

16. Compliance with and enforcement of electoral law

The legal framework should provide effective mechanisms and remedies for compliance with the law and the enforcement of electoral rights, defining penalties for specific electoral offences.

The legal framework should provide effective mechanisms and remedies for the enforcement of electoral rights. The right to vote is a fundamental human right and the right to a remedy for violation of the right to vote is also a fundamental human right. The legal framework for elections must set forth detailed and sufficient provisions protecting suffrage rights.

The legal framework should provide that every voter, candidate and political party has the right to lodge a complaint with the competent EMB or court when an infringement of electoral rights is alleged to have occurred. The law must require that the appropriate EMB or court render a prompt decision to avoid the aggrieved party losing his/her electoral right. The law must provide a right of appeal to an appropriate higher level of EMB or court with authority to review and exercise final jurisdiction in the matter. The decision of the court of last resort must be issued promptly.

The legal framework should provide for timely deadlines for the consideration and determination of a complaint and the communication of the decision to the complainant. Some complaints can be determined immediately, others in hours, and some will take days. Deadlines must therefore allow for a degree of flexibility, taking into account the level of the EMB or court, and the nature of the complaint and the electoral urgency. Prompt resolution can frequently prevent escalation of a minor complaint into a major problem. However, certain types of dispute in some jurisdictions can only be raised by means of an election petition after the electoral process has concluded.

The paragraphs above outline the minimum legal standards that must be included in the legal framework. A country has some flexibility in adopting and determining the legal structure of the dispute settlement mechanism most suitable to resolve its electoral disputes.

Checklist

- Does the legal framework provide effective mechanisms and remedies for compliance with the law for the enforcement of electoral rights?
- Does the legal framework clearly state who can file complaints for election law violations and the process for filing complaints?
- Does the legal framework provide for the right to appeal an election management body decision to a court of law with authority to review and exercise final jurisdiction in the matter?
- Does the legal framework provide for timely deadlines for filing, considering and determining remedies for a complaint?