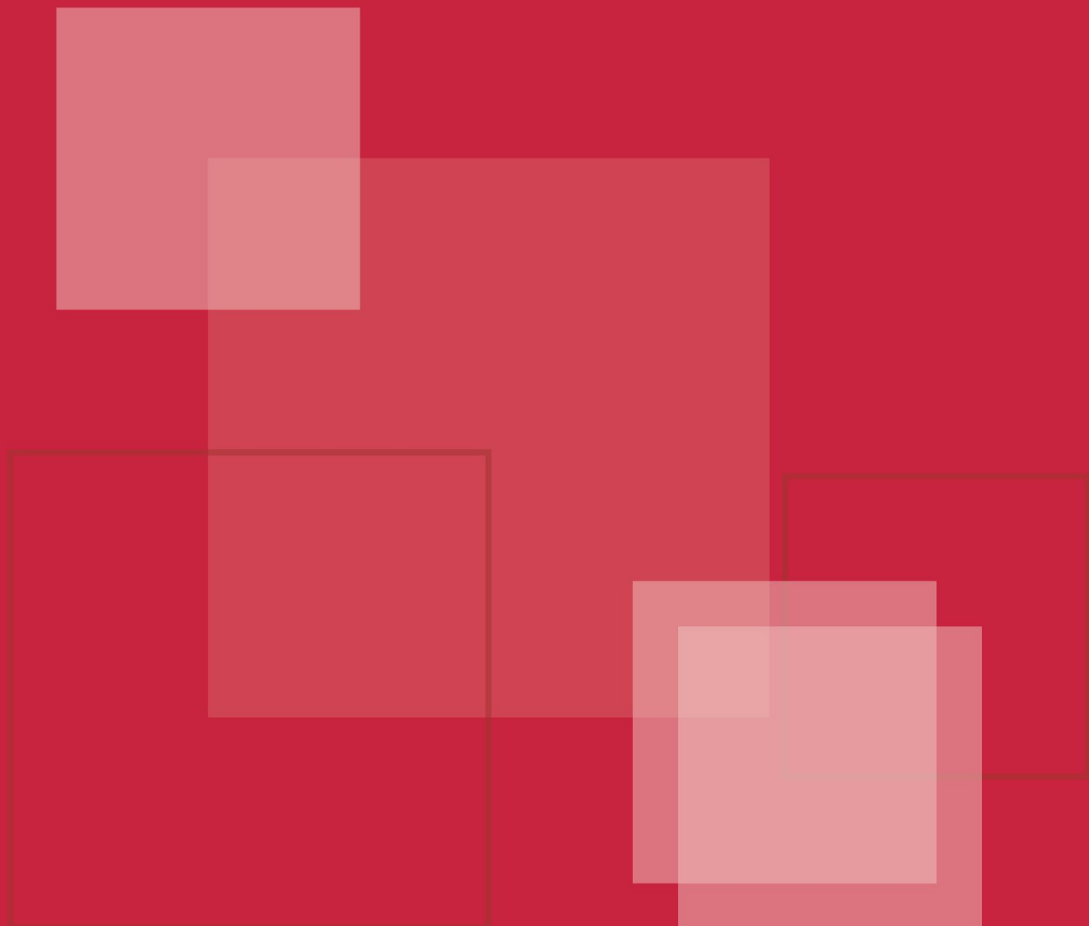




# Electoral Justice System Assessment Guide

Pilot Conference: 2–3 May 2018, Jakarta, Indonesia





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## Foreword

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On behalf of the Indonesia Elections Supervisory Board (Badan Pengawas Pemilihan Umum Republik Indonesia, Bawaslu), I would like to offer my greatest appreciation to the International Institute for Democracy and Electoral Assistance (International IDEA) for its cooperation in co-hosting this Pilot Conference, our first international event for the period 2017–22. I would like to thank all participants for sparing the time to attend this meeting. Their enthusiasm and contributions during the conference were beyond our expectations.

We have come to the realization that an election is not only about voting for our political representatives but also requires justice in conducting the election process. An electoral justice system (EJS) is one of the most important indicators of electoral success. Through the EJS, it can be seen whether an election has imposed the free, honest and fair principles expected of the electoral exercise. In the last few decades, many countries have begun to consider and have become aware of the importance of the EJS in the implementation of their elections. The resulting quality of electoral implementation is recognized by all stakeholders as important to the election process.

While we are still working on attaining perfection in carrying out our job and our duty, Bawaslu has played a huge role in developing justice and democracy in Indonesia's election. Bawaslu now has a new spirit through its vision: *Together with the people we supervise the elections, together with Bawaslu we uphold electoral justice*. This vision shows that Bawaslu understands how important justice can be in the exercise of our elections. By encouraging all elements of society to participate in supervising and upholding electoral justice, Bawaslu believes that upholding electoral justice is no longer just a dream but, I must say, a dream soon to come true. We are highly hopeful that our story—Indonesia's stories in upholding and protecting elections—will be heard worldwide, so that the idea of free, fair and transparent elections will no longer be just an idea but something that can be manifested by nations.

Through this conference, Bawaslu was able to gather insights on the challenges that we might face in the implementation of electoral justice, especially in Indonesia's forthcoming 2019 general elections. We believe that these inputs can act as guidance for Bawaslu in improving the quality and conduct of its duties and functions as an election supervisor. We hope that this event will not be our last, but instead, will be the beginning of a process of learning and evaluating current issues in our election system—not only in Indonesia but globally as well.

*Abhan*  
*Chairperson*  
*Indonesia Elections Supervisory Board (Bawaslu RI)*

## Preface

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The transition from military and civilian authoritarian rule towards democratic or hybrid regimes results in elections being a crucial shaper of a country's political direction, values and configuration.

Within the South East Asian region, the year 2018 alone has been a testament to this observation, as elections in Malaysia have produced a historic alternation of power; the Thai military government prepares the way for elections for the first time in four years; the main opposition alliance in Cambodia has been banned in the lead-up to the July general elections; and the Philippines continues to manage the aftermath of disputes over its national elections. Meanwhile, Indonesia's national elections in 2019 will prove to be a test for the reform agenda of President Joko Widodo.

Given the crucial role that elections play, the institutionalization and operation of a fair, just, credible, legitimate and transparent adjudication system to resolve electoral disputes is essential.

