

Electoral Justice Regulations Around the World:

Key findings from International IDEA's global research
on electoral dispute-resolution systems





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on electoral dispute-resolution systems**

Abdurashid Solijonov



International IDEA resources on electoral processes

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This report is based on data collected up to August 2015. The data and maps are continuously updated in the International IDEA Electoral Justice Database. For the latest information visit <<http://www.idea.int/elections/ej/index.cfm>>.

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Foreword

The basic condition of a representative democracy is the holding of free and fair elections. This might, however, be a technical and sometimes daunting task under adverse contexts. Obviously, a prerequisite is to promulgate laws that provide the basis for a fair and equal electoral system which establishes, among other things, how and when elections are to be held, who can vote and who can run for elections, and which body is responsible for the organization of the elections.

Nevertheless, the existence of laws providing for the organization of democratic elections does not necessarily guarantee that free and fair elections will be held. For this reason, it is necessary to guarantee access to justice and to have an electoral dispute-resolution (EDR) system to ensure that the law is applied in practice and that elections are held on a level playing field. Also, it is important that the legal and institutional frameworks enable the implementation of sanctions to punish and discourage infractions.

Just as there is no ideal model for a democratic state or its electoral system, neither is there a perfect design for all EDR systems. Each system tends to have its own strengths and weaknesses, and the best option always depends on the specific context of the individual country.

This report highlights the relevance of the information collected by International IDEA's staff and collaborators, and uses it to illustrate some interesting trends in the EDR designs applied around the world. It analyses disputes related to election results, the nomination and registration of electoral contestants, and campaign finance infractions, and also mentions election-related crimes and the ways in which countries deal with them.

In addition to being a valuable publication in its own right, this report also serves as an introduction to International IDEA's Electoral Justice Database. This database is a unique tool that provides the user with detailed information on the EDR system in use in practically any country of the world by including step-by-step information detailing the EDR process for legislative and presidential elections, and direct quotes from the relevant legal text, often including a link to the document in question. The Electoral Justice Database can also be used to compare the systems implemented in a certain region or group of countries. Its design facilitates comparisons by using a streamlined vocabulary, including summary tables at the end of the list of selected countries, and providing the user with the option to download the data.

This information could be very useful to national legislators and judges—both in countries in the process of democratization and in well-established democracies—as well as citizens' groups, non-governmental organizations and other stakeholders.

I sincerely congratulate International IDEA for providing the electoral community with this systematic overview that furnishes valuable information to undertake a comprehensive comparative analysis.

Manuel González Oropeza
Justice of the Electoral Tribunal of the Federal Judiciary of Mexico

1. Introduction

Overview

Elections are central to establishing a legitimate democratic government. However, a democratic government's degree of legitimacy depends on the extent to which elections are trusted and perceived to be free and fair. At the same time, competition is an inherent part of elections, which can tempt actors to engage in various types of misconduct during the many stages of the electoral process, including improper disqualification of voters or candidates, electoral fraud, obstruction of electoral processes by both election officials and voters, and campaign finance infractions. In addition to deliberate misconduct, numerous types of unintended administrative error or mishandling can disrupt election procedures. These irregularities may result in electoral complaints or disputes raised by various stakeholders. The way in which complaints and disputes are handled is one of the important indicators of the credibility of elections. Therefore, free and fair elections necessitate the adoption of efficient and transparent electoral dispute-resolution (EDR) mechanisms that are explicitly defined in legislation.

In the period 2013–14, International IDEA conducted a comprehensive global study of EDR systems and developed an online Electoral Justice Database (EJD) to share the findings. The target audience for this database is quite broad. It includes voters, candidates and political parties as the key participants in electoral processes, as well as practitioners, academics, media organizations and other relevant actors working in the field of elections. The main aims of compiling comparative data about EDR systems around the world were to contribute to electoral legal reform processes, raise questions and debate about the functioning of the institutions in charge of electoral justice, and inform voters and other stakeholders about the ways in which electoral disputes are processed in their own countries and abroad.

The main focus of the study was the electoral law and other legislation of countries with provisions on EDR mechanisms. So far, the legal documents of 178 countries have been analysed, and the results are now freely available online in the EJD. The data in the database is divided into four parts. Each of these parts covers specific types of election-related disputes. Three have separate sections for presidential and legislative elections, while the fourth deals with criminal offences that are common to both. In total, the database contains 105 data variables.

This report provides an overview of the EJD and presents key findings from the study of EDR mechanisms. It also presents a brief discussion of these findings, highlighting important trends and practices from a global perspective. The aim of this report is to provide an introduction to International IDEA's EJD and promote its utility within the electoral assistance and practitioner communities around the world.

Organization of this report

Chapter 2 presents an overview of the EJD, which explains the rationale behind the research and provides general information about the content and structure of the database. The findings of the research are presented in chapters 3 to 6, which summarize the data from the four parts of the database. Chapter 3 presents data from Part 1 of the EJD, which targets disputes related to election results. Chapter 4 covers data from Part 2, which deals with disputes related to nomination and registration of electoral contestants. Chapter 5 presents data from Part 3 of the EJD, which targets disputes related to campaign finance infractions. Chapter 6 shares the findings from Part 4 of the EJD, which deals with election-related crimes and the ways in which countries deal with them. The report also draws some general conclusions based on the findings presented in the text and provides a separate appendix to explain how to use the online database.

While the content of the EJD is fairly extensive, this report covers only selected data from the database. For instance, the report presents data only from the sections that cover disputes related to legislative elections. Presidential elections do not take place in 42 per cent of countries and, where they do, the EDR procedures are almost the same for both types of elections in most cases. Users who are interested in data on presidential elections and other areas which are not covered in this report can explore the online database, where relevant summaries of the data can be generated using graphical presentations and maps.

2. About the Electoral Justice Database

Why an Electoral Justice Database?

International IDEA's recent research on electoral justice shows that both newly established electoral legal frameworks across the globe and reformed versions of some existing frameworks pay increased attention to electoral justice. These frameworks focus, for example, on the dispute-resolution procedures applicable to certain stages of the electoral processes including the nomination of candidates, the conduct of campaigns or the certification of results (Orozco-Henríquez et al. 2010). This research also highlights an increasing awareness of the need to establish comprehensive and integrated legal and institutional frameworks to govern elections, and the EDR system is often the key element of the electoral reform agenda. The lack of credibility of some electoral processes has often led voters to question the need to participate in elections, or to reject their results. In view of this, effective and timely electoral justice becomes the key element in addressing threats to the credibility of elections.

The importance of access to justice in election-related matters is also well documented in relevant international obligations and standards. A review of approximately 200 public international law documents by the Carter Center (2014) found 21 fundamental rights and obligations that are relevant to electoral processes. These documents pay due attention to electoral justice and recognize its role in providing equal rights to electoral participants and fair resolutions of judicial procedures. International IDEA's most recent publication on the subject (Tuccinardi et al. 2014) dedicates a special chapter to electoral justice that summarizes the key obligations, treaties and United Nations jurisprudence on this topic.

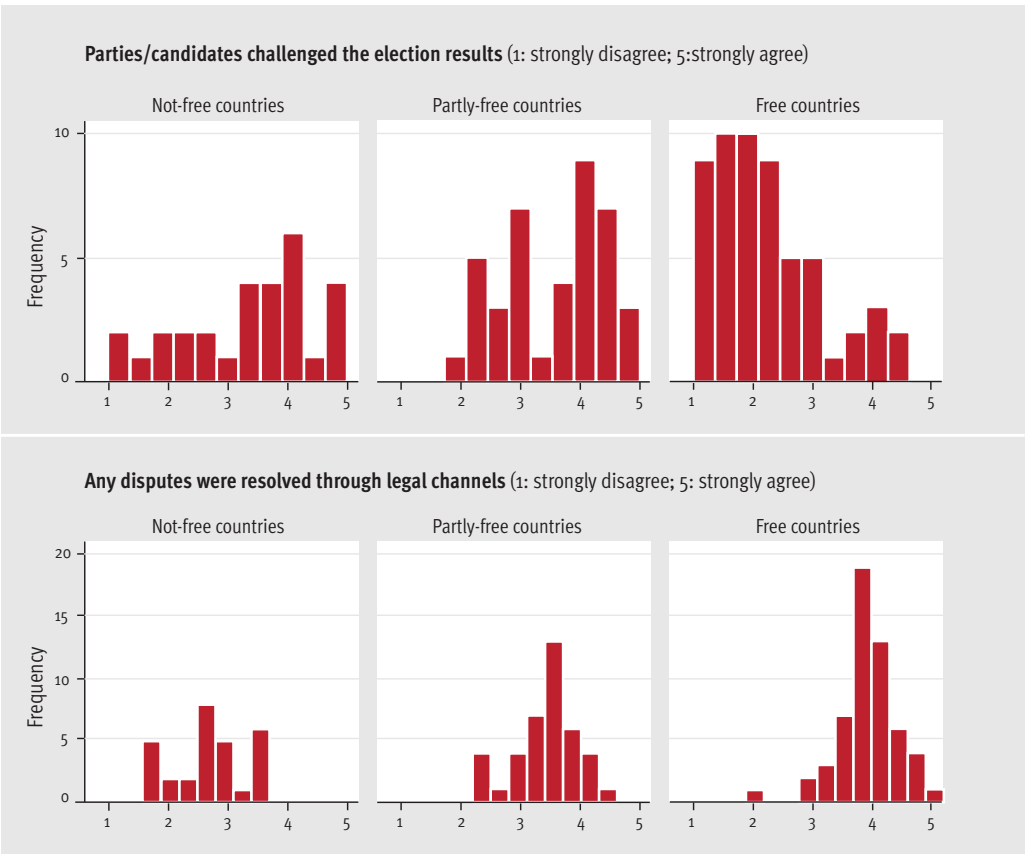
Academic researchers are also paying increased attention to electoral justice in broader analyses of electoral integrity. According to the research conducted by Birch (2011), which covers 161 elections administered in 61 countries between 1995 and 2007, malpractices related to electoral justice are not so widespread. Nonetheless, her findings reveal some concerns related to the adjudication of disputes in 47 per cent of countries. Since any mishandling of electoral disputes has the potential to diminish stakeholders' trust in electoral justice, this finding is troubling.

More recently, a global expert survey on perceptions of electoral integrity (PEI) by Norris et al. (2015) examines some key aspects of electoral justice. The survey results show that democratic or 'free' countries generally experience fewer challenges to elections results than 'partly-free' and 'not-free' countries (see Figure 2.1.). At the same time, however, in democratic countries there are many more cases of electoral disputes resolved using legal channels. This generally shows how well EDR mechanisms work in democratic countries. The case of partly-free countries, which are also known as hybrid regimes, is particularly interesting. They have many more cases of challenges to election results

compared to the other two groups, but nonetheless have far fewer cases resolved through legal channels compared to free countries.

Based on the data in Figure 2.1, it is possible to conclude that partly-free countries have a greater need to develop efficient EDR mechanisms and to establish and preserve public trust in these institutions. There is a clear pattern of under-utilization of legal channels to deal with challenges to election results in these countries. The case of non-democratic countries could be really challenging, since weak rule of law and autocratic pressure may make it difficult to develop functioning EDR mechanisms. However, the fact that there are still challenges to election results even in these countries should signal the need for proper EDR mechanisms.

Figure 2.1. Findings of the Perceptions of Electoral Integrity (PEI) dataset



Notes: Data based on expert evaluation of 153 national parliamentary and presidential elections held worldwide in 125 countries between 1 July 2012 and 30 June 2015. Freedom House indicators were used to classify countries as free, partly free or not free.
Sources: Norris, P. et al., 'Perceptions of Electoral Integrity, Version 3.5', Harvard Dataverse, July 2015, <<https://dataverse.harvard.edu/dataset/-/PEI>>, accessed 4 November 2015.

International IDEA's EJD is intended to help electoral legislation reformers and other actors concerned with electoral justice to develop efficient EDR systems. It is also expected to inspire academic enquiry into unexplored areas of legal institutions for EDR systems, trigger new questions about the functioning of EDR systems and contribute to improving their role in levelling the playing field for electoral competition. Such comparative data has not been collected before, and even the EJD itself previously provided only general data. Therefore, the EJD is now filling a significant knowledge gap with regard to the institutions in charge of electoral justice.

The structure of the Electoral Justice Database

The structure of the EJD and its general methodological approach to data collection mostly build on *Electoral Justice: The International IDEA Handbook* (Orozco-Henríquez et al. 2010). Readers of this report and users of the database are encouraged to consult the Handbook to gain a more comprehensive understanding of the concepts used and rationale behind the research. References to the Handbook have been added throughout this report.

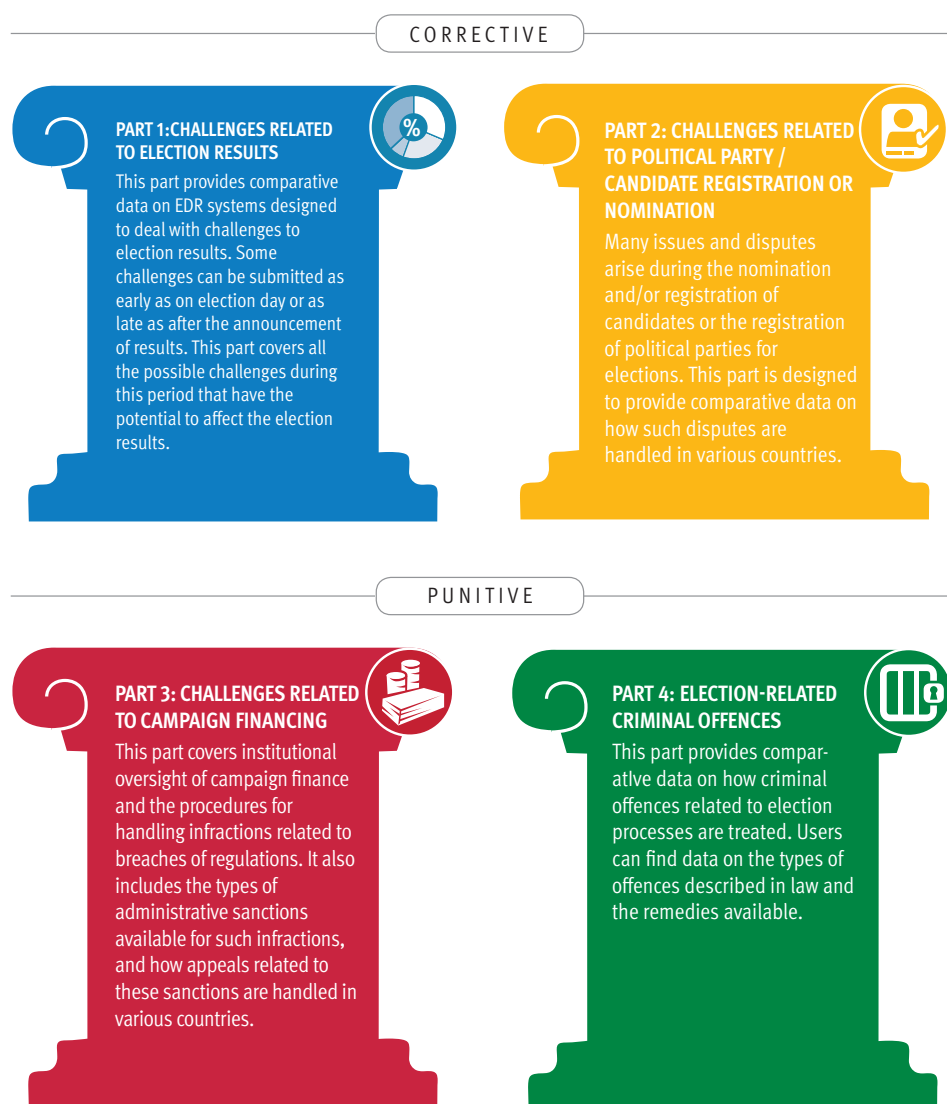
The structure of the EJD was designed to partly reflect the Handbook's division of EDR systems into three different types, namely:

1. EDR systems that either provide a formal remedy or are corrective in nature, such as the means of bringing electoral challenges that can annul, modify or acknowledge an irregularity;
2. EDR systems that are punitive in nature, and which impose a penalty on the perpetrator, entity or person responsible for the irregularity, such as election-related administrative and criminal liabilities; and
3. Alternative mechanisms for electoral dispute resolution which are voluntary for the parties in dispute and frequently informal.

Figure 2.2 shows the structure of the EJD and provides a description of each part of the database. It should be noted that alternative EDR mechanisms are not covered in the EJD because the data in the database is based on the texts of legislation, while alternative EDR mechanisms are mostly informal institutions.

It should be noted that, in practice, electoral disputes can arise at any point in the electoral cycle, and some of these types of disputes are not covered in the existing four parts of the EJD. For example, complaints related to voter registration and disputes related to general election campaigns are not currently covered in the EJD.

Figure 2.2. The four parts of the Electoral Justice Database



Source: International IDEA, Electoral Justice Database, <<http://www.idea.int/elections/ej/index.cfm>>.

Parts 1, 2 and 3 of the database contain separate sections on legislative and presidential elections. EDR processes are sometimes different for presidential and legislative elections and in some countries, presidential and legislative elections are covered in separate legal documents. Part 4 is general and applies to both types of elections. The database contains 105 questions. The number of questions in each part differs, reflecting the nature of dispute-resolution processes (see Appendix B).

What types of data can users find in the database?

The EJD presents global comparative data in a simple and user-friendly format. Data for each of the 105 questions in the database is presented in the following pattern:

1. *Data.* These are given mostly in the form of standardized options, such as the type of first-instance body that hears appeals (courts, EMBs), the entities that can submit the complaints (candidates, voters), or as simple yes/no answers. If some data do not fall under any of the standard options, they come under the option 'other'.
2. *Comments.* Whenever necessary, the data is supported by additional comments or clarifications. These are meant to provide in-depth information about national practices or explain complexities in the interpretation of legal documents.
3. *Sources.* These are meant to support the data and mostly consist of quotes from the legal documents or paragraphs from other materials used in the study. Each data point in the database has its corresponding source. Hyperlinks to the full text of laws or other material are provided if the text is available online.¹

Since the four parts of the EJD cover different categories of electoral disputes, the number and type of questions in each part also differ. Appendix B lists all questions in each part of the EJD.

