

# Effective Legal Frameworks for Electoral Justice

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# What Is Electoral Justice?

Electoral justice, in general terms, involves the means and mechanisms:

- for ensuring that each action, procedure and decision related to the electoral process is in line with the law (the constitution, statute law, international instruments and treaties, and all other provisions); and
- for protecting or restoring the enjoyment of electoral rights, giving people who believe their electoral rights have been violated the ability to make a complaint, get a hearing and receive an adjudication.

# Accra Guiding Principles - Values

Integrity

Participation

Lawfulness (Rule of Law)

Impartiality and Fairness

Professionalism

Independence

Transparency

Timeliness

Non-Violence (Freedom from Threats and Violence)

Regularity and

Acceptance

# Electoral Risk Management Tool on Legal Frameworks

## Internal Factors:

- Contested Election Law
- Unfit Electoral System
- Inadequate Electoral Rules

## Action Points on Prevention and Mitigation of Election-Related Violence:

- Establish clear, effective laws and institutions
- Define roles (parties, security sector)
- But also, collaborate and promote understanding

# 1) Exceptions NOT swallowing the rule

- Constitution: Freedom of assembly is an inviolable right, and shall be governed by appropriate legislation.
- Law: No assembly allowed except for Tuesday mornings on one street with 10 days notice, no signs allowed...

Rights matter, and while some restrictions are reasonable (to prevent traffic problems, etc.) passing laws that effectively eliminate fundamental rights will not be acceptable to the public and other stakeholders.

## 2) Flexibility

Procedures must be followed, but should not be a straitjacket. Remember what the interests are of the people in a polling station:

- Voter: to cast his or her vote in secret and have his or her vote counted without intimidation or coercion
- Polling officials: To enable a voter to cast his or her voter under these conditions and to ensure that each voter casts only one vote and in the correct location.
- Candidate/party representatives, media, observers, security forces have their own interests

Following regulations is essential, but build in some reasonable flexibility. This will mitigate electoral complaints, and electoral competitors' gamesmanship.

### 3) Legal notoriety and exemplary justice

In any democracy, political competitors will test the limits of the law. It might be subtle, like campaign finance violations, or more blunt like intimidation or ballot box stuffing.

- Establish firm, clear sanctions.
- Ensure that electoral competitors are **aware** of the sanctions.

And when some person or organization is found to have willfully or with intent broken the law, after a proper hearing with full due process, ensure that the punishment is enforced and known to other stakeholders.

This is the best kind of education and preventative measure against future misconduct.

# 4) Peace and Security

Elections are often battles.

- Shouting, arguing, name-calling... Tensions may rise.
- Furthermore, there may be groups that for ideological reasons, self-interest, or both will want to see elections fail and may use violence to achieve that goal.
- Security forces will have a difficult job in these circumstances.

Voting, however, is the most peaceful of acts. The polling station is ideally free of partisanship, polemics, intimidation. Security forces must respect the inviolability of the polling station.

An effective legal framework accounts for these two goals, by ensuring broad coordination and cooperation between election management and security forces for the securing of polling sites, but also ensures that security forces themselves, even inadvertently, do not intimidate voters while casting votes. This will minimize likelihood of violence while preserving the peace of the polling site.

# 5) Belief in the law

Laws often fail, because people do not believe that the law serves them or the public interest. Why?

- How they were drafted and promulgated.
- Law is perceived to benefit some more than others.
- Law is perceived as being enforced selectively or in an unfair manner.
- Other reasons?

Dissatisfaction with or “disbelief” in the law is a red flag and should be a concern for electoral leaders as well as leaders in general.

Thank You!