A system of electoral justice helps ensure that the public has faith in the electoral process. It is a key determinant in ensuring the building of trust and confidence for a robust democracy. International IDEA believes that its forthcoming *Electoral Justice System Assessment Guide* will aid countries, their relevant electoral management bodies and other electoral justice institutions in assessing the quality of their adjudication processes, thus building their capacity to operate as institutions that safeguard against electoral malpractice and misconduct.

This Pilot Conference aimed to continue, support and expand the discourse on electoral justice, and help construct communities that can sustain the dialogue and reform process in the foreseeable future.

International IDEA expresses its gratitude to all participants, speakers, organizers and supporters of the Pilot Conference for the *Electoral Justice System Assessment Guide*, and especially to the Indonesian Elections Supervisory Board (Bawaslu) for its role as a host and facilitator.

*Leena Rikkilä Tamang*  
*Director for Asia and the Pacific*  
*International IDEA*

## Acknowledgements

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International IDEA would like to acknowledge and extend its gratitude to Bawaslu officials and staff for co-hosting the Pilot Conference and for being the first electoral management body to apply the *Electoral Justice System Assessment Guide* to an assessment of its operations.

International IDEA would also like to thank the following organizations for participating in the Pilot Conference and for contributing to the finalization of the Assessment Guide: the election commissions of Bangladesh, Fiji, Myanmar, the Philippines and Sri Lanka; the Association for Elections and Democracy (Perkumpulan untuk Pemilu dan Demokrasi, Perludem); the Constitution and Democracy Initiative (Konstitusi dan Demokrasi Inisiatif, KoDe Inisiatif); the Constitutional Court of Indonesia; the International Foundation for Electoral Systems (IFES); the Legal Network for Truthful Elections (LENTE); Netgrit; Management Systems International (MSI); and Indonesia Corruption Watch. Thanks to the keynote speakers, Bawaslu chairperson Abhan and member Fritz Siregar, for presenting their findings and providing feedback on the Assessment Guide.

A special thanks to Frank McLoughlin for developing the *Electoral Justice System Assessment Guide*.

Finally, thanks to International IDEA's staff and consultants for their role in facilitating the Pilot Conference. Specifically, to Therese Pearce Laanela and Adhy Aman, and consultants Carla Luis, Frank McLoughlin and Vincentia Indah, for organizing the conference, and to Jayshendra Karunakaren for serving as rapporteur for the conference and preparing this report.

## Introduction



On 2–3 May 2018, the Indonesian Election Supervisory Board (Bawaslu) and the International Institute for Democracy and Electoral Assistance (International IDEA) hosted a Pilot Conference with key stakeholders to gather input to the drafting and prospective implementation of the draft *Electoral Justice System Assessment Guide*.

Developed by International IDEA, the Assessment Guide consists of a series of researchable questions regarding universal, organizing principles integral to the quality and robustness of a country's electoral justice system. Prior to the Pilot Conference, Bawaslu became the first electoral institution in the world to 'road test' the draft Assessment Guide, in order to assess the state of electoral justice in Indonesia, as well as its own strengths and weaknesses as an electoral management body (EMB). The Pilot Conference therefore presented an opportunity for Bawaslu to report back on its self-assessment, and for International IDEA to gain valuable insights into how the Assessment Guide could be improved and adjusted to suit specific contexts.

## Objectives

The Pilot Conference had the following objectives:

- Exchange and sharing of knowledge, experiences and insights into the challenges of implementing electoral justice in the jurisdiction of the participants;
- Advising International IDEA facilitators regarding corrections of and improvement to the content, structure, and utility of the current draft of the *Electoral Justice System Assessment Guide*;
- Brainstorming the translation of the content in the Assessment Guide into various end products, such as mini-guides, manuals, software products and so on; and
- Establishing a secure and sustainable basis for continuing and broadening the dialogue and discourse on electoral justice, including as part of ongoing worldwide conversations (e.g. the Global Network on Electoral Justice).

The expected outcome of the Conference was the development of a prototype Assessment Guide for public review, which would be developed through the incorporation of the feedback, suggestions and recommendations of participants steeped in the operation of EMBs and other electoral justice institutions in their local jurisdictions.



Through the platform for discussion that the conference provided and in the agreement of a set of working principles in the creation of the Assessment Guide, it was hoped that a further solidification of a community of practice around electoral justice issues would be achieved.

## Participants

The participants in the Pilot Conference consisted of a diverse range of stakeholders who have worked in or critically engaged in electoral justice at the domestic and international level. In addition to Bawaslu officials, participants included officials from state organizations such as the election commissions of Fiji, Myanmar, Sri Lanka, and the Philippines, the Indonesian Constitutional Court, representatives from civil society organizations (CSOs) such as the Legal Network for Truthful Elections (LENTE), the Association for Elections and Democracy (Perludem), IFES and academics from Indonesian universities.

The response from the stakeholders to the draft Assessment Guide has been overwhelmingly positive and a clear majority of stakeholders present agreed to continue working with Bawaslu and International IDEA on further developing and testing the Guide.



*Participants in the Electoral Justice System Assessment Guide Pilot Conference (photo credit: International IDEA).*



*Opening Statement to the EJS Assessment Guide Pilot Conference by International IDEA's Therese Pearce Laanela (photo credit: International IDEA).*



*Opening Statement to the EJS Assessment Guide Pilot Conference by Frank McLoughlin (photo credit: International IDEA).*



## Agenda and report writing

The *Electoral Justice System Assessment Guide* was produced by International IDEA, with Bawaslu agreeing to play a ‘thought and practice’ leadership role on the topic of electoral justice in the context of the Asia-Pacific region by assessing its organization and operations against the working principles outlined in the Guide.

The draft Assessment Guide identifies key principles in setting a framework for a robust electoral justice system, including from the perspective of complainants and respondents: fairness, lawfulness, professionalism, transparency, accessibility, timeliness, and education, and from the perspective of electoral justice system institutions: independence, impartiality, efficiency and effectiveness, accountability, professionalism, inclusivity, and adaptability.

The production of this report has been based on the speakers’ presentations, conference minutes submitted by the rapporteur assigned to the plenary and breakout sessions, and photographs taken during the Conference. The draft report was sent to the respective speakers and rapporteurs for verification, feedback and approval before submission to Bawaslu and International IDEA for publication.