The decision about the questions included in each part of the EJD was made in consultation with leading elections experts. The experts made sure that the questions represent the crucial stages and components of a standard EDR procedures. For instance, Figure 3.1 is a graphic representation of the entire EDR process dealing with election results, where most of the questions in Part 1 of the EJD are located.

Sources for the data

The comparative data in the EJD is based on the text of the law. Since, in theory, resolution of electoral disputes should follow the procedures established by the law, the legal frameworks governing electoral justice provide a reliable source of data on EDR systems. However, it should be acknowledged that the strength of legal frameworks varies from country to country.

Some frameworks contain vague provisions or gaps, which may result in inconsistent or unfair application of the law. This means that by having the law as the only source for the data, the EJD can help to identify such problems in the legislation, and potentially contribute to reform initiatives. However, it should also be noted that, for a variety of reasons, some countries may not follow the letter of the law on EDR. Thus, even if the EJD finds that the EDR procedures are well

¹ If no hyperlink is provided, the text of the laws or other material are not available online. Users interested in the full text of the sources can contact International IDEA using the templates provided to request copies of the source documents.

covered in the law, the actual impact of the law may not be so efficient.

This is one of the weaknesses of relying on de jure data, and de facto data would be needed to complement de jure data in order to obtain a proper examination of EDR systems. However, comparative de facto data on the functioning of EDR systems are not available. The election observation mission (EOM) reports produced by various organizations provide assessments of EDR procedures relevant to observed elections, but these analyses are not conducted in a consistent way using a standard methodology. The information in EOM reports must be coded using a rigorous methodology in order to compile comparative data on the application of EDR rules.

In many countries the legal provisions on EDR mechanisms are rather complex. This poses a great challenge when classifying the data in the EJD. Nevertheless, the researchers engaged in the study tried as far as possible to be consistent in the interpretation of the law. Where certain provisions were unclear, the data was coded as ‘not specified’ and relevant explanations provided.

The EJD contains only cross-sectional data based on the most recent legislation. The research was conducted in 2013–14. However, the database is regularly updated following legal reforms, which means that data for some countries changes over time. When the database is updated following a legal reform in a specific country, the out-of-date data is preserved and can be made available on request.

What types of data are covered in this report?

As noted in the introduction, this report presents the findings on only some of the key questions from each part of the EJD and provides a brief discussion of those findings. For instance, chapters 3 and 4 of the report present findings that target mainly the EDR procedures related to first-instance bodies, and a few general questions. Chapter 5 also covers only the key questions from Part 3 of the database. Chapter 6 covers all the questions from the Part 4 of the database, as this part of the database is quite short.

Those who are interested in the questions not covered in this report can explore the online database, where relevant data and maps can be generated. Finally, this report presents data only for legislative elections. Findings on presidential elections can be generated using the online database.

Updates to the database

Since the EJD is updated and developed on a regular basis, users are encouraged to provide feedback and suggestions to further develop the content of the database. Moreover, if users discover any mistakes or omissions in the database, or realize that the law has been misinterpreted, the submission of corrections to the data is encouraged. Since the legislation providing for elections is rather complex in many countries, we are far from claiming that the EJD contains flawless interpretations of legal documents.

3. Challenges related to election results

This chapter presents the findings from Part 1 of the EJD, which contains comparative data about EDR procedures related to challenges to election results. The modern history of elections is full of reports about losing candidates or parties challenging the results of elections. Such challenges may be based on alleged irregularities or misconduct during voting, the counting and processing of results or at any other stage of elections. Having clearly stipulated rules in law about how to deal with such challenges is very important, as it helps ensure that all the stakeholders feel that their rights are being fully respected.

Part 1 of the EJD covers the EDR procedures that are designed to deal with challenges and disputes that might have an impact on election results. In practice, most disputes that address election results occur closer to the end of electoral contests. As such, resolution of these disputes can be part of the concluding act in the administration of one particular electoral event. Failure at this final stage can ruin the investments and accomplishments made during the preceding stages. However, in some cases the reverse might be true—disruptions and irregularities conducted in earlier stages may be resolved by electoral disputes if the EDR system functions as it should. Therefore, the importance of sound and effective EDR systems that address disputes related to election results cannot be overestimated.

Figure 3.1 models the entire EDR process for dealing with disputes related to election results, where most of the questions in Part 1 of the database are located. The following sections present and discuss the answers obtained to some of the key questions raised in the database.

Electoral dispute-resolution bodies dealing with disputes related to election results

There are several approaches to and criteria for classifying electoral dispute-resolution systems (Orozco-Henríquez et al. 2010: Chapter 5). One of the suggested criteria for classification is the nature of the body that hears electoral challenges in the first instance. However, this criterion may not be very useful given that, in many countries, legislation prescribes that electoral challenges to election results must be brought before the electoral management bodies (EMBs) in the first instance, even though in most cases EMBs are not the bodies that make the final decision. Therefore, in order to provide users with broader information about the instances dealing with electoral challenges, the EJD covers the first- and last-instance bodies dealing with electoral disputes, as well as the number of levels of adjudication.

Figure 3.2 shows the distribution of types of first- and last-instance bodies dealing with challenges related to election results in 173 countries. The lines represent the routes by which the complaints transfer from the first-instance body to the last-instance body. However, in 88 countries (51 per cent) the decisions of the first-instance body cannot be appealed, which means that there is only one level of adjudication.

Data shows that the most frequently observed first-instance bodies are courts of general jurisdiction and EMBs, followed by constitutional courts or councils. When it comes to the last-instance bodies it is notable that, in the vast majority of countries, the highest level of court of general jurisdiction performs this function. Constitutional courts or councils are the last-instance bodies in only 13 countries.

Figure 3.1. The electoral dispute-resolution process for election results

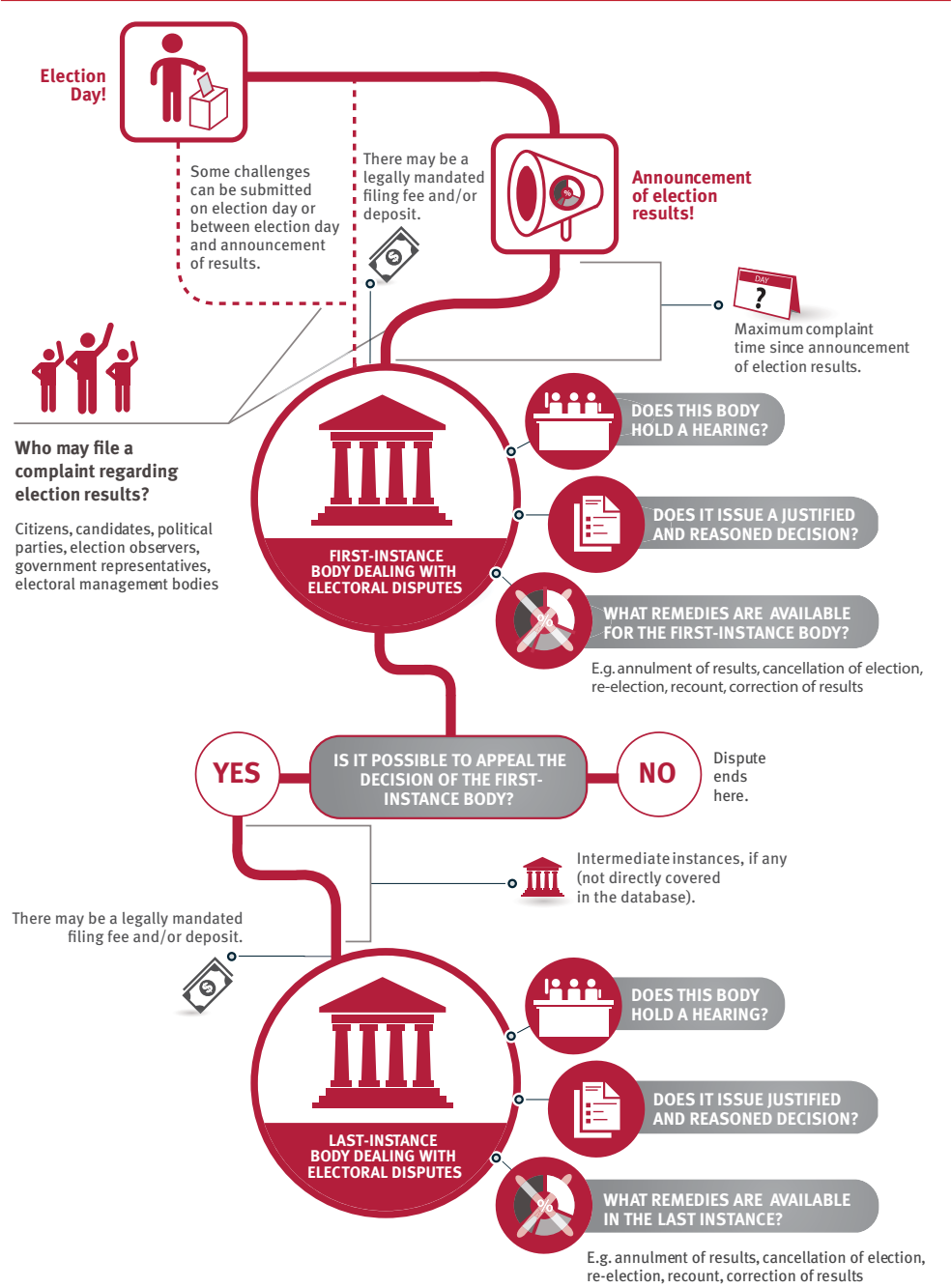
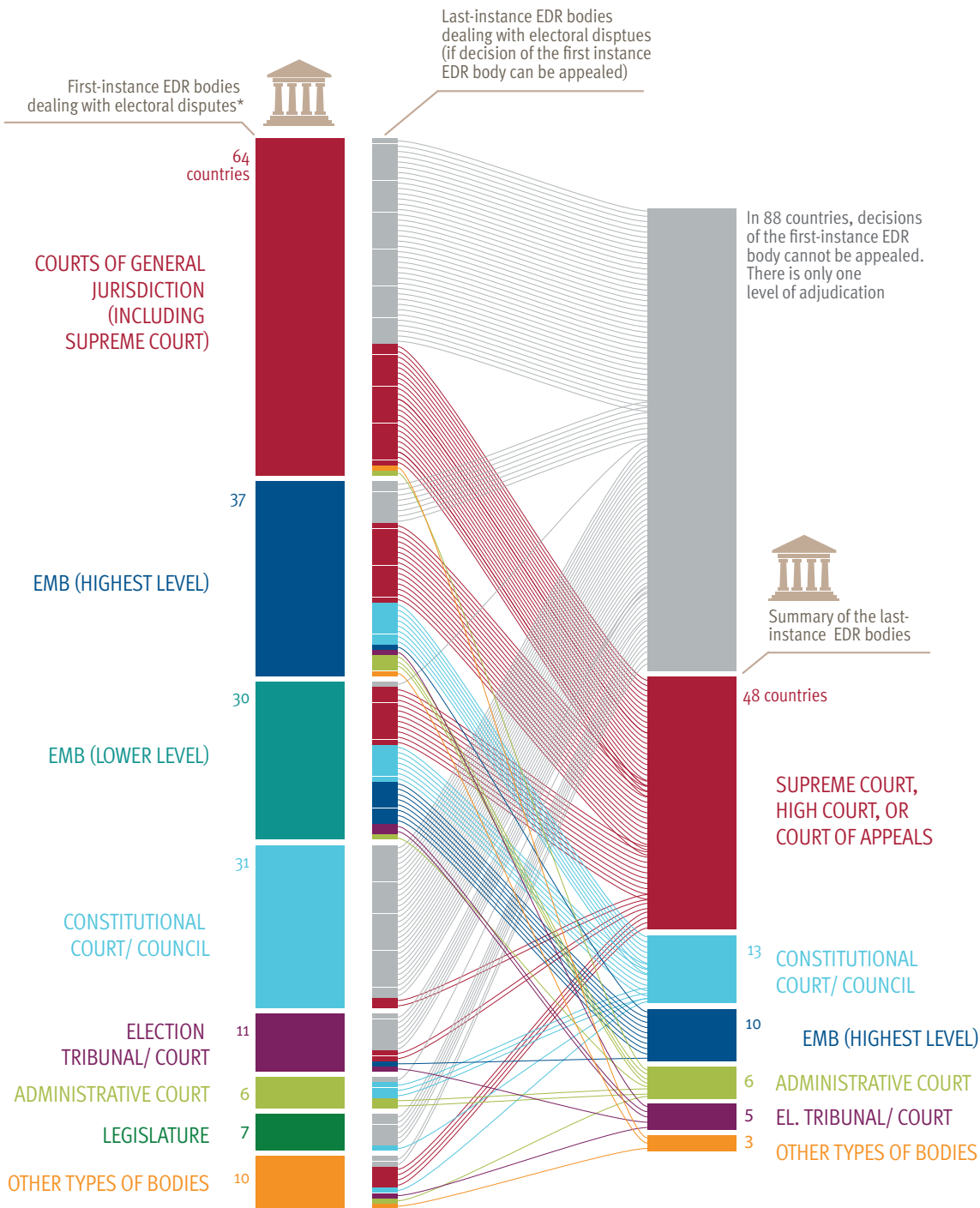


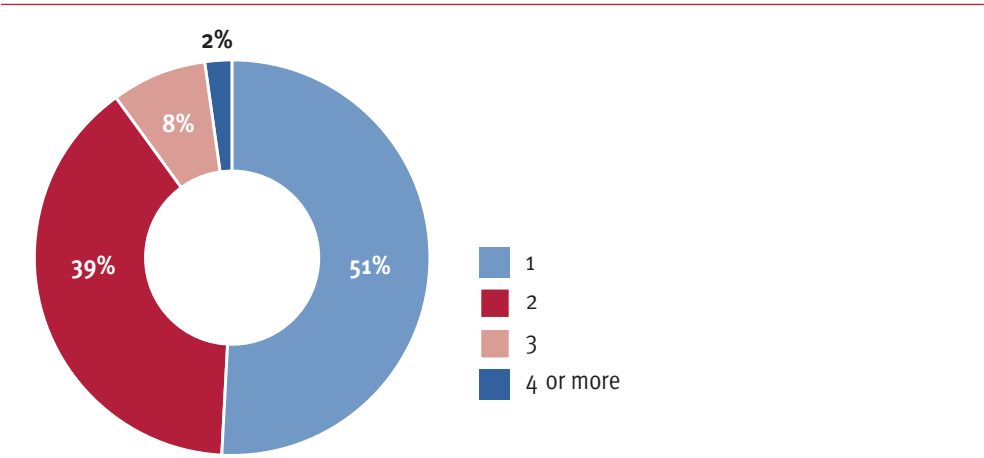
Figure 3.2. First- and last-instance bodies dealing with electoral disputes related to election results



* Number of countries having each EDR body in the first instance. Some countries have more than one type of EDR body that processes disputes in the first instance, thus total number of countries in the first instance column is greater than that of the last instance.
Notes: Data for 173 countries. Graph represents the data in the EJD as of August 2015.

Since there are more than two levels of adjudication of electoral disputes in some countries, Figure 3.2 presents a somewhat simplified representation of reality. As Figure 3.3 shows, in 10 per cent of countries, there is at least one additional body between the first- and last-instance bodies. Apart from the number of intermediary bodies and the total number of days it takes for the whole EDR process, the EJD does not provide detailed data on these intermediary levels of adjudication.

Figure 3.3. Number of levels of adjudication for disputes related to elections results



Notes: Data for 172 countries. Graph represents the data in the EJD as of August 2015.

Who can challenge election results with the first-instance EDR body?

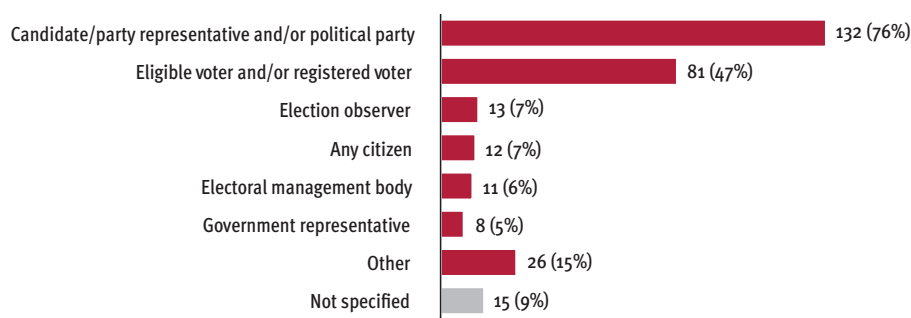
Generally, all stakeholders affected either directly or indirectly by the election outcome should be entitled to challenge the election results or file complaints about misconduct during or after the elections, given that the resolution of these challenges or complaints may affect the election results. One of the aims of the research was to investigate the extent to which legislation in different countries contains provisions about who should be allowed to submit such challenges or complaints.

The findings show that the groups of stakeholders most often entitled to submit complaints or challenge the election results are candidates (or party representatives), political parties and eligible or registered voters (Figure 3.4). It should be noted that legislation in most countries does not clearly distinguish between registered and eligible voters. In such cases, both answers are selected. Where legislation clearly differentiates between these two groups, the answers are coded separately. For example, the legislation of 25 countries clearly specifies that only registered voters are entitled to challenge election results.

Legislation of 15 countries does not clearly specify who may challenge or file complaints about election results. The option ‘Other’ includes various entities, such as voter-initiative groups, attorneys-general and parliamentarians. More details can be explored using the online database.

The electoral legislation in 81 countries (47 per cent) contains clear provisions that allow voters—key stakeholders in elections—to challenge elections results. This raises some serious questions about the impartiality of EDR systems in the remaining 53 per cent of countries. Further research would be needed to understand why voters are not legally allowed to challenge election results in so many countries.

Figure 3.4. Who can challenge the results of legislative elections?



