures, characteristics and performance of EDR systems, with a theoretical and comparative framework, in context and a global perspective. And we are farther still from having a work that records, in comparative and contextual terms, in a global perspective, the principles, structures, characteristics, and performance related to the EDR systems. Certainly, there is no theoretical and practical handbook to multiply and make available relevant knowledge on the contemporary EDR to several audiences.

## II. Products and beneficiaries

### 1. *This project is expected to produce:*

- a. an easy-to-read, practical, and informative handbook that sets forth principles, structures, typologies, functions, performance, alternative methods, cost considerations, and policy issues in the area of EDR, and which would become a key reference for studying, understanding, and improving them;
- b. possibly, a second volume made up of the case studies which, in summary form, are incorporated in the Handbook, so as to better understand the strengths and weaknesses of the EDR systems in each country;
- c. a data base that contains all the information collected, organized, and analyzed in the course of preparing the handbook and its second volume;
- d. a new topic for inclusion in the electronic compendium on *Administration and Cost of Elections (ACE)* and relevant IDEA tools.

### 2. *Beneficiaries*

Beneficiaries of this handbook and related materials will include: electoral management bodies; political and electoral decision-makers; legislators; government leaders and officials; civil society organizations; researchers and academics; mass media; international observers; inter-governmental organizations and international non-governmental organizations in the area of electoral assistance and promotion; and, of course, the citizenry.

### III. References

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