The structure of this report is as follows. Chapter 1 summarizes the concept and development of electoral justice. Chapter 2 presents the preliminary findings of a self-assessment undertaken by Bawaslu using the Assessment Guide. Chapter 3 details the feedback from the Pilot Conference on the Guide itself, including overall comments, feedback on individual sections of the Guide, and feedback through the lens of relevant stakeholders in the electoral cycle. Chapter 4 outlines some closing remarks and comments on the way forward.

The Pilot Conference programme is included as an Annex.



## 1. The concept and development of electoral justice



Electoral justice is crucial to ensuring the success, fairness and credibility of the electoral process, which is the bedrock for a robust and legitimate democratic system. In recent decades, many countries have begun to consider conceptualizing and implementing electoral justice systems to improve the quality of the stakeholder process, as well as the quality of elections and democracy. The principles and system of electoral justice are also commonly known as electoral integrity.

The definition of an electoral justice system outlined in *Electoral Justice: The International IDEA Handbook* is as follows:

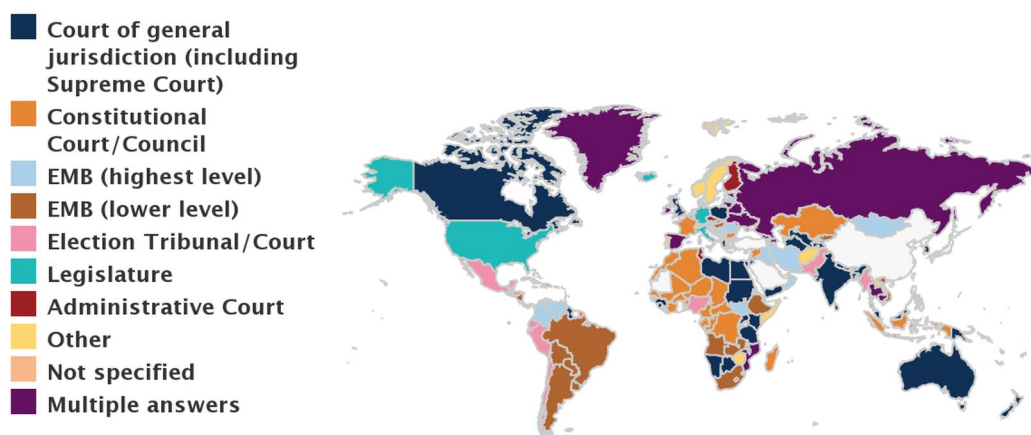
the set of means or mechanisms available in a specific country (sometimes in a specific local community or even in a regional or international context) to ensure and verify that electoral actions, procedures and decisions comply with the legal framework, and to protect and restore the enjoyment of electoral rights. An electoral justice system (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 (International IDEA 2010: 200).

When the electoral process is operating smoothly, the aim of electoral justice is therefore to ensure that the electoral rights of the people are safeguarded and to ensure that misconduct does not happen. However, when irregularities, violations or misconduct do occur, electoral justice system (EJS) institutions should have the capacity to address and correct the misconduct, violation or irregularity.

Electoral justice systems vary from country to country, and often consist of many different laws and institutions. Laws can include international conventions, constitutional provisions, electoral laws and regulations, penal codes, codes of conduct, and judicial decisions. Institutions can include electoral management bodies (EMBs), courts, constitutional courts of councils, legislatures, law enforcement agencies, ministries, and civil society organizations, among others. Figure 1 provides a global snapshot of this diversity in electoral justice systems in terms of the first-instance body with jurisdiction over electoral justice disputes.



Figure 1. First-instance bodies with jurisdiction over electoral justice disputes: worldwide



Source: International IDEA, Electoral Justice Database, <<https://www.idea.int/data-tools/question-view/127>>, accessed 14 August 2018.

While the shifting trajectories of the post-Cold War environment resulted in greater attention being paid to how elections were conducted, the laws and regulations that managed elections remained domestic in both origin and nature. International and non-governmental organizations alike—including the United Nations, the International Foundation for Electoral Systems (IFES) and The Carter Center—initiated a movement focused on increasing attention to electoral management. Over the past 25 to 30 years, there has been a shift in the discourse from managing elections in a local, insular fashion towards a global consciousness and movement that advocates for electoral reform, and for reform of electoral justice systems.

This global movement initially consisted of several key areas which have shifted in emphasis across time. It first focused on the content of laws. There is an increasing realization that the rule of law matters, due to the widely-shared common interest in maintaining stability and protecting the electoral process from abuse of power and misconduct. Over time, the emphasis of this movement shifted towards the legal framework of elections—and specifically, the bodies and institutions that manage, regulate and supervise elections. Then, attention towards electoral dispute resolution increased. Once the key shifts in the areas of this global movement are understood, the conduct and management of elections can be seen as a systemic whole, with an understanding of the place of CSOs within this systemic whole.

This transformative process has a geographic dimension. The journey started with the struggle to uphold the integrity of electoral processes from abuse by authoritarian regimes through the judiciary in Latin America. As innovative grassroots movements proliferated, this global movement reached Africa, and also Asia, as a myriad of institutions led advocacy through cutting-edge thinking.

International organizations such as International IDEA, IFES, The Carter Center, the Organization for Security and Cooperation in Europe (OSCE) and the United Nations Development Programme (UNDP) have conducted excellent work in developing, conceptualizing and framing core working principles for electoral justice. The content of



best-practice principles for electoral justice can be found in handbooks, websites, curricula such as the Bridge Project, and online tools and software.

A culmination of this international thinking was the development of the Accra Guiding Principles on Electoral Justice (Ghana Principles), which include integrity, participation, lawfulness, impartiality and fairness, professionalism, independence, transparency, timeliness, non-violence, regularity and acceptance.

The Ghana Principles were an inspiration for the ordering and structuring of the various sections of International IDEA's *Electoral Justice System Assessment Guide*.

## About the Electoral Justice System Assessment Guide

International IDEA aims to discover new, innovative ways to market its knowledge products, and to test knowledge products that are currently in development. In this context, this Pilot Conference provided the Institute with an opportunity to review the accuracy of the *Electoral Justice System Assessment Guide*.

The draft *Electoral Justice System Assessment Guide* contains a set of working best-practice principles that form the foundation of a successful electoral justice system.

From the perspective of complainants and respondents, these principles include: fairness, lawfulness, professionalism, transparency, accessibility, timeliness and education. From the perspective of electoral justice system institutions, these principles include: independence, impartiality, efficiency and effectiveness, accountability, professionalism, inclusivity and adaptability.