Notes: Number (percentage) of countries with each option. Some countries have more than one option. Data for 174 countries. Graph represents the data in the EJD as of August 2015.

The timing of challenges to election results

Elections are usually big events in which a large number of people are mobilized in a limited period of time. Their administration and management, therefore, are complex logistical exercises that have to be well planned and coordinated by competent EMBs and the other actors involved. Clearly stipulated rules and guidelines, especially time limits on certain key procedures, are very important for the successful administration and management of the entire electoral process. When it comes to dealing with disputes related to election results, timing is of the utmost importance in the light of the fact that in most cases the announcement of final results depends on the rulings made on such disputes.

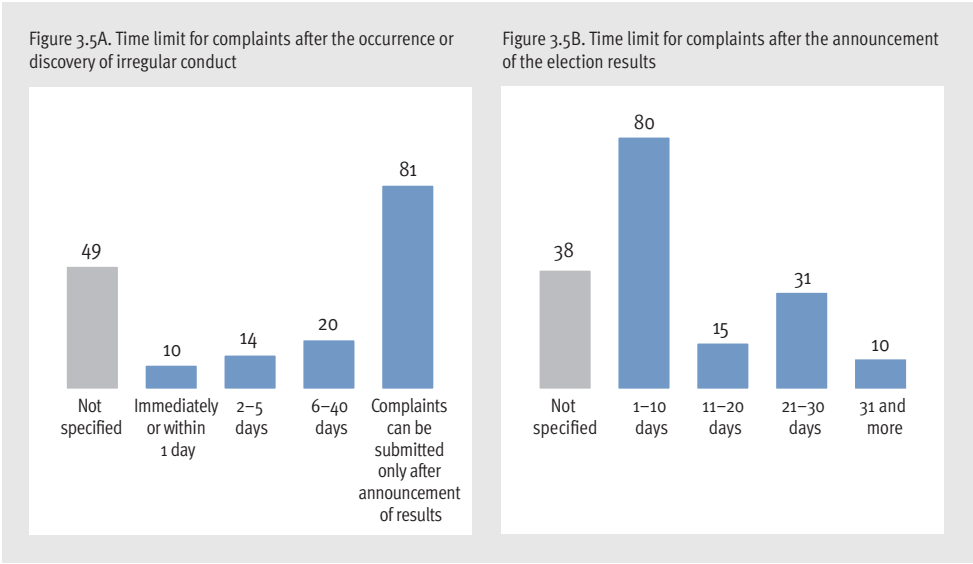
Challenges to election results are sometimes related to election day itself, such as the voting procedure, the set-up, management and staffing of polling stations, the decisions of polling officials about who should be allowed to vote or prevented from voting, the freedom and secrecy of the ballot, and so on (Orozco-Henríquez et al. 2010: paras 428–80). After the voting has been completed, electoral challenges may address the procedures for counting and tallying the votes, the distribution of

elected seats, the declaration of the results, certification of the validity of the election and the publication of the election results. Based on this reasoning, the EJD divides the question related to timing into two parts: the time limit for complaints after the occurrence or discovery of irregular conduct (Figure 3.5A); and the time limit for complaints after the announcement of the election results (Figure 3.5B).

The research shows that legislation in only 44 countries (25 per cent) provides for a time limit on complaints after the occurrence or discovery of irregular conduct. In 49 countries, legislation does not contain clear provisions in this regard, which by extension may indicate that such a limit does not exist or such a challenge is not permitted. It can be observed from the results that in a great majority of the countries, election results-related complaints and challenges can be submitted only after the announcement of results. It should also be noted that 28 countries have provisions that allow the submission of complaints both before and after the announcement of the results.²

Before the announcement of results, complaints can be submitted within the range of 1–40 days, while after the announcement of results complaints can be submitted mainly within the range of 1–30 days. In 10 countries the handling of challenges can take more than 30 days. However, the most frequently applied ruling is within the range of 1–10 days.

Figure 3.5A and Figure 3.5B. Time limits for complaints about election results



Notes: Columns represent number of countries. Data for 174 countries. Graph represents the data in the EJD as of August 2015.

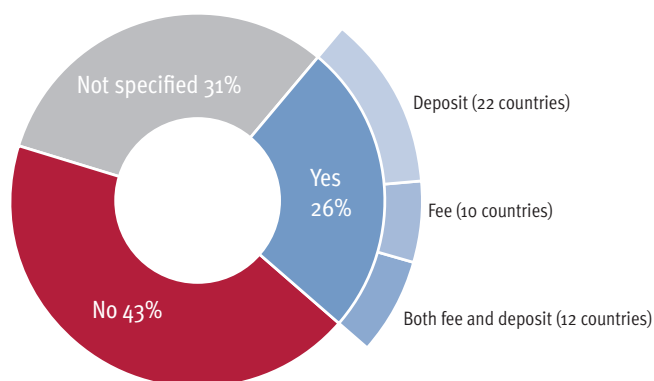
² It is possible combine the answers to both question in the online database to see which countries allow complaints in both periods.

Requirement to pay a fee or deposit to submit a complaint to the first-instance electoral dispute-resolution body

While many stakeholders argue that access to the EDR system should be free of charge, some countries require a charge in the form of a judicial bond, a deposit or a non-recoverable sum as a precondition for access to the EDR system. If the users of the electoral justice system are required to pay a specific fee, this should be set at a reasonable level that takes account of criteria such as necessity and proportionality (Orozco-Henríquez et al. 2010: paras 360–64). Fees should not become an obstacle to access to electoral justice. In some countries, a sum of money has to be deposited when submitting a complaint or a challenge, which is returned only in the event that the challenge is declared to have been well-founded.

The research targeted the legal requirement to pay a fee or deposit as a condition for submitting an electoral complaint. Results show that in 75 countries (43 per cent) legislation does not prescribe a requirement to pay any fee or deposit for submitting election results-related complaints (Figure 3.6), while 44 countries (25 per cent) do have fee or deposit requirements prescribed in the law. In almost one-third of countries the legislation does not contain any clear provisions regarding fees or deposits. The database also provides data on the level of fees or deposits in local currencies for those countries that require them.

Figure 3.6. Requirement to pay a fee or deposit to the first-instance electoral dispute-resolution body



Notes: Data for 173 countries. Graph represents the data in EJD as of August 2015.

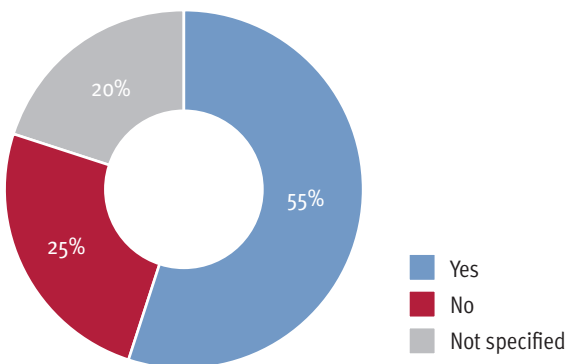
Requirement for a first-instance electoral dispute-resolution body to hold a hearing

The EDR system should guarantee the right to a defence or to a hearing on a challenge both to the complainant and to the person or body complained against. This includes an opportunity to make their arguments as well as an obligation on the EDR body to hear and study them (Orozco-Henríquez et al. 2010; paras 376–79).

However, sometimes holding a hearing may not be practically possible, especially when more than the expected number of challenges are submitted after the voting and there is an urgent need to resolve these challenges in a short period before the announcement of results. Some of these challenges may be minor or have no impact on the election results. However, such arguments should not be used as an excuse to eliminate hearings and defence procedures. One solution would be to establish clear requirements or guidelines with regard to the challenges that are admissible. This could help to exclude frivolous or malicious challenges and possibly even punish them.

As Figure 3.7 shows, legislation in 55 per cent of countries prescribes that the first-instance EDR bodies should hold a hearing to deal with challenges to election results, while the legislation of 25 per cent of countries does not establish such a requirement. Legislation in 20 per cent of countries contains no specific provisions about a hearing.

Figure 3.7. Requirement for a first-instance electoral dispute-resolution body to hold a hearing

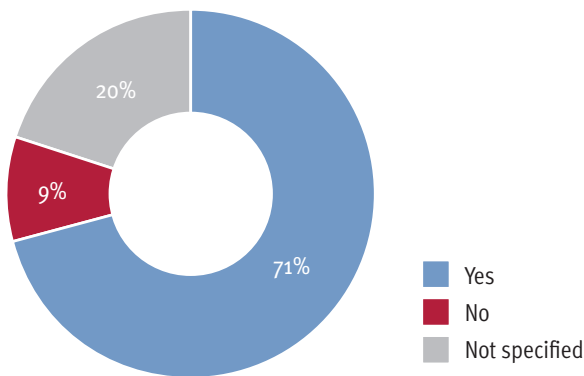


Notes: Data for 174 countries. Graph represents the data in EJD as of August 2015.

Requirement for the first-instance electoral dispute-resolution body to issue a reasoned decision

Decisions by the EDR body on any electoral dispute should be produced in well-reasoned and justified reports, which conclude with judgements that are delivered in keeping with the proven facts of the proceedings (the principle of congruence) and which assess each party's claim (the principle of exhaustiveness) (Orozco-Henríquez et al. 2010: para. 379). Acknowledging the importance of this phase of the EDR process, the research included a comparative analysis of how the legislation of countries covers these requirements. The results presented in Figure 3.8 show that legislation in a majority of countries (71 per cent) establishes a requirement for a reasoned decision, while legislation in only 9 per cent of countries does not contain such a requirement. Again, the legislation of 20 per cent of countries makes no clear ruling in this regard.

Figure 3.8. Requirement for the first-instance electoral dispute-resolution body to issue a reasoned decision



Notes: Data for 174 countries. Graph represents the data in EJD as of August 2015.

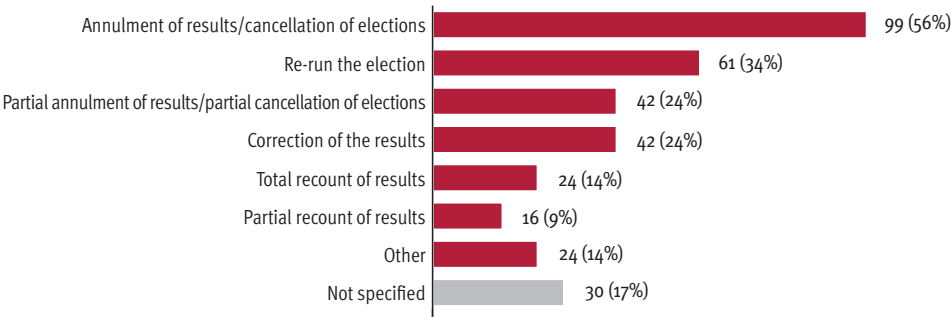
What remedies are available to the first-instance electoral dispute-resolution body?

One of the important responsibilities of EDR bodies is to issue judgements or make decisions that are consistent with the complaints or challenges submitted. Clearly stipulated remedies in law and specific conditions for applying such remedies for each type of complaint make this task easier. The research attempted to find out how electoral legislation around the world prescribes remedies for disputes raised regarding election results. The findings (Figure 3.9) show that the two

most commonly available remedies in the first-instance EDR bodies are the ‘annulment of results/cancellation of elections’, which is prescribed in the legislation of 56 per cent of countries; and ‘re-run the election’, which is prescribed in 34 per cent of countries.

First-instance bodies are also entitled to partially annul results in the constituency where the dispute was raised or order the correction of results in 24 per cent of countries. A total recount can be ordered by the first-instance bodies of only 14 per cent of countries. It should be noted that legislation in most of the countries prescribes several of the above-mentioned remedies. For example, the first-instance EDR body in Burundi can order either a full or partial annulment of the results, and can also order the correction of results if the investigation finds that the irregularity was caused by clerical error. Legislation in 17 per cent of countries does not specify the remedies available in election results-related complaints or disputes submitted to first-instance EDR bodies.

Figure 3.9. Remedies available to first-instance electoral dispute-resolution bodies



Notes: Graph shows number (percentage) of countries with each option. Some countries have more than one option. Data for 177 countries. Graph represents the data in the EJD as of August 2015.

Ability to appeal the decision of the first-instance electoral dispute-resolution body

Appeals are hearings that can be invoked before a higher court on the merits of the judicial decision issued by the lower court, or against violations committed in the proceedings of the lower court (Orozco-Henríquez et al. 2010: paras 401–403). Previous research shows that appeals usually account for the largest share of judicial EDR mechanisms (Orozco-Henríquez et al. 2010: paras 401–403).

Figure 3.2 provides a general overview of the ‘flow’ of appeals procedures from the first-instance to the last-instance EDR bodies. In addition to judicial EDR processes, when EMBs deal with electoral challenges in the first instance, their decisions may also be appealed either to higher-level EMBs or to judicial bodies. However, in some cases the decisions of the highest-level EMBs are not subject to appeal.

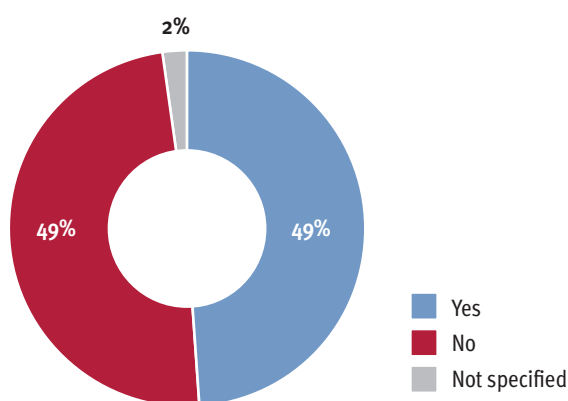
In general, international standards recognize the importance of a fair hearing and the right to appeal in any type of dispute-resolution process (Ticcinardi et al. 2014). In the case of electoral disputes, the ability to appeal any of the decisions of the EDR bodies helps to ensure that arbitrary decision-making is avoided and that the rights of all stakeholders are wholly protected.

The findings of the research (Figure 3.10) show that the legislation of almost half the countries does not allow appeals of the decisions of the first instance body. Closer analysis of those countries using the online database reveal that appeals are not allowed when the first-instance bodies are constitutional courts or councils (27 countries), supreme or high courts (25 countries), election tribunals or courts (7 countries), and legislatures (6 countries).

In sum, these countries represent 74 per cent of the countries in which the decision of the first-instance bodies cannot be appealed. These bodies are usually considered to be the highest-level judicial bodies in the hierarchy of EDR systems, so it is understandable that their decisions are not subject to appeal.

Findings suggest that the decisions of first-instance bodies can be appealed to higher instances in 49 per cent of countries. Closer analysis of Figure 3.2 reveals that the bulk of appeals procedures ‘flow’ from EMBs to the highest-level courts, but also from lower-level courts to the highest-level courts.

Figure 3.10. Ability to appeal the decision of the first-instance electoral dispute-resolution body



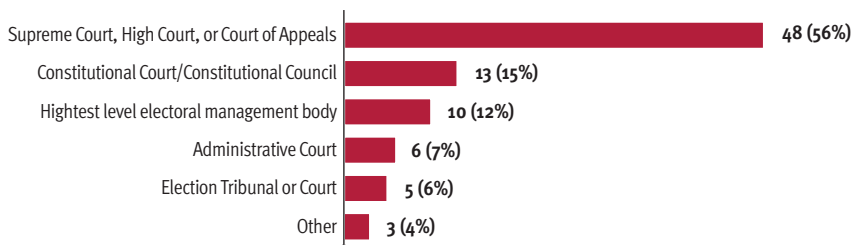
Notes: Data for 173 countries. Graph represents the data in the EJD as of August 2015.

Last-instance bodies in electoral dispute-resolution systems

Figure 3.10 shows that it is possible to appeal the decisions of first-instance EDR bodies in 49 per cent of countries. In some of these countries there are several levels of hearing before the disputed issue reaches the last-instance body, while in others the second-instance body is the last-instance body (see Figure 3.3). Figure 3.11 shows that the most common last-instance bodies are the highest-level courts of general jurisdiction. Only in two countries (South Sudan and Libya) do appeals against the decisions of lower-instance bodies not reach the highest courts.

In 10 countries, the highest-level EMB is the last-instance body dealing with election results. Seven of those countries are in Latin America. This is in line with practice in Latin America, where most of the countries have Electoral Courts/Tribunals that also function as EMBs.

Figure 3.11. Last-instance electoral dispute-resolution bodies dealing with disputes related to election results



Notes: Graph shows number (percentage) of countries with each option.
Data for 85 countries which allow appeals against the decisions of the first-instance body.
Graph represents the data in the EJD as of August 2015.

The section of the EJD on last-instance bodies also contains questions that explore requirements for fees or deposits, hearings in the last instance, reasoned decisions and remedies. These questions are not covered in this report. Users who are interested in these questions can explore the online database.

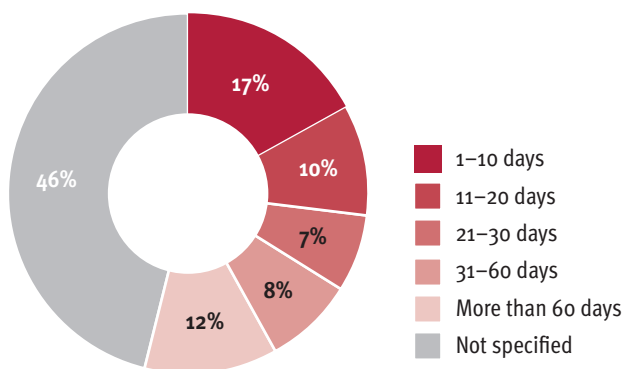
The maximum adjudication time allowed for the full electoral dispute-resolution process

The research also attempted to collect comparative data about the maximum time allowed for the adjudication of the full EDR process, from the day a complaint about the election results is filed with the first-instance body until a decision is reached by the last-instance body. Classifying data based on maximum adjudication times was not an easy task because legislation in many countries does not clearly indicate

a deadline or timelines for the adjudication of electoral disputes. This is especially the case when there is more than one level of adjudication and even more complicated when more than one EDR body can deal with complaints at the first instance.