The aim of the Assessment Guide is to test, via a series of questions, whether these principles have been upheld in electoral justice systems in specific national contexts. Each section of the Guide covers a specific principle and includes background information that defines and explains key concepts, as well as a set of real-world examples of the successful safeguarding of these principles in electoral justice systems.

Ultimately the Guide is meant to help relevant stakeholders in the electoral process change with the times, update current practices, and learn from history.

## 2. Testing the Electoral Justice System Assessment Guide: the case of Indonesia

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Bawaslu was asked to test the *Electoral Justice System Assessment Guide*, by measuring its own internal operations against the working principles laid down in the Guide.

The Assessment Guide was tested by five divisions of Bawaslu: the legal division, the dispute-settlement division, the human resources and organization division, the election supervision and socialization division and the enforcement division.

It should be noted that this evaluation was conducted from the perspective of Bawaslu. Additional evaluations of Bawaslu by external organizations would provide a more holistic, accurate and unbiased measure of how Bawaslu measures up to the working principles outlined in the Assessment Guide.

Bawaslu believes that this Assessment Guide is a useful way to check if a country has an electoral justice system in place. Indonesia has had a system of electoral justice in place since 1999, the planning of which occurred a year prior to elections. Bawaslu became a permanent institution as an electoral supervisory body and has identified the need to conduct an internal review of its structure and operations, in order to improve as an institution in the delivery of electoral justice.

There are three types of elections in Indonesia: (a) direct presidential elections, (b) legislative elections and (c) elections of heads of regents (second-level local governments). In 2019, both direct presidential and legislative elections will be held, while in 2024 all three levels of elections will take place, making it the largest set of elections in Indonesia's history as a democracy.

When the organization conducted the self-assessment based on the Assessment Guide, the starting point was to locate existing election laws. In Indonesia, these are the Laws on Regional Elections (10/2016) which govern the electoral process for heads of regencies. The General Elections Law (7/2007) is the legal basis for the creation of the electoral governance and supervisory bodies, namely the Elections Commission, Bawaslu and the Honorary Council of Election Management Bodies. Other relevant laws include the Supreme Court Law, the Press Law and the Judicial Commission Law.

### Results

In terms of the principles set out in the Assessment Guide, Bawaslu ranks positively in the principles of fairness, lawfulness and accessibility. Bawaslu also ranks well in the areas of

education, independence and impartiality, but not as well as the previously mentioned areas. See Table 1 for a summary of the preliminary findings.

**Table 1. Preliminary findings, Bawaslu electoral justice self-assessment**

Principle	Self-assessment, Bawaslu
Fairness	Bawaslu treats all political parties equally. There are sanctions if the organization fails to do so, as Bawaslu members could be dismissed by the Honorary Council for Elections Management Bodies.
Lawfulness	The decisions of the organization's adjudication are obtained by all parties to the dispute, and Bawaslu provides assistance to parties to appeal decisions to a higher court.
Accessibility	Bawaslu is in a position where it can be accessed by any individual or party, without any discrimination between groups. There is no cost to file complaints or settle disputes. Bawaslu also maintains the strict confidentiality of all parties. Any individual can also obtain public documents from Bawaslu.
Education	Bawaslu engages people to participate in elections supervision, although it currently does not meet its targets.
Independence	The organization realizes that a proportion of its members are not as independent as expected.
Impartiality	Bawaslu does not have parameters in its internal structure to measure this area.

The overall conclusion is that the organization measures well according to the principles laid out in the Assessment Guide, but there are still areas that need improvement. This assessment and the efforts to improve Bawaslu according to the Guide are crucial. Bawaslu is assuming a more prominent public role as an elections supervisor and there is increasing public interest in the organization, especially when electoral disputes arise, as people rely on Bawaslu for supervision and dispute resolution.



*Presentation of Bawaslu's report by Bawaslu Member Friz Edward Siregar (photo credit: International IDEA).*



### 3. Reflections on the Assessment Guide



Throughout the duration of the Pilot Conference, the participants provided feedback in three ways: regarding the overall report, on individual sections and working principles in the report, and through the perspective of different stakeholder groups in the electoral process that would utilize the Assessment Guide. This was achieved through discussions with and among the participants at the conference, and through brainstorming within breakout groups.

#### General reflections

While the conference participants unanimously agreed that the Assessment Guide was clear and comprehensive, the feedback received regarding the Guide illuminated some key concerns and areas for improvement in order to improve its clarity and robustness. The feedback was grounded in the working experience and knowledge of participants, who are currently working in electoral commissions and EMBs, courts, oversight organizations and CSOs.

There are three key overarching themes to the feedback provided by the participants.

##### 1. Improve the clarity of the content of the Assessment Guide

The feedback provided under this theme reviews the ‘nuts and bolts’ of the working principles in the Guide. It is directed towards explicating certain key terms and criteria to enable users to better understand how the working principles in the Guide apply to operation and functioning of EJS institutions.

The key feedback provided in this area was as follows:

- As a starting point, the definition of democratic elections should be grounded in universal language with normative reference to international law such as the International Covenant on Civil and Political Rights (ICCPR). Particular attention should be paid to the ‘democratic’ elements and criteria that define an electoral process and system that meets the standard of ‘democratic elections’, and such standards should be consistent with the international legal provisions.
- There could be problems of bias if EMBs use the questionnaire in the Assessment Guide to assess themselves. Also, different stakeholders could assess the same electoral justice system differently, depending on their perspectives. Thus, separate, tailor-made



Guides might be issued for use by different stakeholders, instead of a one-size-fits-all template. This improves the clarity of the Guide as stakeholders who use it will be directed to questions that specifically pertain to them.

- The Guide should also assess the competency of the staff at EMBs and other institutions to judge whether the staff have met their mandates. In line with this, the Guide should devote more attention to the recruitment and appointment of electoral justice system institution officials. The participants, through their experience of working in EMBs and CSOs, felt that the Assessment Guide is relatively light in this area, given the importance of this area to the success of the functioning and operation of EMBs.
- The Guide should cite specific provisions of domestic laws, to ensure that users are able to assess the correct legal provisions with reference to the principles established in the Guide. This will particularly aid any advocacy proposals.
- The participants expressed that the Guide should explain the time length for the handling of electoral conflicts in greater detail. In particular, more information should be included regarding an appropriate time length to resolve electoral disputes.
- The Guide should more fully address cases where organizing principles might overlap, or instances in which organizing principles might appear to be inconsistent with one another. An example provided is whether the area of Timeliness should be included under the Efficiency and Effectiveness principle. The participants called for more careful review and more discussion in addressing such seeming contradictions in order to match guidelines and questions with the correct principles.

## 2. Include more best-practice frameworks and guidelines in the Assessment Guide

The feedback received called for more direction towards operationalizing the working principles of the Guide through best-practice guidelines. A greater emphasis on best-practice guidelines will enable users to utilise the working principles to advocate for reforms for specific countries or communities, and will provide an improved comparative focus towards judging and setting standards for an EJS body.

The feedback received was as follows.

- Given the increasing prominence played by social media and technology in elections and the drafting of regulatory laws by national parliaments to govern such areas of communication, the Guide should establish key principles and a framework to set best-practice examples of how to regulate social media in elections.

## 3. Contextualize the operational principles and guidelines in the Assessment Guide to better fit the local realities of the community

The feedback received also was directed towards ‘localizing’ the Assessment Guide to better reflect the problems of elections and EJS institutions that are locally-specific to a certain country or community.

The various feedback received were as follows:

- The Guide should adapt to countries with multiple EMBs and account for the interaction between multiple EMBs. On a broader note, it is imperative for the Guide



to not only reflect the ‘nuts and bolts’ of an electoral justice system, but also its political-social environment.

- The Guide should include domestic laws that safeguard a ‘level-playing field’ between political parties in its framework. This is especially relevant in countries where the incumbent party may attempt to manipulate the electoral system and election results.
- In countries with multiple levels of elections, where each individual election is governed by different laws (such as Indonesia), the Guide should aim to build a framework for electoral justice that is consistent across different levels of elections.
- In countries where election laws are revised relatively frequently, the Guide should aim to assess consistency among frequently changing laws.
- The participants also gave their insight into how the Assessment Guide could be utilized in their own work.
- Some participants noted that for countries with weak electoral justice systems, the Assessment Guide could be useful in identifying issues to raise with their domestic electoral institutions and national legislatures for prospective reform. In line with this, the participants also reported that the Guide can be a useful benchmark for reform of their domestic electoral justice system institutions.
- Participants added a note of caution that in some countries some categories of stakeholders could face political pressure or repression for using the Guide to engage in reform efforts. It might limit the effectiveness of the Guide if only certain types of stakeholders are free to use it.
- It would be difficult to implement the Guide in societies which practice traditional methods of selecting their leaders.
- In assessing a reform process, the Guide should capture the distinctive roles of actors in the institution (parties) and outside the institution of government (civil society).



*Participants providing feedback on the Assessment Guide (photo credit: International IDEA).*



*Participants providing feedback on the Assessment Guide (photo credit: International IDEA).*





*Participants' discussion at the Pilot Conference (photo credit: International IDEA).*



*Participants' discussion at the Pilot Conference (photo credit: International IDEA).*



## Reflections on individual sections

Participants were divided into a series of breakout groups over the two days to assess the core working principles in the Assessment Guide. Each working principle consists of a set of questions that tests for a certain country's level in protecting and safeguarding this working principle of the EJS. Thus, in the process of assessing the working principles, the set of questions were reviewed by the individual breakout groups. Each breakout group was assigned to review two principles. The working principles assessed are (per the order of the Assessment Guide):

1. Lawfulness
2. Professionalism
3. Accessibility
4. Education and Awareness
5. Independence
6. Efficiency and Effectiveness
7. Accountability
8. Inclusivity

The first two breakout group sessions on Wednesday, 2 May 2018 brainstormed the challenges in assessing these select principles from the Assessment Guide. The third and final breakout group session on Thursday, 3 May 2018 focused on ways to tailor the Assessment Guide to fit and fulfil the needs of target audiences, typically, stakeholders in the electoral process.

The following information is the product of the discussion both within the breakout groups and within the overall conference itself.

### Lawfulness

The principle of Lawfulness is tested by Questions 2–9 in the Assessment Guide. This section covers international obligations, the protection of rights, clear and comprehensive laws and jurisdictions, and acceptance of decisions.

In brainstorming the challenges to assessing the principle of 'lawfulness', the discussion produced a central key theme: the difficulty of making international obligations acceptable in all countries. The discussion centred around the non-binding nature of some international obligations, and the inherent barriers to the diffusion of such obligations into the domestic legal framework. In particular, the breakout group discussed the perception among domestic state organizations and communities that such international obligations represent unwanted intrusion into a country's domestic affairs and legal sovereignty, and thus lack the same legitimacy that domestic legislation has.

The discussion for this section centred around contextualising the elements of 'lawfulness', to obtain a better reading and more accurate description of the local operations of EJS institutions. This is highlighted by the suggestion in Question 5 to account for inconsistencies with (1) multiple electoral laws that contains contradictory provisions in electoral governance, (2) multiple EJS institutions which could have overlapping and conflicting jurisdictions and functions, and (3) an inconsistent application of EJS laws to different disputes and cases, which leads to arbitrariness.



In addition, the discussions also centred around making the Assessment Guidelines clearer to the reader by defining key principles and criteria, and finding the right match between the select questions and the overarching principle that the question is based upon. This is seen in the suggestion to include a definition and scope of a ‘timely’ manner of enforcement of resolution decisions for electoral disputes, whether the acceptance of resolutions and judgements should be included under the ‘effectiveness’ principle, and to include a justification for why Question 9 (regarding the ‘Proportionality of Sanctions’) is only directed towards the respondent. Unlike the comment on Question 5 which is aimed at improving the accuracy of the report with regard to context, these other suggestions are directed towards improving the clarity of the report and to reduce overlap.

### Professionalism

The section on Professionalism is tested by Questions 10–11 and Questions 41–42 of the Assessment Guide. This section covers codes of conduct, treatment of persons with respect, training of staff and officials, and continuity of staff between elections.

In the breakout group discussion, the participants listed the challenges in assessing the principle of ‘Professionalism’, including the following:

1. The public does not know how to file a complaint.
2. The absence of an internal code of conduct.
3. The Commission does not have policies ensuring inclusivity with regard to minorities, indigenous peoples, and detainees.
4. The Commission does not possess a good working background, with regard to how judges are trained.
5. Lack of training for EMB staff and officials for event-management techniques, given that the running and supervising of elections require such technical know-how.