As can be seen from Figure 3.12, it was not possible to calculate the maximum adjudication time for 46 per cent of countries for the above-mentioned reasons. However, in 54 per cent of countries legislation does provide for timelines and/or deadlines. Figure 3.12 bands countries by the time they allocate for the full EDR process. Even among those countries that clearly specify timelines, however, there are exceptions or different timelines depending on the nature of the dispute. For example, in Ecuador it can take 2, 9 or 30 days to complete the EDR process depending on the nature of the dispute. In Côte d'Ivoire all the disputes have to be resolved 30 days before parliament first resumes after the election. In special cases such as Italy, Kenya and Russia, EDR process can last for more than a year. Having such a long time span for the adjudication of disputes may provoke criticism in line with the idea that 'justice delayed is justice denied'.

Figure 3.12. Maximum time allowed for the full electoral dispute-resolution adjudication process related to election results



Notes: Data for 173 countries. Graph represents the data in EJD as of August 2015.

4. Challenges related to the nomination and registration of electoral contestants

This chapter presents the findings from Part 2 of the EJD, which contains data about EDR procedures related to the nomination and registration of candidates and political parties for elections. Electoral challenges may arise at any stage of the electoral cycle because all activities conducted and decisions made during the entire electoral cycle can have an impact on election outcomes. One of the crucial stages in the electoral cycle is the nomination or registration of electoral contestants. Ideally, all stakeholders should be able to question the eligibility of a candidate for office. Clearly stipulated rules and procedures that allow such challenges and their effective and timely resolution are crucial to ensuring that all stakeholders have trust in the electoral process.

The Handbook states that reforms aimed at improving electoral legislation are currently paying increased attention to electoral justice focused on the procedures for the nomination and registration of electoral contestants. This indicates a growing awareness of the need to ensure that such procedures are transparent and subject to scrutiny by stakeholders.

As noted above, the questions in Part 2 of the EJD represent the critical steps and components of the EDR process dealing with challenges related to the nomination and registration of candidates and political parties for elections (see Appendix B). Even though the inclusion of question 6 on the maximum time limit for complaints after the announcement of election results may seem unusual, some countries deal with nomination- or registration-related disputes after the announcement of election results. In others, legislation prescribes general provisions for all disputes related to elections in the form of a general election petition, and thus it can be concluded that those provisions also cover disputes about procedures for the nomination or registration of candidates and political parties. For example, in Botswana the electoral law clearly prescribes that the decisions of the returning officers related to the nomination of candidates can only be questioned in the form of an election petition, which must be submitted after the announcement of the election results.³

The research found that legislation in 16 countries (9 per cent) is silent about the possibility of challenging the nomination/registration of candidates or registration of political parties for elections. In most of these countries the law prescribes eligibility requirements for candidates and political parties to be nominated or registered for elections, but the law does not prescribe the way of challenging the decisions about nomination or registration. However, legislation in 158 countries (91 per cent) contains provisions for challenging the nomination or registration of electoral contestants. This chapter describes the findings of the research on those 158 countries.

³ See the Botswana country data in International IDEA's Electoral Justice Database, <<http://www.idea.int/elections/ej/country.cfm?id=34#h-27>>

Figure 4.1. Electoral dispute-resolution process for dealing with challenges to decisions on the nomination and registration of candidates and political parties

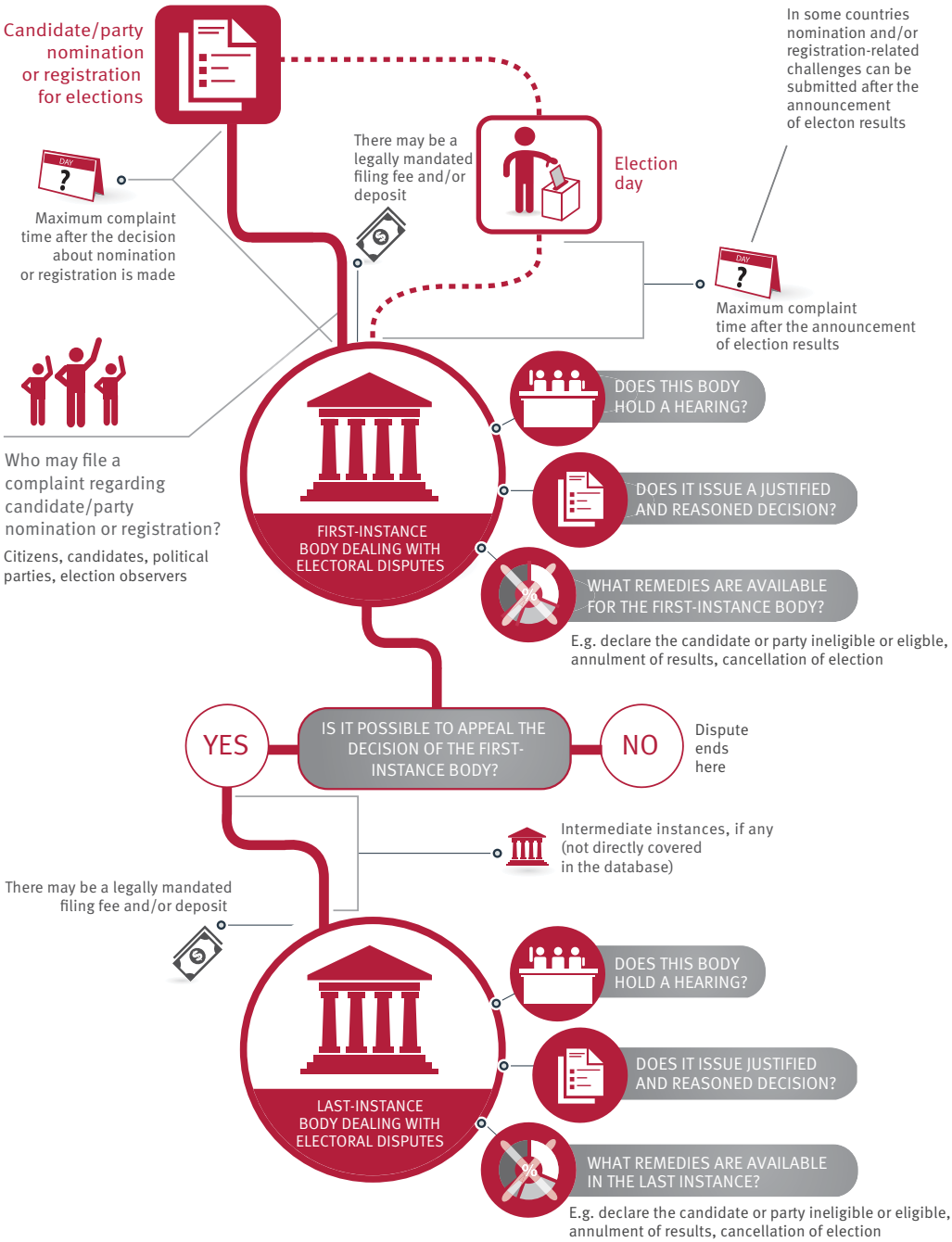


Figure 4.1 models the entire EDR process for dealing with challenges related to candidate/party registration or nominations for elections. Naturally, most nomination- or registration-related disputes are raised well before the elections. However, as noted above, some of these challenges can be raised after the administration of elections. Therefore, the dotted lines in the figure pass through the election day.

Electoral dispute-resolution bodies dealing with disputes related to the nomination and registration of electoral contestants

Figure 4.2 shows the types of first- and last-instance bodies that deal with nomination- or registration-related disputes in 155 countries.⁴ The lines show the route of the complaints from first instance to last instance, or indicate where there is only one level of adjudication.

Figures 3.2 and 4.2 show a similar proportion of types of first- and last-instance EDR bodies. This indicates that EDR procedures for disputes related to election results and disputes related to the nomination and registration of candidates and political parties are handled in a similar way. The only difference is the involvement of the constitutional court or council in the last instance. The constitutional court or council is the last-instance body in the case of disputes related to elections results in 13 countries, while in the case of disputes related to the nomination and registration of candidates and political parties they are the last-instance body in only four countries.

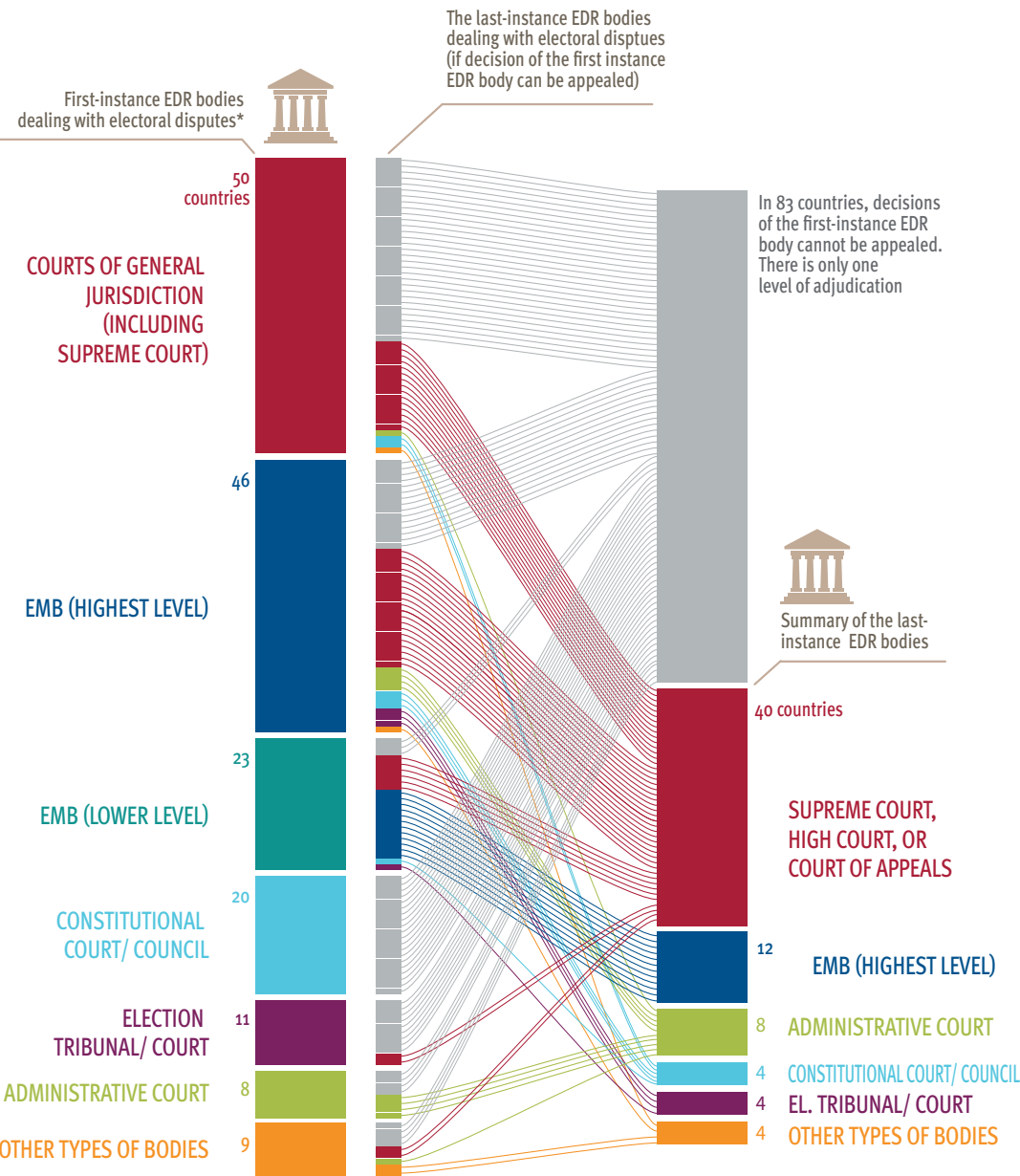
Since there are more than two levels of adjudication for electoral disputes in some countries, Figure 4.2 is a somewhat simplified representation of reality. In six per cent of countries, there is one additional instance between the first- and last-instance bodies (Figure 4.3). The EJD does not provide data on intermediary levels of adjudication, but does provide data on the total number of days the entire EDR process takes (see Figure 4.10).

Who can challenge the nomination and registration of electoral contestants?

As noted above, the question of who should be entitled to submit complaints or challenges about electoral irregularities is an important one. When it comes to the nomination or registration of electoral contestants, in addition to candidates and political parties themselves, the law should allow other stakeholders to have their voices heard on the question of who can run for elected office.

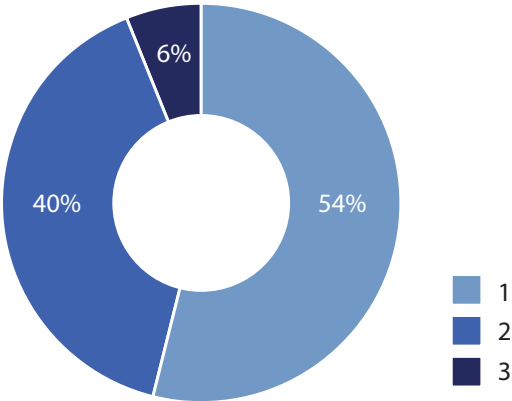
⁴ Gambia, Germany and Uganda are not included because they have complex legislation on EDR, which provides for several last-instance bodies depending on the type of dispute.

Figure 4.2. First- and last-instance bodies dealing with disputes related to the nomination and registration of electoral contestants



* Refers to number of countries having each EDR body in the first instance. Some countries have more than one type of EDR body that processes disputes in the first instance. For this reason, the total number of countries in the first-instance column is greater than that in the lastinstance column.
Notes: Data for 173 countries. Graph represents the data in the EJD as of August 2015.

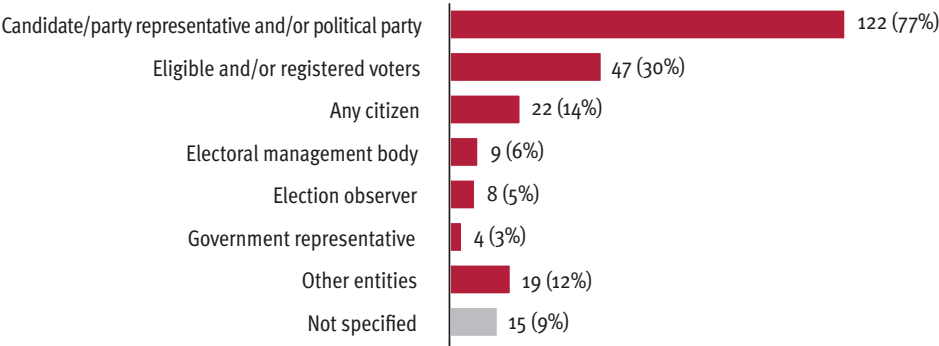
Figure 4.3. Number of levels of adjudication for disputes related to the nomination and registration of electoral contestants



Notes: Data for 155 countries. Graph represents the data in EJD as of August 2015.

Figure 4.4 shows that among the stakeholders who are entitled to dispute the nomination or registration of a candidate or political party to run in an election, candidates (or political party representatives), political parties, eligible voters and registered voters appear in the electoral legislation more often than other types of stakeholders. The term ‘any citizen’ or similar wording is used in the legislation of only 22 countries. EMBs and election observers can challenge decisions on nomination or registration in only 9 and 8 countries, respectively. The option ‘other entities’ includes initiative groups, various associations and the attorney general, among others. More details can be found in the online database. The research found that legislation in 15 countries does not specify who may challenge or file complaints about the nomination or registration of electoral contestants.

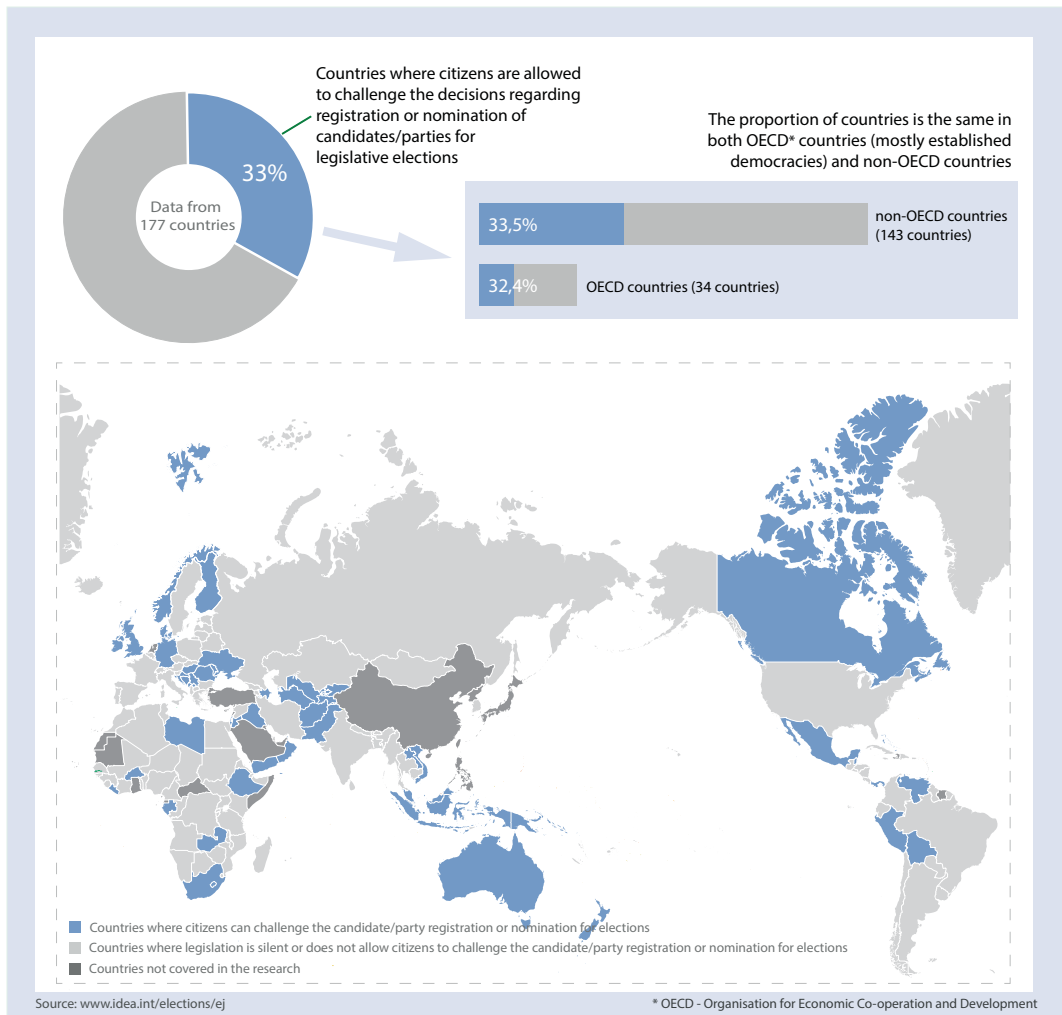
Figure 4.4. Who can challenge the nomination or registration of electoral contestants?