The suggestions from this breakout group are grounded in the working experience of the participants from electoral commissions. Hence, the points of the discussion here are more operational and practical by nature, such as touching on the complaints-filing process, and lack of appropriate working background along commissioners as obstacles to the functioning of the EJS body.

### Accessibility

The principle of Accessibility includes Questions 16–24 of the Assessment Guide. This section covers legal standing requirements, the costs to file a complaint, access for persons with disabilities, linguistic minorities, women and marginalized groups, and the ease of filing a complaint and receiving responses.

In the discussion, the participants listed the following challenges in assessing this principle:

1. There could be technical problems and disruptions with online platforms that aim to improve accessibility, for example, online tracking of the status of claims.
2. The existence of discrimination along the lines of gender, race and ethnicity that prevent marginalised groups from reporting to EJS institutions.
3. The costs of time and distance to access EJS institutions, that could be prohibitively high for certain individuals and groups. Added to this are the potentially prohibitively expensive costs to file complaints and investigate, whether in pecuniary terms or time.



4. The lack of awareness of the process of accessing EJS institutions.
5. EJS institutions create an environment where persons with disabilities and individuals with special needs are unable to access these institutions and utilise their services.
6. The presence of social instability and violence that prevents direct access to EJS institutions.

The underlying theme of the points raised in this section is assessing the problem of inequality, an inherent political and socio-economic issue that is a relevant factor in the testing process of countries in the Asian region. The problem of inequality relates to the unequal access of populations to engaging the electoral process, whether as voters or as disputants in cases. This could be reflected in lack of financial resources to file complaints, traveling large distances to access EJS bodies, and lack of enfranchisement in the voting process.

### Education and awareness

The principle of Education and Awareness is tested by Questions 26–27, and this section covers knowledge of how to access and use the electoral justice system, and knowledge of the importance of electoral justice and the exercise of rights. In discussing the challenges involved when assessing and testing this principle on different settings, the breakout group produced the following points:

1. There exists diversity between peoples in big cities, the countryside and indigenous areas regarding the understanding of electoral rights, EJS and its related institutions.
2. Low literacy levels increase the difficulty of educational campaigns and programmes to understand EJS. This deters access to EJS institutions.
3. The needs of persons with disabilities are not catered to, and thus, this section of the community is deterred from accessing EJS institutions.
4. In-country language barriers are an additional barrier to the process of education.
5. Stakeholder apathy regarding elections.
6. Information regarding EJS institutions are inaccessible by the public.
7. Candidates and political parties are disappointed with adjudication results of disputes, and thus, mistrust EJS institutions.

The discussion in this section takes similar form to the previous section on ‘Accessibility’, as the working experience of the participants inform the conference about the high levels of inequality that plague the functioning of the EJS and bodies. The underlying theme is, once again, that voters have unequal capacity to engage the voting process and fulfil their rights under an EJS system.

### Independence

The principle of Independence is tested by Questions 28–30 of the Assessment Guide. This section covers independence of EJS officials, the independence of EJS institutions, and decisions that oppose powerful groups.

In the last five years (or one complete electoral cycle), has the current EJS (and particularly a last-instance EJS institution such as a high court with final authority on electoral disputes) issued a major election-related decision that has disfavoured the government, the ruling party, or another powerful group or faction?





The participants in the breakout group listed the following challenges to assessing this principle:

1. The Assessment Guide does not include the dismissal process of EJS officials. Given how important this area is when assessing and rating the overall independence of an EJS institution, participants recommended including an assessment of the dismissal process of EJS staff and officials into the set of questions in this section.
2. The Assessment Guide does not include an independent assessment of police and prosecutors, which are key components to the EJS and thus, necessitate inclusion into the assessment. Participants have recommended this assessment to be built into this section.

The prescriptive suggestions raised in the discussion are aimed to ensure that the framework of the Assessment Guide is more robust to ensure the principle of independence is upheld and safeguarded. Participants raised key areas that were excluded from the Assessment Guide: namely, that there should be a best-practice guide and framework for the dismissal process of EJS officials, and an assessment of police and prosecutors (thus, shifting the discourse of Electoral Justice to place value on the role of law enforcement agencies).

#### Efficiency and effectiveness

The principle of Efficiency and Effectiveness are tested by Questions 32–36 of the Assessment Guide. This section covers timely and efficient disposition of claims, use of technology by EJS institutions, screening and prioritizing of complaints, effective methods of communication, and adequate remedies available.

In the breakout group, participants listed the following challenges and recommendations to testing this principle:

1. The Assessment Guide should include greater detail about the time frame to implement dispute settlement.
2. The length of the time frame to decide cases should be pre-determined in the Assessment Guide.
3. The Assessment Guide should explicate best-practice criteria to determine the balance of remedies between stakeholders.
4. There could be different tiers of EMB institutions, with different roles and responsibilities, thus, a framework should be included in the Assessment Guide to factor and account for these tiers.
5. The Assessment Guide should include a methodology of evaluating the consistency of EJS orders and decisions in dispute-resolution.
6. The Assessment Guide should include a methodology of evaluating the quality of internal evaluations of EJS institutions.

In addition, the breakout group posed several recommendations and areas to consider in order to improve the quality of an EJS:

1. In terms of the use of technology, application of new technologies should be directed toward translating languages and dialects to receive complaints and should include a mechanism to track applications and to get feedback.



2. EMBs and other electoral justice institutions should include video-conferencing as a mechanism for communication.
3. EMBs and other electoral justice institutions should increase the public's and user's capacity to utilise these technologies.
4. A best-practice framework should be considered to create a regulatory system that governs the use of social media in elections, in which the freedom of online expression is protected.
5. EJS institutions should create a consistent feedback system for stakeholders.

The discussion raised by this breakout group is aimed to re-format this section of the Assessment Guide to enable it to be operationalised within the local context of EJS institutions. The suggestions centre around the theme of increasing the use of best-practice guides (in the form of setting an appropriate time frame for the resolution of disputes and explicating criteria for the balance of remedies between stakeholders) and to shape the Guide to account for multiple tiers of EJS institutions that would have different responsibilities and *modus operandi*. Thus, the outcome of the discussion calls for, on the one hand, a universal best-practice framework that prescribes efficiency-maximization procedures, and on the other, a greater contextualisation of the Guide to fit the realities of local countries.

### Accountability

This principle is tested by Questions 37–40 of the Assessment Guide. This section covers appellate review, judicial review of laws governing electoral justice, legislative oversight, misconduct issues within EJS institutions.

The participants listed the following challenges and recommendations regarding the assessment of this principle:

1. There could be too many institutions in which to appeal, making the accountability process confusing and unclear. Stakeholders could engage in 'institution shopping'.
2. The Assessment Guide should factor the extent to which higher courts take into account lower court decisions.
3. The Assessment Guide should create a methodology that evaluates the consistency between the regulatory regimes of different tiers of elections, such as regional, local and presidential elections (in Indonesia). This methodology should highlight any internal consistency problems.

Similar to the last section on 'Efficiency and Effectiveness', the outcome of the discussion calls for a re-shaping of the Assessment Guide to factor multiple EJS institutions, horizontally overlapping jurisdictions that contain the inherent problem of 'institution-shopping', disputants selecting the EJS body that they feel could maximize their chances of prevailing. This context is particularly relevant in Indonesia, and is reflected in Bawaslu's self-assessment using the Assessment Guide.

### Inclusivity

This principle is tested by Questions 43–44 of the Assessment Guide and this section covers: the gender balance and ethnic, religious, (and other) diversity of leadership and staff of EJS institutions, including marginalized groups.



The participants have listed the following challenges to the testing of this principle:

1. There is no general agreement about gender and minority balance.
2. There is an absence or lack of criteria to ensure that the appointments process is fair and open.

The outcome for the discussion on this section is the inclusion of more specific, explicit criteria about how the Assessment Guide would, in a prescriptive manner, operationalise the principle of inclusion.



*Brainstorming during breakout group sessions (photo credit: International IDEA).*





*Rapporteur listing ideas during breakout group sessions (photo credit: International IDEA).*



*Discussion during individual breakout group sessions (photo credit: International IDEA).*



## Reflections by stakeholder groups

Participants were divided into breakout groups that reflected the working backgrounds of the participants as stakeholders in the electoral process. It has to be noted that a small number of participants belonged to a different stakeholder group than the label of the group represented. Therefore, these participants had to carry out a role-playing exercise.

Each breakout group was tasked with listing challenges that each of these stakeholder groups face with respect to their use of the Assessment Guide and/or their operations on elections and finding recommendations to improve the Assessment Guide to reflect these challenges.

The stakeholder groups addressed in the conference were (a) EMBs and the judiciary, (b) advocates and awareness-raising organizations, (c) analysts and (d) political parties and candidates.

### Electoral management bodies and the judiciary

The challenges this stakeholder groups faces were as follows:

1. The Assessment Guide is too broad and generalized and does not fit the local needs of the institution or the community.
2. The Assessment Guide might not be accessible for local institutions due to language barriers.
3. The dissemination of the working principles of the Guide towards local institutions could be seen as illegitimate, as it was not drafted with local institutions.

### *Recommendations*

1. Local institutions may adopt and develop the Assessment Guide according to their specific needs.
2. The Assessment Guide needs to be translated into local languages.
3. Governments should be recommended to utilise the Assessment Guide through public education, which will help legitimise the Guide at a local level.
4. The Assessment Guide should include local and international cases.
5. The Assessment Guide should be published in the format of an e-book and in several volumes (divided by subject matter and/or stakeholders).
6. The Assessment Guide should include an introduction from a representative of a higher authority from the state, to explain the importance of taking guidance from the Guide.
7. The Assessment Guide should be disseminated through local publications by national authorities and local institutions and officials should be in charge of the adoption process. To this end, local universities should be involved (instead of international institutions).
8. The Assessment Guide (in the form of local publications) should be divided into two parts: one which expounds the theoretical foundations of electoral justice, and a second, which contains the questionnaire toolkit.



The feedback received indicates that the Assessment Guide could face problems of dissemination and approval by local communities, due to a possible mistrust of its externally-developed content, that it does not reflect the local problems and disputes of a certain community, and that it is inaccessible due to barriers. Thus, the takeaway from this breakout group is that for a given country and EJS institution, the Guide should be tailored to fit the local realities and experiences of the community.

### Advocates and awareness-raising organizations

The challenges this stakeholder group faces were as follows:

1. The Guide is too generalised to be applied to a specific country's domestic reality and context. Not every question in the Guide can be applied to test a country's EJS institution.
2. CSOs are not sources of information themselves, as these organizations rely on other sources for their data-collection.
3. Organizations could lack the technical capacity and knowledge to use the Guide. Perhaps the Guide can be made more user-friendly, to fit with the specific audience.
4. Using the Guide itself will not result in reforms, there still needs to be a process that translates the Guide into reforms.

### Recommendations

1. The Assessment Guide is still relatively thin in terms of how to gather data and analyse responses.
2. The format of the Assessment Guide could be divided into three forms:
  - in its current format,
  - questionnaire (use in data collection) and formulating results,
  - report presentation consisting of concrete reform proposals (as an advocacy tool), which can involve interactive online infographics.

The feedback received by this group reflect that the Assessment Guide should be designed in a way that makes it easier to be utilised and operationalised by local institutions. Specifically, the Guide should be tailored to fit different target audience groups. In addition, it should allow in its framework the operational, working principles and guidelines to be translated into reform proposals (which also would be tailored to fit the different means of advocacy within legislatures in different countries).

### Analysts

The challenges this stakeholder group faces were as follows:

1. the inability to access large sources of data;
2. reporting could involve legal harm to the organization (due to censorship and defamation laws, which could also result in self-censorship);
3. there could be lack of information available; and
4. coordination between analysts could be difficult as different organizations focus on different specialist areas.



#### *Recommendations*

1. The local publications of the Assessment Guide should factor censorship laws, and adapt its language and methodology of assessment that does not cause legal harm for any individual involved with the testing process.
2. The Assessment Guide should provide direction to interested groups in sources and methods of accessing relevant information.

For this group of stakeholders, the feedback called for greater awareness of the local realities of operationalising the Assessment Guide. This is reflected in the problems raised by the breakout group, namely the challenge of accessing data, the legal harms that could result in publication of material, and the potential need for coordination between different sets of analysts that focus on different parts of the electoral cycle.