Notes: Graph shows number (percentage) of countries with each option. Some countries have more than one option. Data for 158 countries. Graph represents data in the EJD as of August 2015.

As in the case of disputes related to election results, it is interesting to find out to what extent voters and citizens in general have the right to challenge decisions on the registration or nomination of electoral contestants. The findings (see Figure 4.5) suggest that in the majority of countries (67 per cent), voters and citizens cannot challenge decisions regarding the nomination or registration of electoral contestants. Interestingly, the proportions are the same for Organisation for Economic Co-operation and Development (OECD) countries, which are mostly established democracies, as for non-OECD countries. This is an important finding that warrants further research.

Figure 4.5. Can citizens challenge the nomination or registration of electoral contestants?



Notes: The term 'citizens' in this map covers the options 'eligible voters', 'registered voters' and 'any citizen'. Graph represents the data in EJD as of August 2015.

The timing of challenges related to the nomination or registration of electoral contestants

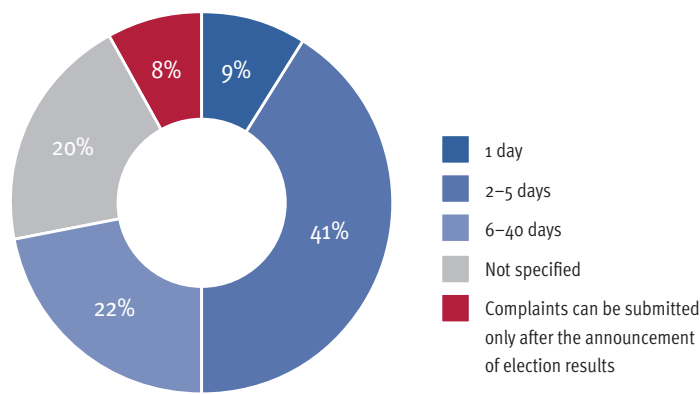
Unique to the timing of disputes related to the nomination and registration of electoral contestants is that all the disputes should preferably have been raised and resolved before the elections take place. However, in some countries such complaints are only processed in the form of a general election petition after the elections have been administered. In order to collect this level of detail, the EJD divided its data collection into two parts:

1. *The maximum amount of time after occurrence or discovery that a complaint can be made* (Figure 4.6A). In this case, the time period for the submission of a complaint should begin from the announcement (or rejection) of nomination or registration of contestants; and
2. *The maximum amount of time after the announcement of the election results that a complaint can be made* (Figure 4.6B.). Since only 20 per cent of countries allow such timing of complaints, Figure 4.6B does not provide the actual details of time limits. Instead it only gives information about the existence or non-existence of such limits. Details of time limits for those 20 per cent countries can be seen in the online database.

The findings show that 72 per cent of countries provide for time limits for complaints after the announcement of a decision about the nomination or registration of electoral contestants. The maximum number of days allowed for the submission of nomination- or registration-related complaints ranges from 1 to 40 days, but the most common is 2–5 days. The legislation of 8 per cent of countries does not allow such complaints but stipulates that all such challenges should be submitted after the announcement of the results (see the case of Botswana discussed above).

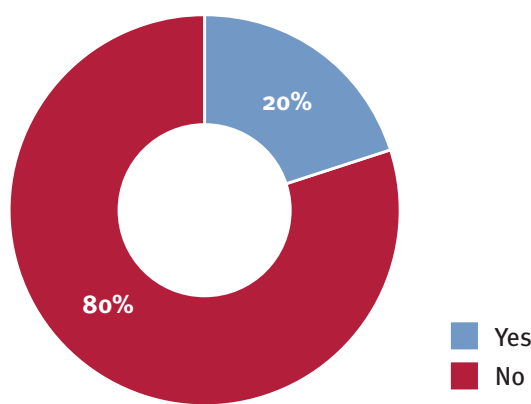
Nomination- or registration-related complaints can be submitted after the announcement of results in only 20 per cent of countries. In addition to the 8 per cent identified in Figure 4.6A, a further 8 per cent of countries have provisions that allow complaints to be submitted both before and after, and some countries do not specify a time limit after occurrence or discovery but do specify that complaints should be made after the announcement of results. More details about these countries and data about the actual timing of complaints after the announcement of results can be found in the online database.

Figure 4.6A. Maximum time allowed for complaints or challenges related to the nomination or registration of electoral contestants after occurrence or discovery



Notes: Data for 157 countries. Graph represents the data in the EJD as of August 2015.

Figure 4.6B. Does the country allow challenges related to nomination or registration of electoral contestants after the announcement of election results?



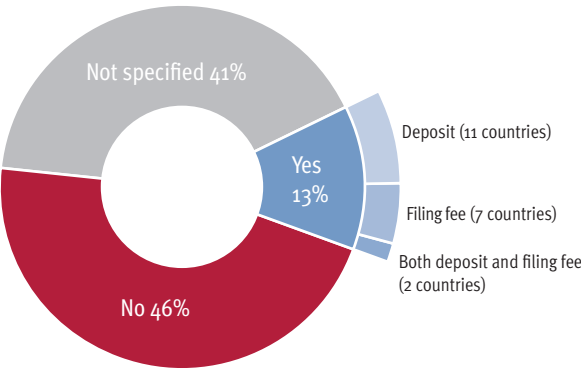
Notes: Data for 157 countries. Graph represents the data in EJD as of August 2015.

Requirement to pay a fee or deposit when submitting a complaint to the first-instance EDR body

The research included a question about the requirement to pay a fee or deposit (or both) as a condition of submitting complaints regarding the nomination or registration of electoral contestants. The results show

that legislation does not require the payment of any fee or deposit in 46 per cent of countries (Figure 4.7). Only 13 per cent of countries have fee or deposit requirements prescribed by law. Legislation in 41 per cent of countries does not contain any clear provisions in this regard. Among those countries that have requirements for a fee or deposit, 11 require a deposit, 7 require a fee and 2 require both a fee and a deposit.

Figure 4.7. Is there a requirement to pay a fee or deposit to the first-instance electoral dispute-resolution body?



Notes: Data for 156 countries. Graph represents the data in the EJD as of August 2015.

Ability to appeal the decision of the first-instance electoral dispute-resolution body

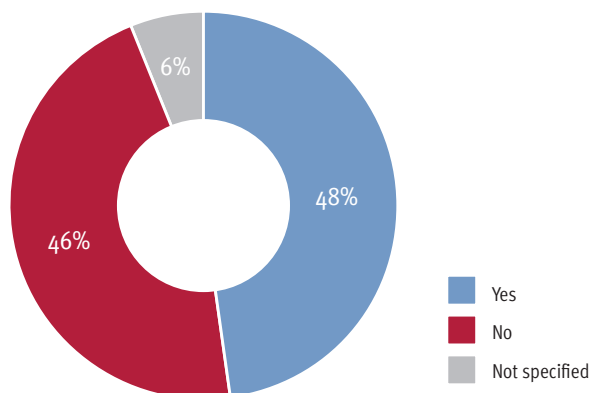
Figure 4.2 provides a general overview of the ‘flow’ of the appeals processes from the first-instance to the last-instance EDR bodies. In addition to the judicial EDR processes, it can be seen that when lower level EMBs deal with electoral challenges in the first instance, their decisions can be appealed either to higher-level EMBs (in 12 countries) or to judicial bodies.

The findings presented in Figure 4.8 indicate that the legislation of 46 per cent of the countries does not allow appeals against the decisions of the first-instance body. Closer analysis of those countries reveals that appeals are usually not allowed when the first-instance bodies are constitutional courts or councils, supreme or high courts or election tribunals or courts. Since these bodies are considered to be the highest-level judicial bodies in the hierarchy of EDR systems, it is understandable that their decisions are not subject to appeal.

However, in 48 per cent of countries, the decisions of the first-instance bodies can be appealed to higher instances. Closer analysis of Figure 4.2 reveals that in 51 of those countries (71 per cent), the first-instance bodies are EMBs. This indicates that the bulk of appeals procedures are conducted when EMBs hear the complaints and challenges in the first instance. In 19 countries (26 per cent) that allow appeals, the first-instance bodies are courts of general jurisdiction. Naturally, as shown in Figure 4.2, most of the appeals against the decisions of the courts end up in the highest-level courts as the last-instance bodies.

Legislation in 6 per cent of countries contains no specific provisions regarding the possibility of appeal. It is assumed that in these countries because the law does not specify the appeals procedure, there is only one level of adjudication.

Figure 4.8. Is it possible to appeal the decision of the first-instance electoral dispute-resolution body?

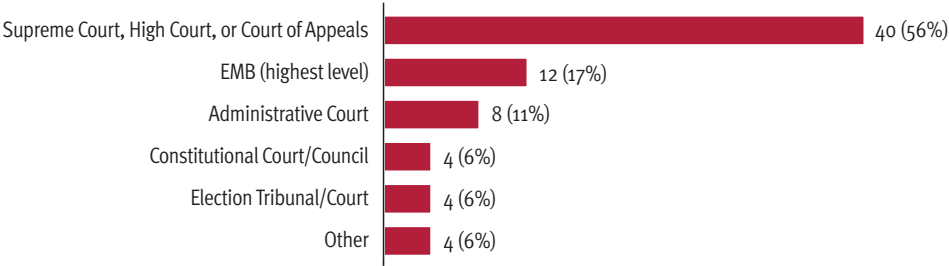


Notes: Data for 158 countries. Graph represents the data in the EJD as of August 2015.

Last-instance bodies dealing with disputes related to nomination or registration of contestants

Figure 4.8 shows that 48 per cent of countries allow the possibility of appeal against the decisions of first-instance EDR bodies. In such cases, it is useful to have a general snapshot of the last-instance bodies. The most common last-instance bodies are the highest level instances of courts of general jurisdiction (see Figure 4.9). Only in 12 countries is the highest level EMB the last-instance body dealing with the nomination or registration of electoral contestants.

Figure 4.9. Last-instance electoral dispute-resolution bodies dealing with disputes related to the nomination or registration of electoral contestants



Notes: Graph shows number (percentage) of countries with each option. Data for 72 countries which allow appeals against the decisions of the first-instance body. Gambia, Germany and Uganda are excluded due to the fact that they have several last-instance bodies. Graph represents the data in the EJD as of August 2015.

Part 2 of the EJD also contains questions that explore the requirement for hearings, the requirement for reasoned decisions, and available remedies in the law for both first- and last-instance bodies. This report does not cover these questions. Users who are interested in these questions should explore the online database.

Maximum time for adjudication on the full electoral dispute-resolution process

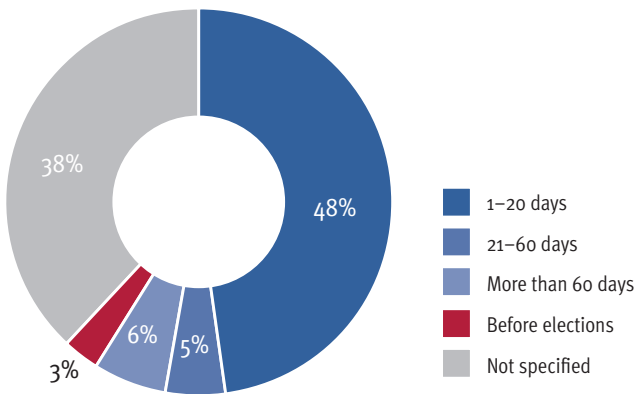
The research also attempted to collect comparative data about the maximum time allowed for a full EDR process from the day a complaint about the nomination or registration of electoral contestants is filed with the first-instance body until a decision is reached by the last-instance body. Classifying data based on maximum adjudication times was not an easy task because the legislation in many countries does not clearly indicate timelines and/or deadlines for the adjudication of electoral disputes. This is especially the case when there is more than one level of adjudication and even more complicated when more than one EDR body deals with complaints as the first-instance body.

Figure 4.10 shows that the legal documents of 38 per cent of countries contain no clear provisions on adjudication timelines. Among those countries which specify the maximum time available for the adjudication of disputes in some way or another, there are some exceptional cases in which it is more difficult to identify the adjudication time. For example, in Angola, Armenia and Germany, there are different adjudication timelines for candidate nominations and party registration. In Georgia, adjudication times differ depending on which body is hearing the complaint in the first-instance body (i.e. whether it is a court or an EMB).

Figure 4.10 divides the countries into bands according to the time they allocate for the full EDR adjudication process. It should be noted that in some countries challenges related to nomination or

registration of electoral contestants are processed as a general election petition. The longer adjudication times may indicate these types of petitions. Although the legislation of four countries (3 per cent) does not prescribe timelines for disputes related to the nomination or registration of electoral contestants, it clearly indicates that such disputes should be resolved either before election day (in Thailand and Vietnam) or before the start of the election campaign (in Comoros and Mali).

Figure 4.10. Maximum time for the full electoral dispute-resolution process related to the nomination or registration of electoral contestants



Notes: Data for 158 countries. Graph represents the data in the EJD as of August 2015.

5. Challenges related to campaign financing

This chapter presents some of the key findings from the Part 3 of the EJD, which contains data about institutional oversight of campaign finance, the types of administrative sanctions applied to infractions related to breaches of regulations, and how appeals related to these sanctions are handled in various countries.

One of the major contemporary challenges to democracy is the impact of money on politics. In the sphere of elections this largely affects campaign financing. Media reports on growing campaign expenses in both established and younger democracies highlight that the relationship between money and politics requires serious analysis, particularly of the causes and consequences of the involvement of huge financial resources in election campaigns. One of the effective ways of monitoring and controlling campaign finance is the establishment of oversight institutions that have the power and political will to ensure that money does not undermine the integrity of elections.

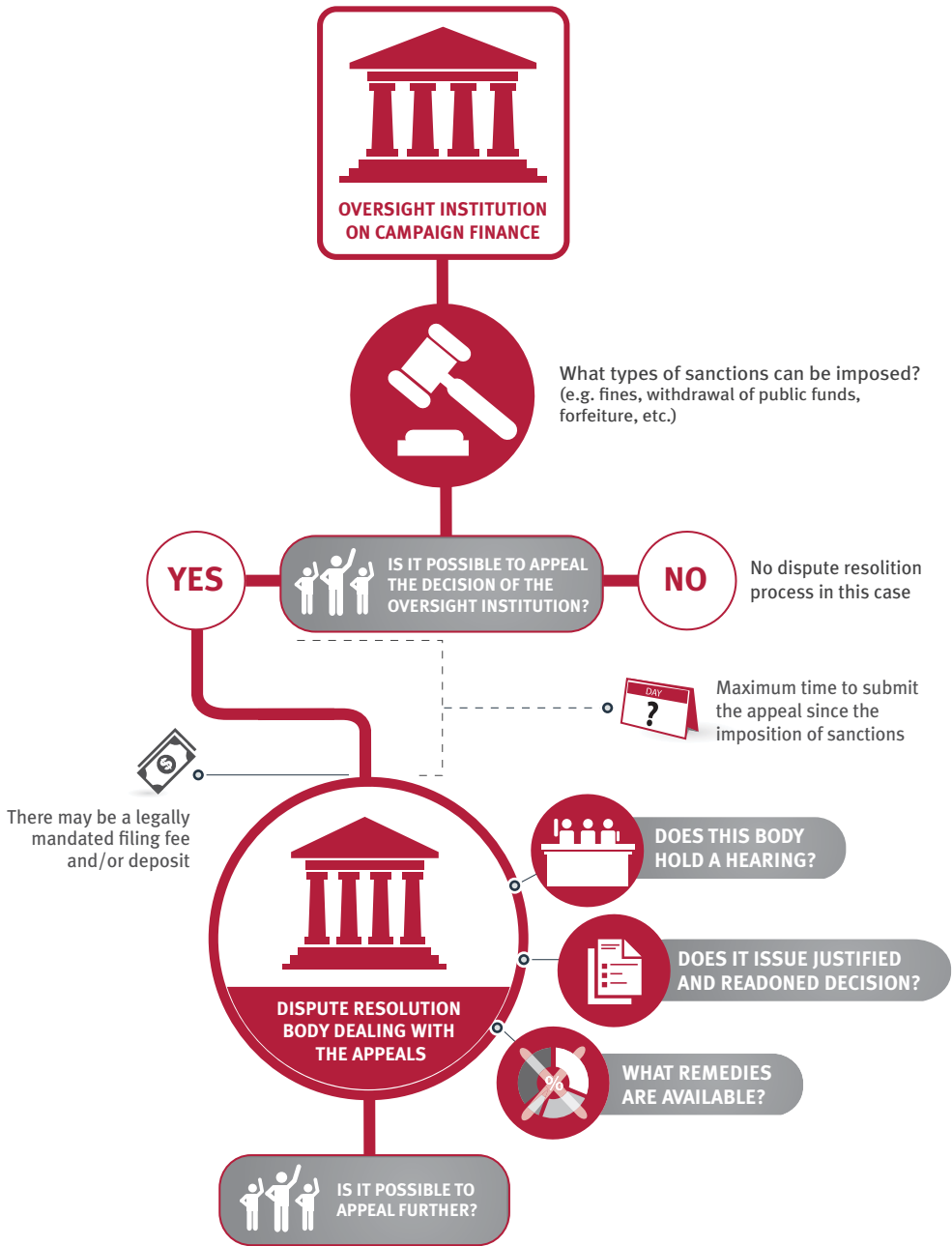
Given the importance of this topic, a specific part of the EJD was dedicated to institutional oversight of campaign finance and the procedures for handling infractions related to breaches of regulations. As mentioned in the introduction, this chapter deals with EDR mechanisms that are punitive in nature. However, it covers only non-criminal or administrative sanctions imposed on campaign finance infractions. It should be noted that campaign finance infractions are also considered criminal acts in many countries. Comparative data on campaign finance infractions that entail criminal sanctions or penalties are covered in Chapter 6 of this report.

The questions included in Part 3 of the EJD represent the critical components of the EDR process dealing with campaign finance infractions (see Appendix B). Figure 5.1 models this process in sequential order. It is notable that dispute-resolution processes related to campaign finance can commence only if the decisions of the oversight institutions are subject to appeal.

Part 3 of the EJD currently provides comparative data for 170 countries. The findings indicate that the legislation of 49 countries (29 per cent) does not contain provisions for institutional oversight of campaign finance (Figure 5.2). Some of these countries have regulations on the general institutional oversight of political party funding, but these do not specifically target campaign finance and the ways of dealing with campaign finance infractions.⁵

⁵ International IDEA's Political Finance Database contains global data on the institutions that play a formal role in political finance oversight, <<http://www.idea.int/political-finance/>>.

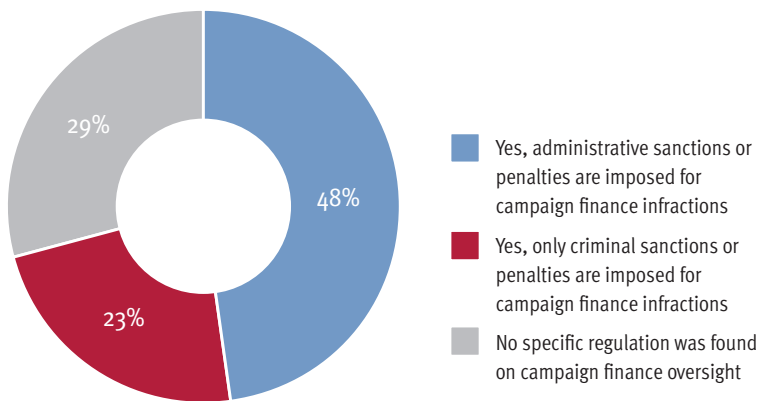
Figure 5.1 Electoral dispute-resolution process for campaign finance infractions



In 39 countries (23 per cent), the research found that campaign finance-related infractions are considered only as criminal acts and thus dealt with in these countries' criminal courts. It should be noted, however, that some countries impose both administrative and criminal sanctions for campaign finance infractions. The administrative sanctions used in such countries are described in this chapter, and their criminal aspects in Chapter 6.

In only 82 countries (48 per cent) did the research find clear provisions in law that specifically regulate institutional oversight of campaign finance and impose administrative sanctions for campaign finance infractions (see Figure 5.2). The key findings on those countries are set out in the following sections.

Figure 5.2. Does the country prescribe institutional oversight of campaign finance?

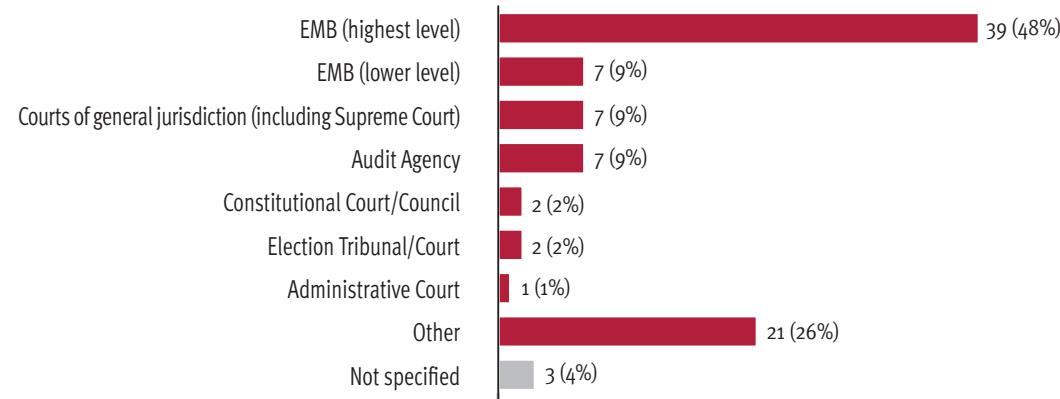


Notes: Data for 170 countries. Graph represents the data in the EJD as of August 2015.

Institutions with powers to impose administrative sanctions for campaign finance infractions

In almost half the countries that have provisions on campaign finance oversight, the highest-level EMBs—that is, the central electoral management bodies—are in charge of this function (Figure 5.3). Each of the remaining types of institution are represented in less than 10 per cent of countries. The ‘Other’ option includes various types of institution, such as the anti-corruption agencies in Latvia and Serbia, the Chairman of the Knesset in Israel and the Party Transparency Tribunal in Austria, among others. In three countries (Colombia, the Cook Islands and Nicaragua), even though the legislation provides for administrative sanctions against campaign finance infractions, it was not possible to identify from their laws what types of institutions have a formal role in imposing such sanctions.

Figure 5.3. Institutions with the power to impose administrative sanctions for campaign finance infractions

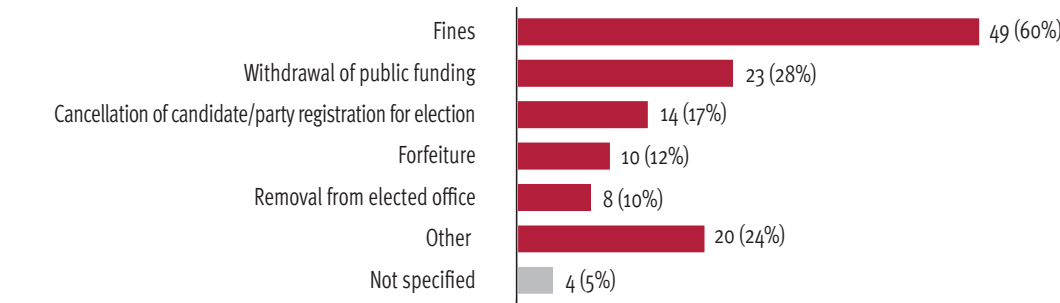


Notes: Graph shows number (percentage) of countries with each option. Some countries have more than one institution in charge of campaign finance. Data for 82 countries. Graph represents the data in EJD as of August 2015.

Types of sanction available for campaign finance infractions

The findings in Figure 5.4 show that the most common administrative sanction for campaign finance-related infractions is a fine, which is imposed in 49 countries (60 per cent). Public funds can be withdrawn in more than a quarter of countries. The option ‘Other’ includes various types of sanction, such as the disqualification of a candidate for a certain period of time, as practiced in India, Mozambique, Nepal and Pakistan; and de-registration of a political party in Cambodia, Ecuador and Guatemala. More details can be found in the online database.

Figure 5.4. Types of sanction for campaign finance infractions

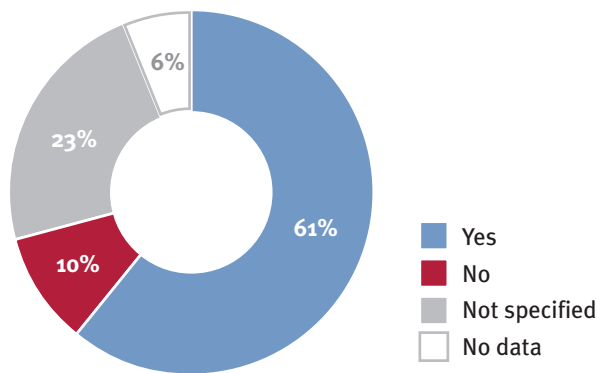


Notes: Graph shows number (percentage) of countries with each option. Some countries have more than one type of sanction. Data for 82 countries. Graph represents the data in the EJD as of August 2015.

Can the sanctions imposed be appealed?

In principle, dispute-resolution processes related to campaign finance only exist if the legislation provides for an opportunity to appeal against the sanctions or other decisions of the oversight institutions. The findings indicate that among the 82 countries that have oversight institutions, 50 (61 per cent) allow the possibility of an appeal against their decisions (see Figure 5.5). Legislation in 23 per cent of countries does not contain clear provisions regarding the possibility of such appeals. In five countries the research team could not obtain all the legal documents on the functioning of oversight institutions, so there is no data for those countries on the question of appeals.

Figure 5.5. Ability to appeal sanctions for campaign finance infractions



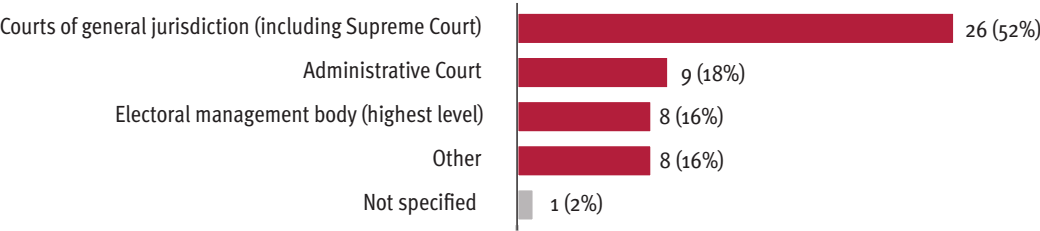
Notes: Data for 82 countries. Graph represents the data in EJD as of August 2015.

The competent body to hear appeals against sanctions

The research found that disputes are processed within the systems of courts of general jurisdiction in 26 countries (see Figure 5.6). This represents 52 per cent of countries that allow appeals against the sanctions related to campaign finance. Administrative courts and EMBs (at the highest level) are each involved in less than 20 per cent of countries.

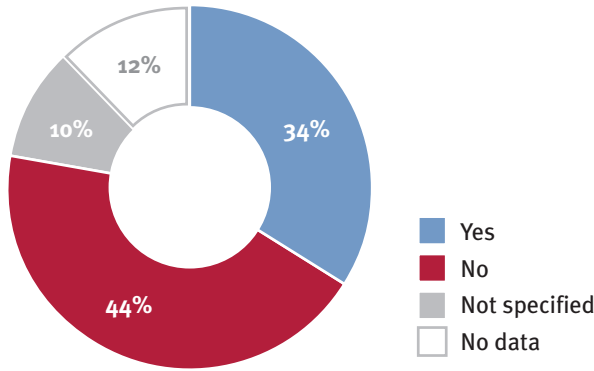
In 22 countries (44 per cent), the decisions of the bodies that hear appeals against sanctions are final and cannot be further appealed (Figure 5.7) but in 17 countries (34 per cent) they can. The research team could not gain access to the relevant legislation in six countries (12 per cent), so there is no data about the possibility of further appeal in those countries.

Figure 5.6. Competent bodies for the hearing of appeals against sanctions



Notes: Number (percentage) of countries with each option. Some countries have more than one type of competent body. Data for 50 countries. Graph represents the data in the EJD as of August 2015.

Figure 5.7. Ability to appeal the decisions of the competent body



Notes: Data for 50 countries. Graph represents the data in EJD as of August 2015.

In addition to the questions discussed above, Part 3 of the EJD also provides detailed comparative data on some additional questions, such as the requirements for filing fees or deposits, the maximum time available to submit an appeal after the imposition of sanctions, the requirement for a hearing or a reasoned decision and the types of remedies available to the body dealing with appeals. Data on these questions is only available for the 50 countries that allow appeals against the sanctions imposed by oversight institutions. Summaries of the data on these questions can be found in the online database but are not included in this report.

6. Election-related criminal offences

This chapter describes the findings from Part 4 of the EJD, which contains comparative data about how countries deal with election-related criminal offences. As discussed in the introduction to this report, formal electoral dispute-resolution mechanisms can be corrective or punitive in nature. Part 4 of the EJD covers the punitive mechanisms of electoral justice that apply in cases where certain types of misconduct or irregularity during the electoral processes are viewed as criminal acts in the legislation of a country.

Election-related criminal offences attract so much attention during the electoral processes, and there is an obvious need for comparative knowledge about how countries regulate the procedures for dealing with such offences. The EJD attempts to fill this gap by providing global data on the types of legal documents that address election-related criminal offences, the types of behaviour during electoral processes that are treated as criminal acts, and how criminal acts during elections are prosecuted and penalized. The chapter presents the findings on all the questions included in Part 4 of the EJD.

Analyses of the legal documents of the 171 countries included in this aspect of the research show that in only two countries (the Czech Republic and Eritrea) is there no legislation criminalizing any type of misconduct related to elections. In the remaining 169 countries, legal documents classify certain types of misconduct or irregularities performed during electoral processes as criminal offences in some form or another.

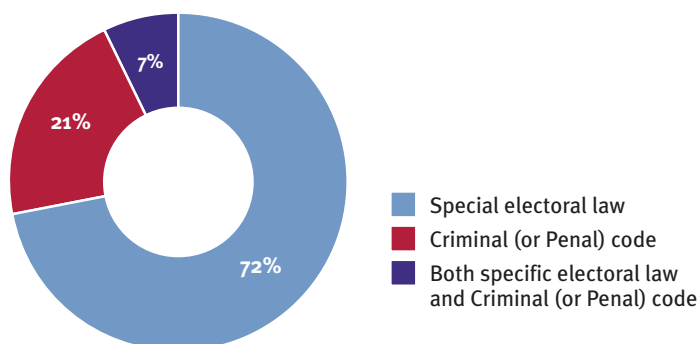
What types of law provide for election-related criminal offences?

In general, there are two schools of thought on the law governing electoral offences with regard to where such provisions should be situated in the national legal system (Orozco-Henríquez et al. 2010: paras 105–109). The first promotes the idea that such offences should be included in the penal or criminal code, whereas the second suggests that they should be included in the electoral law. Proponents of the first position argue that it is better for electoral crimes to be regulated in criminal codes in order to safeguard them from constant changes in electoral law. Those who support the second position argue that electoral crimes should not lie outside the evolving dynamics of elections, and that the definition of such crimes should be re-examined whenever the electoral legal framework is subject to reform. This helps to maintain consistency between the substantive electoral law and the punitive electoral law.

Findings suggest that electoral law provides for electoral offences in a majority of countries (72 per cent), whereas criminal or penal codes cover electoral offences in only 21 per cent of countries (Figure 6.1). In some countries (7 per cent), both types of law govern electoral offences. In addition, the research found that in some countries other legal documents also deal with election-related criminal offences.

For instance, the Political Parties Act 2002 in Sierra Leone and the Broadcasting Act 1989 in New Zealand classify certain types of misconduct related to campaign finance as criminal offences.

Figure 6.1. What types of law provide for election-related criminal offences?



Notes: Data for 169 countries. Graph represents the data in EJD as of August 2015.

What types of election-related misconduct are regarded as criminal offences?

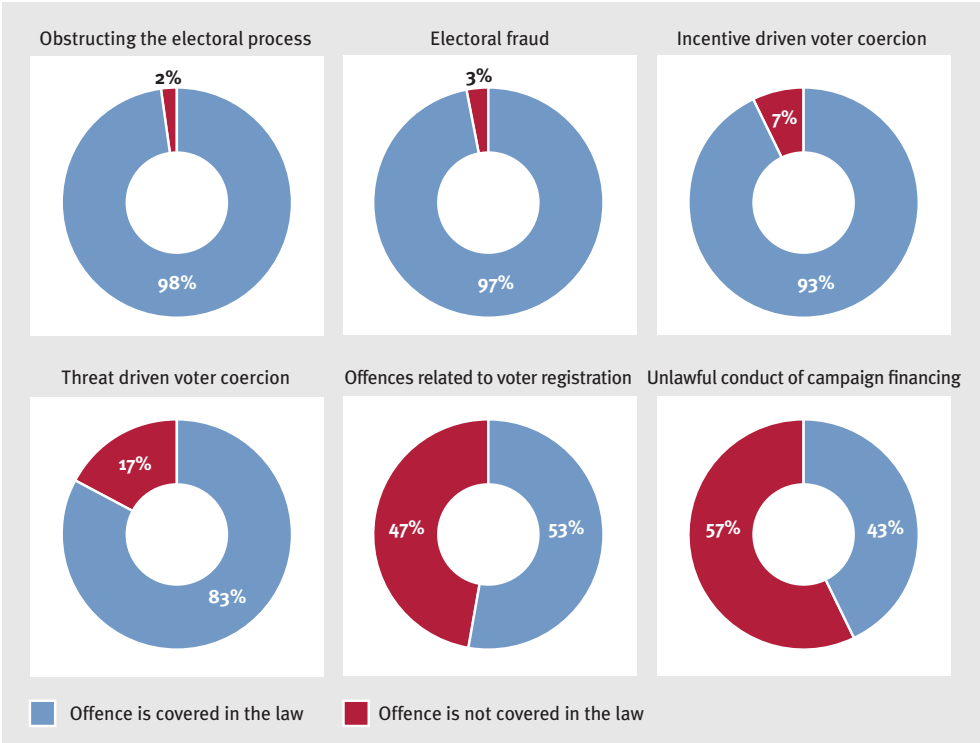
The most crucial question in this part of the database is to find out what specific types of election-related misconduct or irregularities are considered criminal offences in law. It is known that a country's political culture and electoral practices can have an impact on the treatment of some types of conduct as acceptable or unacceptable (Orozco-Henríquez et al. 2010: paras 108–109). For instance, transporting voters to or from a polling station may be an offence in many countries, but this practice is permitted in the UK where it is regarded as a provision that ensures a level playing field (Orozco-Henríquez et al. 2010: paras 108–109). Global comparative data about how countries define election-related criminal offences is useful for researchers and practitioners.

The findings on this question are presented in Figure 6.2. The grouping of offences in this way is based on the suggested classification of forms of misconduct provided in Chapter 4 of the Handbook (Orozco-Henríquez et al. 2010: 45–47), the only difference being that this research divides voter coercion into two parts: (a) incentive-driven voter coercion, such as vote buying or making the provision of public services conditional on voting in a certain way; and (b) threat-driven voter coercion, such as voter intimidation or putting other types of pressure on voters to vote in a certain way.

Grouping offences in this general way might not be helpful for those who are interested in particular types of offence, such as voting more

than once which is classified as electoral fraud. This level of detail can be obtained from the ‘Sources’ section of the online database, which provides quotes from the legislation and lists all the types of offences as they appear in the laws.

Figure 6.2. Which types of election-related misconduct are regarded as criminal offences?



Notes: Data for 169 countries. Graph represents the data in EJD as of August 2015.

Figure 6.2 shows that the first four types of criminal offence appear in the legislation of the vast majority of countries. However, among those four types of offence, incentive- and threat-driven voter coercion do not appear in the legislation of 7 per cent and 17 per cent of countries, respectively. This indicates that the legislation of these countries should be reviewed in the light of the requirements of international obligations and standards governing elections. For instance, International IDEA (Tuccinardi et al. 2014) quotes the United Nations Human Rights Committee’s General Comments: ‘CCPR, GC 25, p. 11. States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. . . . Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced’.

Misconduct and irregularities related to voter registration and campaign finance are not classified as criminal offences in almost half the countries included in the research. It could be argued that

complaints of misconduct during voter registration are often handled before the elections, and EDR bodies may process such cases in the same way as they process general election-related complaints. As discussed above, irregularities related to campaign finance are often dealt with as administrative infractions and sanctioned accordingly. Therefore, in order to better understand the dispute-resolutions systems related to campaign finance, one has to combine the data provided in Part 3 and Part 4 of the EJD.

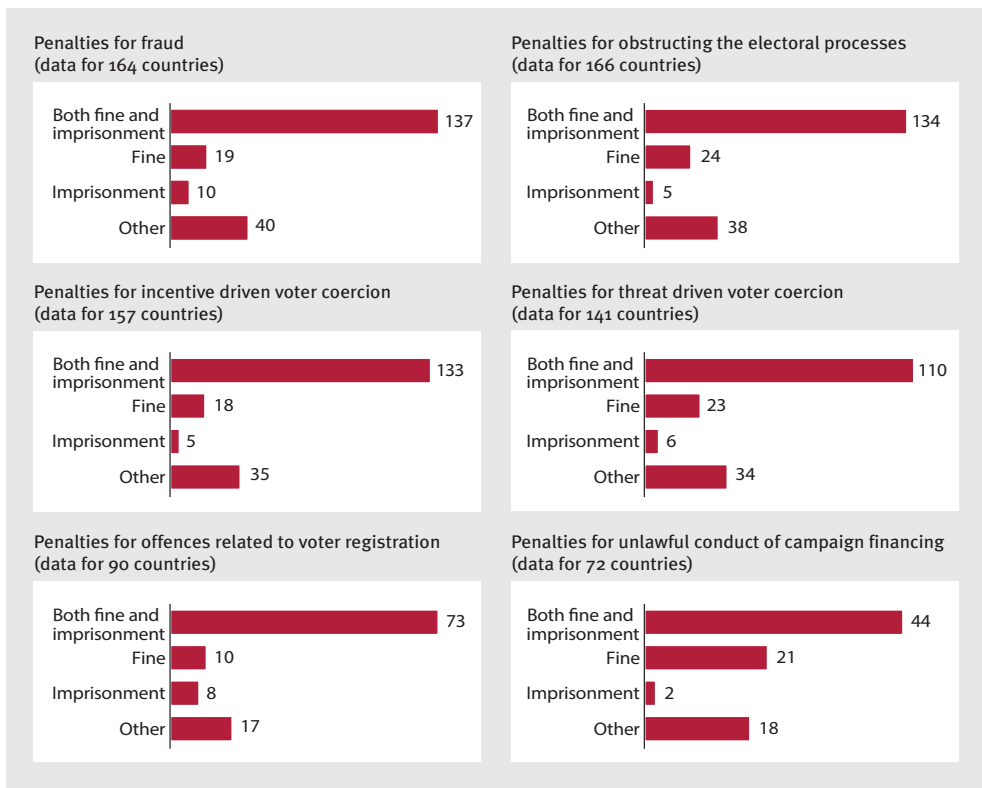
What penalties are envisaged for election-related criminal offences?

Clearly prescribed penalties or sanctions in the laws against election-related crime help to decrease the incidence of such criminal behaviour. All types of penalties, be they fines, imprisonment or any other, should be proportionate to the degree of misconduct and therefore severe enough to fulfil their purpose of inhibiting prohibited actions during elections (Orozco-Henríquez et al. 2010: 112–24). The research reveals that in a majority of countries, legal documents prescribe penalties that are proportionate to the degree of misconduct. For instance, many countries apply different lengths of imprisonment based on the severity of the action, and the same is true of the amount of the fine imposed for criminal misconduct. For example, in Belgium, criminal offences related to electoral fraud can be penalized by imprisonment for periods of eight days to two years, or by a fine ranging from EUR 26 to EUR 1,000, depending on the nature of the fraud.

Figure 6.3 shows that in the great majority of countries, election-related offences can be penalized by both fines and imprisonment. Details about the terms of imprisonment and the size of fines can be found in the online database. The option ‘Other’ includes various types of criminal penalties. For electoral fraud, for example, Russia, Tajikistan, Turkmenistan and Ukraine impose compulsory or correctional labour, Latvia and Lithuania impose community service and Iran imposes up to 50 lashes in addition to other penalties. Details about other types of penalties can be found in the online database.

The research also reveals that in parallel with enforcing criminal penalties, the legislation of some countries imposes administrative sanctions for certain types of misconduct or irregularity. For obstructing electoral processes, for example, the sanction is disqualification from holding public office for a certain period of time in Andorra and Costa Rica, suspension of electoral rights in Dominica and Luxemburg, and suspension of the right to stand in elections in Bhutan, Malaysia and Singapore. Even though this part of the database is meant to cover criminal penalties, it was decided to provide data on administrative sanctions too. It was thought that this approach would help make the data more useful, and the findings suggest that some offences attract both criminal and administrative penalties at the same time.

Figure 6.3. Penalties for election-related criminal offences

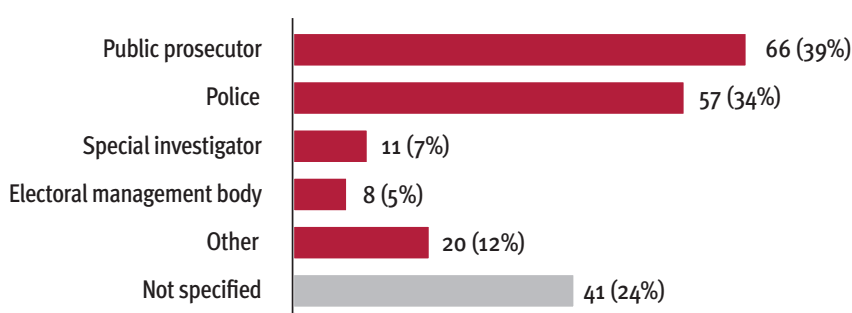


Notes: Columns represent the number of countries. Some countries have more than one type of penalties. Graph represents the data in EJD as of August 2015.

Investigation of election-related criminal offences

Previous global reviews of EDR systems concluded that in the vast majority of countries, the criminal procedure for electoral offences is the same as that for any other crime (Orozco-Henríquez et al. 2010: paras 112–14). However, this earlier research did not look into the detail of the types of bodies in charge of investigating election-related crime. This global research found that in the majority of countries, public prosecutors and the police are in charge of investigating election-related crime, which largely confirms the results of the previous reviews (Figure 6.4). In some countries, however, other entities investigate such crimes. For instance, special investigators are in charge of investigating election-related crime in 11 countries, such as the Special Prosecutor for electoral crimes in Mexico and Nicaragua; and investigations are carried out by the EMB in eight countries, three of which are in Latin America (Bolivia, the Dominican Republic and Honduras) where the Supreme Electoral Tribunal, which is the EMB, usually handles the investigation of electoral crime. ‘Other’ entities include the local courts in Chile, the Inspectorate of the Ministry of the Interior in Slovenia and the Anti-Corruption Committee in Zambia. The research found that legislation in 41 countries does not clearly specify which entity is in charge of investigating election-related crime.

Figure 6.4. Who carries out the investigation of election-related criminal offences?

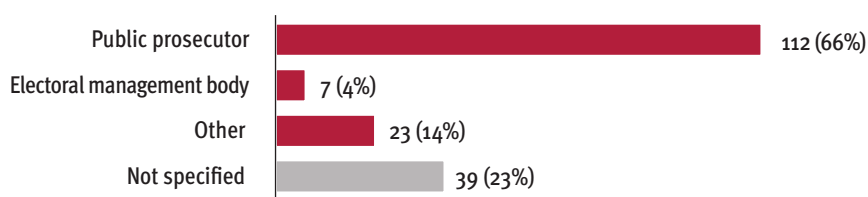


Notes: Graph shows number (percentage) of countries with each option. Some countries have several types of investigator depending on the nature of a crime. Data for 169 countries. Graph represents the data in EJD as of August 2015.

Prosecution of election-related criminal offences

Criminal prosecution of alleged electoral crimes or offences should be undertaken in an objective, expeditious and impartial manner by the authority assigned to perform this task (Orozco-Henríquez et al. 2010, paragraphs 371–75). The autonomy and independence of that authority should be guaranteed, but it should also enjoy the support of the various political parties or factions. The findings of the research show that a public prosecutor is the entity most frequently entrusted with prosecuting electoral crime (Figure 6.5). EMBs have prosecuting capacity in only seven countries. The option ‘Other’ includes various bodies, such as the attorneys general in Gibraltar, Sri Lanka, and Trinidad and Tobago, among others, officers of the EMB appointed to serve as prosecutors by the Director of Public Prosecutions in Kenya and a Special Prosecutor for electoral crimes in Mexico. The electoral legislation of 39 countries does not clearly specify which authority should prosecute electoral crimes.

Figure 6.5. Who prosecutes election-related criminal offences?



Notes: Graph shows number (percentage) of countries with each option. Some countries have several types of prosecutors depending on the nature of a crime. Data for 169 countries. Graph represents the data in the EJD as of August 2015.

7. Conclusions

EMBs and courts of general jurisdiction are most frequently the bodies that hear electoral complaints in the first instance. In more than half of the countries with more than one level of adjudication, the highest levels of courts of general jurisdiction, such as supreme courts, high courts and courts of appeal, perform the role of the last-instance body. These findings indicate that, across the globe, electoral disputes are most often processed within the general court system. Constitutional courts or councils are the next most likely to perform the role of EDR body. When they hear complaints in the first instance, their decisions cannot be appealed in almost all circumstances. As the last-instance body, constitutional courts and councils deal with electoral disputes in less than 7 per cent of countries, but mostly hear appeals against the decisions of EMBs.

Of the entities that are entitled to submit electoral complaints, the research found that candidates and political parties can submit elections-related complaints and challenges in the vast majority of countries. However, the research found a problem in the way voters—key stakeholders in elections—are entitled to submit electoral complaints. Legislation in only 47 per cent of countries allows voters to submit election results-related complaints; and complaints related to candidate/party registration or nomination in only 30 per cent of countries. These findings require additional enquiry into the causes and effects of such a wide pattern of legal exclusion of voters from raising electoral challenges.

The research findings on EDR procedures point to some areas of concern, although these relate mainly to the extent to which legislation contains clear provisions. There is clear evidence that legal documents in many countries completely overlook or fail to prescribe clear rules on the specific procedural requirements or components of EDR mechanisms. These oversights and omissions could effectively create procedural barriers for both EDR bodies and complainants. EDR bodies could lose control over electoral dispute-resolution procedures and complainants might not have a clear idea about when and how complaints can be submitted or what to expect from EDR bodies. The worst outcome would be diminished public trust in electoral institutions.

The research found that only 48 per cent of countries have oversight institutions with powers to impose administrative sanctions against infractions related to campaign finance. In 23 per cent of countries, campaign finance infractions are considered solely as criminal acts. The legislation of the remaining 29 per cent of countries does not provide for any oversight of campaign finance. It would be desirable to conduct further studies to understand why this aspect of elections remains unregulated in so many countries. Unclear legal provisions were also found in regulations covering EDR procedures for dealing with disputes related to campaign finance. The absence of clear provisions in

the law can create confusion for those who are affected by the sanctions of oversight institutions.

In regards to the legal provisions covering elections-related criminal offences, the findings suggest that in the great majority of countries (72 per cent) electoral crimes and offences are addressed in the electoral law, and only in 21 per cent of countries are they covered in the criminal (or penal) code. This indicates that most countries agree that the treatment of electoral crime or offences should not be outside the realm of the evolving dynamics of elections. In other words, developments and reforms in the elections field should make it easier to make changes to the treatment of electoral crimes or offences.

With regard to the types of election-related misconduct that are regarded as criminal offences, the findings suggest that the legislation of the vast majority of countries contains provisions that penalize the main categories of crimes, such as the obstruction of electoral processes, electoral fraud, incentive-driven voter coercion and threat-driven voter coercion. When it comes to the imposition of penalties, the findings reveal that on average more than 80 per cent of countries apply both fines and imprisonment to all the above-mentioned types of criminal offences.

The research also found that certain types of misconduct during voter registration and unlawful conduct in respect of campaign finances are treated as criminal acts, but in relatively fewer countries—in 53 per cent and 43 per cent of countries, respectively. This is understandable given the fact that these types of irregularities are also treated as administrative infractions in many countries and dealt with accordingly.

Overall, the findings of International IDEA's global research on EDR systems bring new insights to how electoral justice is provided across the globe. The mission of the research team engaged in this study will have been accomplished if these findings raise new questions and debate about the legal provisions on electoral justice, advance theoretical understanding of the impact of EDR systems on the quality of elections or other important outcomes and serve as a useful source of reference for practitioners working with elections on a day-to-day basis as well as reformers of electoral legislation.

Appendix A. Questions covered in the Electoral Justice Database

Part 1. Challenges to election results

Section A. Legislative elections

1. What is the first-instance body dealing with EDR?
2. Who may file a complaint?
3. Is there a legally mandated filing fee and/or deposit?
4. What is the amount of filing fee/deposit (in local currency)?
5. What is the maximum time limit on making a complaint after occurrence or discovery?
6. What is the maximum time limit on making a complaint after the announcement of election results?
7. Is there a requirement to hold a hearing?
8. Is there a requirement to issue a reasoned decision?
9. Is it possible to appeal decisions of the first-instance body?
10. What are the remedies available in the first instance?
11. What is the last-instance body dealing with EDR?
12. Is there a legally mandated filing fee and/or deposit in the last instance?
13. What is the amount of filing fee/deposit (in local currency) in the last instance?
14. Is there a requirement to hold a hearing in the last instance?
15. Is there a requirement to issue a reasoned decision in the last instance?
16. What are the remedies available in the last instance?
17. How many levels of adjudication are there?
18. What is the maximum time limit for the full adjudication process from when the complaint is filed with the first-instance body until a decision is reached at the last instance?

Section B. Presidential elections

The same questions as above

Part 2. Challenges related to political party and candidate nomination and registration

Section A. Legislative elections

The same questions as in the Legislative section of Part 1

Section B. Presidential elections

The same questions as in the Legislative section of Part 1

Part 3. Challenges related to campaign financing

Section A. Legislative elections

1. Which institution(s) has the power to impose sanctions for campaign finance infractions?
2. What types of sanctions can be imposed for campaign finance infractions?
3. Can the sanctions imposed be appealed?
4. If appeal is possible, what is the competent body to hear the appeal?
5. Is there any legal requirement to pay any fees or deposits as a condition for the submission of an appeal?
6. What is the amount of filing fee/deposit (in local currency)?
7. What is the maximum time limit for submitting an appeal after the imposition of sanctions?
8. Is there a requirement to hold a hearing?
9. Is there a requirement to issue reasoned decision?
10. Is it possible to further appeal the decision of the competent body?
11. What remedies are available?

Section B. Presidential elections

The same questions as above in the Legislative section

Part 4. Election-related criminal offences

1. Does the law criminalize any election-related offences?
2. What type of law provides for election-related criminal offences?
3. Which types of election-related offences are punishable by law?
4. What penalties are envisaged for offences related to electoral fraud?
5. What penalties are envisaged for offences related to incentive-driven voter coercion?
6. What penalties are envisaged for offences related to threat-driven voter coercion?
7. What penalties are envisaged for offences related to obstructing the electoral processes?
8. What penalties are envisaged for offences related to voter registration?
9. What penalties are envisaged for offences related to unlawful conduct of campaign financing?
10. Who carries out investigations of election-related criminal offences?
11. Who prosecutes election-related criminal offences?

Appendix B. Glossary of electoral justice terminology

Ad hoc EDR system An EDR *system* that involves an ad hoc body derived from a provisional or transitional arrangement. This might be created either with international involvement, or as an internal national institutional solution. The key characteristic of this type of EDR *system* is its provisional or transitional nature: the ad hoc body is tasked with the resolution of the challenges arising from a specific election or series of elections held over a given period. The body itself may be legislative, judicial or administrative in nature.

Adjudication The legal process of resolving a dispute. The formal pronouncement of a *judgement* or decree in a court proceeding, which also includes the *judgement* or decision given. The entry of a decree by a court in respect of the parties in a case. It implies a hearing by a court, after notice, of legal *evidence* on the factual issue(s) involved.

Administrative challenges Those challenges that are resolved by the EMB in charge of directing, organizing, administering and overseeing election procedures. Through such a challenge, those affected may oppose an electoral action or decision using a procedure in which either the same organ of the EMB that issued the action or decision being challenged or another of a higher rank decides the dispute.

Alternative dispute resolution (ADR) A means for disputing parties to come to an agreement short of *litigation*. ADR is generally classified into at least four types: negotiation, *mediation*, collaborative law and *arbitration*. (Sometimes a fifth type, *conciliation*, is included as well, but for the present purposes it can be regarded as a form of mediation.) ADR can be used alongside existing legal systems, or as a result of mistrust in the conventional system.

Alternative electoral dispute-resolution mechanism (AEDR mechanism) AEDR mechanisms may exist alongside formal EDR mechanisms or come into being on an ad hoc basis or in exceptional circumstances. They provide for one or more parties to a *conflict* to initiate a process to resolve it, unilaterally, bilaterally, or through a third party or agency. In the latter case, the equivalent judicial mechanisms are *conciliation, mediation and arbitration*.

Alternative electoral dispute resolution (AEDR) Bodies, institutions and/or mechanisms that operate outside the legally established *EDRBs* and/or systems which handle, deal with and/or settle disputes related to *electoral processes*. These are usually informal/traditional bodies and/or mechanisms, such as ad hoc committees for the supervision of compliance with codes of conduct, traditional dispute-resolution mechanisms, non-governmental organizations, civil society organizations and so on.

Annulment (making void) There are three types of annulment: the annulment of a single ballot; the annulment of the votes received at a particular *polling station*; and the annulment of an entire election.

Appeal A request made to a higher *EDRB* to confirm, reverse or modify a decision made by a lower *EDRB*.

Campaign (electoral) Any form of political activity aimed at increasing support for a *candidate*, political party or choice available to voters in preparation for an election or a *direct democracy instrument* during a defined campaign period, including meetings, rallies, speeches, parades, broadcasts, debates and other events, and the use of the media, the Internet or any other form of communication.

Campaign financing The funding of a political *campaign* using monies received through fundraising, contributions, and so on.

Candidate A person who is nominated to contest an election either as a political party representative or independent of any political party's support.

Certification of results The formal endorsement and confirmation of the announcement of electoral results.

Complaint The first document filed with the court by a person or entity claiming legal rights against another.

Conciliation A method of dispute resolution by means of discussion and settlement without going to court.

Conflict Competition between opposing forces, reflecting a diversity of opinions, preferences, needs or interests.

Constitutional court A court concerned with constitutional issues, which may include the constitutionality of laws, procedures and outcomes related to *electoral processes*.

Corrective measure *Electoral challenges* are intrinsically corrective as their effects include the *annulment*, modification or recognition of wrongful conduct in order to repair the violation that has been committed and restore the enjoyment of the electoral right involved. A corrective measure is taken to clean up the *electoral process* in such a way that the harmful effects of an irregular action do not continue and reach the point of substantially affecting the results—regardless of any other administrative *sanction* imposed on the transgressor.

Declaration of results Oral or written formal public communication of the result of an electoral event. This may consist of the number of votes received by each *candidate* or political party contesting an election, and of the candidate(s) and/or party(ies) entitled to sit as/seat an elected member(s) under the provisions of the *electoral law*; or of the number of votes recorded for each of two or more options presented in the use of a *direct democracy instrument*.

Electoral administration The measures necessary for conducting or implementing any aspect of an *electoral process*.

Electoral administrative infraction An act or omission by an electoral body or official which contravenes or fails to meet the requirements of *electoral laws* or procedures but which is not defined by law as a criminal offence.

Electoral challenge A *complaint* lodged by an electoral participant or stakeholder who believes that his or her *electoral rights* have been violated.

Electoral commission A title often given to an *Independent Model EMB* or the non-governmental component of a *Mixed Model EMB*.

Electoral court Court of justice or other body before which an electoral actor may dispute the validity of an election, or challenge the conduct of candidates, political parties or the EMB. See also *electoral tribunal*.

Electoral crime An act or omission defined as a criminal offence, usually through electoral *legislation* or general criminal *legislation*. Examples include electoral fraud, voter coercion, impeding or falsifying *voter registration*, and violations of *campaign financing provisions*.

Electoral cycle The full series of steps involved in the preparation and implementation of an election or *direct democracy instrument*, viewed as one event in a continuing series. In addition to the steps involved in a particular *electoral process*, it includes post-election evaluation and/or audit, the maintenance of institutional memory, and the process of consultation and planning of the forthcoming electoral process.

Electoral dispute Any *complaint*, challenge, claim or contest relating to any stage of the *electoral process*.

Electoral dispute resolution (EDR) The process of hearing and *adjudication* of any *complaint*, *electoral challenge*, claim or contest relating to any stage of the *electoral process*.

Electoral dispute-resolution body (EDRB) The body entrusted with defending *electoral rights* and resolving *electoral disputes*. These may be entrusted to administrative bodies, judicial bodies, legislative bodies, international bodies or, exceptionally, as a provincial or transitional arrangement, to ad hoc bodies.

EDR legislative system An *EDR system* that vests the power of final decision on the validity of elections, including any challenges brought, to the legislature, one of its committees or some other political assembly.

EDR system The legal framework within an *electoral justice system* that specifies the mechanisms established for resolving *electoral disputes* and protecting *electoral rights*. These may be entrusted to administrative bodies, judicial bodies, legislative bodies, international bodies or ad hoc bodies. See also *electoral dispute-resolution body*.

Electoral justice In this report, electoral justice refers to the various means and mechanisms for ensuring that every action, procedure and decision related to the *electoral process* is in line with the law (the constitution, statute law, international instruments or treaties and all other provisions in force in a country), as well as those for protecting or restoring the enjoyment of *electoral rights*. Electoral justice gives people who believe their electoral rights to have been violated the ability to make a *complaint*, get a hearing and receive an *adjudication*.

Electoral justice mechanism (also EDR mechanism) All of the means in place for ensuring that *electoral processes* are not marred by irregularities, and for defending *electoral rights*. Among the mechanisms, a distinction should be made between: (a) those that provide a formal remedy or are *corrective* in nature; (b) those that are *punitive* in nature; and (c) *alternative electoral dispute-resolution mechanisms*.

Electoral justice system The set of means or mechanisms available in a country (sometimes, in a local community or in a regional or international context) to ensure and verify that electoral actions, procedures and decisions comply with the legal framework, and to protect or restore the enjoyment of *electoral rights*. An EJS is a key instrument of the *rule of law* and the ultimate *guarantee* of compliance with the democratic principle of holding *free, fair and genuine elections*.

Electoral law One or more pieces of *legislation* governing all aspects of the process for electing the political institutions defined in a country's constitution or institutional framework.

Electoral legal framework The collection of legal structural elements that define or influence an *electoral process*, the major elements being constitutional provisions, *electoral laws*, other *legislation* affecting *electoral processes*, such as political party laws and laws structuring legislative bodies, subsidiary electoral rules and regulations, and codes of conduct.

Electoral management The process of execution of the activities, tasks and functions of *electoral administration*.

Electoral management body (EMB) An EMB is an organization or body which has been founded for the purpose of, and is legally responsible for, managing some or all of the essential (or core) elements for the conduct of elections, and of *direct democracy instruments*. These essential (or core) elements include determining who is eligible to vote, receiving and validating the nominations of electoral participants (in elections or political parties and/or candidates), conducting balloting, counting votes, and the *tabulation* of votes.

EMB-entrusted EDR system Under this type of system, responsibility is entrusted to an independent *electoral management body* which, in addition to taking charge of organizing and administering *electoral processes*, has judicial powers to resolve challenges and issue a final ruling as to the validity of the *electoral process*.

Electoral offence See *electoral crime*.

Electoral penalty A *punitive measure* following an *electoral offence/crime*, imposed on the perpetrator, entity or person responsible for the irregularity. An electoral penalty can be either criminal (by conventional punishment) or administrative (usually through financial means) in nature.

A criminal penalty is always imposed by a court. An administrative penalty can in some *electoral justice systems* be imposed by the *EMB*.

Electoral process The series of steps involved in the preparation and carrying out of a specific election or *direct democracy instrument*. The electoral process usually includes the enactment of the *electoral law*,

electoral registration, the nomination of candidates and/or political parties or the registration of proposals, the *campaign*, the voting, the counting and *tabulation of votes*, the resolution of *electoral disputes* and the announcement of results.

Electoral regulations The rules subsidiary to *legislation* made, often by the *EMB* or the *ministry in which an EMB* is located, under powers contained in the *electoral law* which govern aspects of the organization and administration of an election.

Electoral rights Political rights which are enshrined in the basic or fundamental provisions of a particular legal order (generally in the constitution), in general relating to the political right to participate in the conduct of public affairs, directly or by means of freely elected representatives. The main electoral rights include the right to vote and to run for elective office, freedom of association, *freedom of expression* and freedom of assembly.

Electoral system A set of rules and procedures which provides for the electorate to cast their votes and which translate these votes into seats for parties and *candidates* in the parliament or the legislature.

Electoral tribunal A judicial institution with specific competence to hear contests and disputes on electoral matters.

Eligible voter A person eligible to register and to vote in an election or direct democracy instrument.

Evidence Any document, piece of testimony or tangible object presented at a hearing by an **EDRB** in line with accepted rules of admissibility that tends to prove or disprove an alleged fact.

Filing fee A legal requirement to pay any fee or deposit as a condition for the submission of a *complaint*.

Freedom of expression A universal right protected by the Universal Declaration of Human Rights. Article 19 provides that 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media regardless of frontiers'.

Free, fair and genuine elections A free, fair and genuine election emanates from an *electoral process* which is a real contest where there is full enjoyment of fundamental freedoms and political rights related to elections: *freedom of expression*, freedom of association, freedom of assembly and freedom of movement. This *electoral process* is supervised by an impartial electoral administration to ensure that the election is conducted fairly, impartially and in accordance with laws. Opportunities exist for independent scrutiny and access to independent review. There is a legal framework and electors are fully informed of their rights.

Guarantee Any legal means or instruments, which are both structural and procedural, by which values, rights or institutions that are protected or established by the legal order on behalf of the voter are assured, protected, supported, defended or safeguarded.

Incompatibility A limitation in *legislation* of a candidacy for or election to a representative position based on the perceived undesirability of a person who already holds one public position gaining access to or holding another.

Independent Model *EMB* An *EMB* model where elections are organized and managed by an *EMB* which is institutionally independent and autonomous of the executive branch of government, and which has and manages its own budget.

Infraction The act or an instance of infringing a legal or administrative provision or regulation.

International challenge Those legal instruments provided for in international treaties and conventions by which those with the standing to do so may have recourse, on a subsidiary and complementary basis, to the competent body after exhausting the domestic remedies provided.

Judicial challenge Those procedural legal instruments provided for by law by which two or more conflicting parties bring before a judicial body, that is, a judge or a court, whether or not as part of the judicial branch, a dispute over an alleged error, irregularity, instance of wrongful conduct, deficiency or illegality in a certain electoral action or decision. The judicial body, in its position as a superior third party and as an organ of the state, decides on the dispute in a final and impartial manner. Generally speaking, the various judicial *electoral challenges* can be classified into *trials* and *appeals*.

Judicial EDR system An *EDR system* that entrusts the authority to make the final decision on a challenge to a particular election to a judicial body. The body in question might be: (a) regular court of the judicial branch; (b) a *constitutional court or council*; (c) an administrative court; or (d) a *specialized electoral court*.

Judgement The decision reached and promulgated by a judicial body and/ or an *EDRB*.

Legislation The body of law made by the legislative process, also called statute law. Written laws passed by a Parliament, Congress or other legislative body at the national or local level.

Legislative challenge Those legal instruments provided for in the constitution or statutes of some countries which grant powers to legislative bodies or other political assemblies to formally resolve certain *electoral challenges* or issue the *certification* or the final result of an election.

Legitimacy The perceived fairness of a dispute-resolution process.

Litigation A judicial contest which seeks a decision from a court.

Lower-level EMB An *EMB* formed at any sub-national level, such as a province, region, district or commune.

Mediation A process in which the disputing parties use a third party to assist them in reaching a settlement of a dispute through a process that is private, informal and non-binding. The mediator has no power to

impose a settlement, but attempts to assist the disputants in reaching consensus and agreement on a mutually acceptable resolution to the dispute.

Member (of an EDRB or EMB) A person appointed or elected to serve on the body or committee which directs the conduct and implementation of the powers and functions of the *EDRB* or *EMB*.

Mixed legislative-administrative EDR system A system that combines features of the administrative *EDR* and the legislative *EDR systems*, usually through stating that challenges are first heard by the administrative body, and subsequent challenges are heard by the legislative body in question.

Observer A person accredited to witness and assess, but not intervene in, the proceedings of an *electoral process*.

Offence A breach of a law or rule; an illegal act.

Party registration The act of enrolling political parties to participate in elections on the basis of eligibility criteria and submitted signatures and deposits.

Personation The fraudulent casting of the vote of a registered elector by another person by a person pretending to be the registered elector.

Polling station (or polling site) A venue established for the purpose of polling and controlled by staff of the *EMB*. Also called a voting station.

Punitive measure A punitive measure does not correct or annul the effect of an electoral irregularity. It punishes either the person who committed the violation or the person responsible for ensuring that the violation does not happen, through either the electoral administrative law, which imposes the *sanctions*, or the electoral criminal law.

Recount A recalculation, in full or in part, of the votes cast in an election or *direct democracy instrument*.

Registered voter An *eligible voter* inscribed on an official list or register of *electors*.

Registration of political parties and candidates The act of reviewing the validity of applications to participate in an election by political parties and *candidates* and accepting those that meet defined criteria.

Registration of voters The act of entering the names of eligible *electors* and other relevant information in a register or list of electors.

Rule of law Rule of law generally entails equal protection of the human rights of individuals and groups as well as equal punishment under the law. It reigns over government and protects citizens against arbitrary state action, ensuring citizens are subject to the rule of law, not the arbitrary rule of men. It encompasses three institutions: the security or law enforcement institution, the court system and judiciary, and the correction system. The principle that law should 'rule' in the sense that it establishes a framework within which all conduct or behaviour takes place.

Sanction Measures taken by an institution in response to non-compliant or unacceptable behaviour.

Specialized electoral court A court that specializes in electoral matters. The authority of this court varies depending on the *EDR system* in the country in question.

Tabulation The process of compiling the results from the counting of the votes cast in an *electoral process*. Also known as the amalgamation of results.

Trial In law, judicial examination or hearing of the facts and reaching a judgement in a civil or criminal case.

Voter registration The process of establishing the eligibility of individuals to cast a ballot in an *electoral process* or direct democracy instrument and inscribing eligible individuals on a register. As one of the more costly, time-consuming and complex aspects of the electoral process, it often accounts for a considerable portion of the budget, staff time and resources of an election authority.

References

- Birch, S., *Electoral Malpractice* (Oxford: Oxford University Press, 2011)
- Carter Center, *Election Obligations and Standards: A Carter Center Assessment Manual* (Atlanta, GA: Carter Center, 2014), <<https://www.cartercenter.org/resources/pdfs/peace/democracy/cc-OES-handbook-10172014.pdf>>
- Norris, P. et al., 'Expert survey of Perception of Electoral Integrity', version 3.5, July 2015, <<https://dataverse.harvard.edu/dataverse/PEI>>
- Orozco-Henríquez, J. et al., *Electoral Justice: The International IDEA Handbook* (Stockholm: International IDEA, 2010), <http://www.idea.int/publications/electoral_justice/index.cfm>
- Tuccinardi, D. et al., *International Obligations for Elections: Guidelines for Legal Frameworks* (Stockholm: International IDEA, 2014)

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About International IDEA

What is International IDEA?

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization that supports sustainable democracy institutions and processes worldwide.

International IDEA acts as a catalyst for democracy-building by providing knowledge resources, policy proposals and supporting democratic reforms in response to specific national requests.

It works together with policymakers, governments, international organizations and agencies and regional organizations engaged in the field of democracy-building.

What does International IDEA do?

The Institute's work is organized at global, regional and country level, focusing on the citizen as the driver of change. International IDEA produces comparative knowledge in its key areas of expertise: electoral processes, constitution-building, political participation and representation, and democracy and development, as well as on democracy as it relates to gender, diversity, and conflict and security.

IDEA brings this knowledge to national and local actors who are working for democratic reform, and facilitates dialogue in support of democratic change.

In its work, IDEA aims for:

- Increased capacity, legitimacy and credibility of democracy
- More inclusive participation and accountable representation
- More effective and legitimate democracy cooperation

Where does International IDEA work?

International IDEA works worldwide. Based in Stockholm, Sweden, the Institute has offices in Africa and , the Asia-Pacific and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations.

About the Global Database on Elections and Democracy

International IDEA's Global Database on Elections and Democracy brings together nine of the Institute's key databases under one common interface, and incorporates both quantitative and qualitative data on:

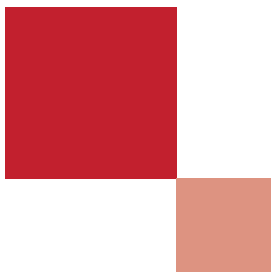
1. Voter Turnout
2. Gender Quotas
3. Political Finance
4. Electoral System Design
5. Electoral Management Design
6. Electoral Justice
7. Direct Democracy
8. Voting from Abroad
9. ICTs in Elections

Quantitative data are given in the form of usual statistics, such as voter turnout and voting age population statistics, or in the form of multiple choices, such as types of electoral systems and models of electoral management. This means that quantitative data can be easily used for various statistical analyses.

Qualitative data are given in the form of comments and more in-depth information, which can serve the needs of those who would like to obtain more comprehensive information about national practices.

The common interface means that navigation and appearance (including maps, tables and menus) are consistent for each individual database. Users can also contribute to updating and improving the quality of each data set, and customize their own data.

Access the Global Database: <<http://www.idea.int/db>>.



Elections are central to establishing a legitimate democratic government. However, a democratic government's degree of legitimacy depends on the extent to which elections are trusted and perceived to be free and fair. At the same time, competition is an inherent part of elections, which can tempt actors to engage in various types of misconduct during the many stages of the electoral process.

The way in which complaints and disputes about such misconduct are handled is one of the important indicators of the credibility of elections. Therefore, free and fair elections necessitate the adoption of efficient and transparent electoral dispute-resolution (EDR) mechanisms that are explicitly defined in legislation.

This report provides an overview of the global data on EDR systems contained within the International IDEA Electoral Justice Database and presents key findings from the study of EDR mechanisms. It also presents a brief discussion of these findings, highlighting important trends and practices from a global perspective.



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