#### **Political parties and candidates**

The challenges this stakeholder group faces were as follows:

1. Political parties and candidates could regard the outcome or process of electoral dispute-resolution lacks fairness, whether through partisan or non-partisan ways. For example, the founding requirements of new political parties could be too restrictive, or the results of the electoral dispute management could be deemed as unfair, especially if it directly and negatively impacts the performance of the parties in elections.
2. The Assessment Guide fails to include a best practice framework for a regulatory regime on the governance of disputes among political parties by EJS institutions, which can be tested against the state of current policies and frameworks in this key area in domestic EJS institutions.

#### *Recommendations*

1. The Assessment Guide should include best-practice criteria that prescribes appropriate policies in the governance and regulation of political parties.

The feedback received by this breakout group centres on greater explication of best-practice frameworks and prescriptive policies that ensure fairness for political parties.







## 4. Closing thoughts and future developments

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The Pilot Conference ended with a unanimous agreement and commitment by the participants in the conference to being involved in on-going and follow-up discussions on the future development of the *Electoral Justice System Assessment Guide*. Through this agreement, they have agreed to be a part of a collaborative effort to develop a network and community of practitioners, advocates, and contributors on conceptualizing, framing and operationalizing working principles of electoral justice. This has fulfilled an important objective of the conference, which was to continue and strengthen the dialogue and discourse on electoral justice.

In summary, the feedback received contained three major themes.

### 1. Explicate clearer guidelines

The Assessment Guide can increase its robustness if it explicates clearer guidelines on certain working principles. A clear example is the participants' call for greater clarity on defining the parameters and scope of 'timely response' to disputes by EJS bodies and the delineation of the criteria to ascertain the appropriate balance of remedies to disputants, with clear, logical and universally-accepted justifications for the selection of these guidelines.

Another key point raised that reflects this theme is the inclusion of more specific criteria for 'inclusivity' within the hiring practices of EJS bodies. In addition, the working experience of the participants proved useful in informing the conference about certain areas pertaining to the day-to-day functioning of EJS bodies that the Assessment Guide had excluded, such as setting guidelines and criteria for the dismissal of EJS officials and for the conduct of law enforcement officials.

### 2. Include more best-practice frameworks

The Assessment Guide should include more best-practice guidelines to operationalize its select working principles. This would help ensure that these working principles can easily be translated into clear, reform proposals and can be used to advocate for reform of EJS bodies and systems.

### 3. Tailor the Assessment Guide to fit local realities

The Assessment Guide should be tailored to fit the needs of local communities, by placing its working principles within the local context of the country-of-focus. This would help increase the accessibility of the Guide and improve its acceptance by local communities in the dissemination process. For example, participants raised the issues of local-specific barriers towards voter access to the EJS process and the different structural and procedural inefficiencies that are specific to certain countries.



*Participants congregating at the end of the EJS Assessment Guide Pilot Conference (photo credit: International IDEA).*

## References and further reading



Electoral Integrity Group, 'Towards an International Statement of the Principles of Electoral Justice' [Accra Guiding Principles], Accra, Ghana, 15 September 2011, <<https://integrityaction.org/publication/towards-an-international-statement-of-principles-of-electoral-justice-accra-guiding>>, accessed 14 August 2018

International Institute for Democracy and Electoral Assistance (International IDEA), Electoral Justice Database, [n.d.], <<https://www.idea.int/data-tools/data/electoral-justice>>, accessed 14 August 2018

Orozco-Henríquez, J., Ayoub, A. and Ellis, A., *Electoral Justice: The International IDEA Handbook* (Stockholm: International IDEA, 2010), <<https://www.idea.int/publications/catalogue/electoral-justice-international-idea-handbook?lang=en>>, accessed 14 August 2018

## Annex. Programme

### Day 1: Wednesday 2 May 2018

Time	Session	Topic	Speaker/facilitator
09.30–09.35	Opening (plenary)	Welcoming remarks by Bawaslu	Chief of Bawaslu RI Commissioner, Mr. Abhan, S.H.
09.35–09.40	Opening	Singing Indonesia's anthem, 'Indonesia Raya'	Bawaslu Staff
09.40–09.45	Opening (plenary)	Introductory remarks by International IDEA	Mr. Adhy Aman, Senior Programme Manager, Asia and the Pacific; Ms. Therese Pearce-Laanela, Senior Programme Manager, Electoral Processes
09.45–10.15	Introductions (plenary)		
10.15–10.45	Introduction (plenary)	Introduction to the Assessment Guide	Mr. Frank McLoughlin, Electoral Justice Consultant
10.45–11.15	Coffee break		
11.15 – 12.30	Discussion (Plenary)	Initial feedback on the Assessment Guide	Therese Pearce-Laanela and Frank McLoughlin
12.30–13:30	Lunch		
13.30–13.45	Introduction (plenary)	Explanation of today's breakout sessions	Frank McLoughlin
13.45–14.30	Breakout session 1: Complainants and Respondents	Breakout groups: Lawfulness (including international standards) Professionalism Accessibility Education	Fritz Siregar, Therese Pearce-Laanela, Adhy Aman, Frank McLoughlin
14.30–15.00	Breakout session reports	Plenary	Fritz Siregar and Therese Pearce Laanela
15.00–15.30	Coffee break		



Time	Session	Topic	Speaker/facilitator
15.30–16.15	Breakout session 2: Electoral Justice Institutions	Breakout groups: Independence Efficiency and effectiveness Accountability Inclusivity	Fritz Siregar, Therese Pearce-Laanela, Adhy Aman, Frank McLoughlin
16.15–16.45	Breakout session reports	Plenary	Adhy Aman and Frank McLoughlin
16.45–17.00	Wrap-up and overview of Day 1	Plenary	Frank McLoughlin

## Day 2: Thursday 3 May 2018

Time	Session	Topic	Speaker/facilitator
09.30–10.30	Opening (plenary)	Introduction to Day 2 and further feedback on Assessment Guide and Day 1 activities	Fritz Siregar and Therese Pearce-Laanela
10.30–11.00	Coffee break		
11.00–11.30	Introduction (plenary)	Tailoring the Assessment Guide to audiences: overview	Frank McLoughlin
11.30–11.45	Introduction (plenary)	Explanation of Today's Breakout Group	Frank McLoughlin
11.45–12.30	Breakout session 3: Tailoring the Assessment Guide to Different Audiences	Groups: Civil society organizations Political parties and other stakeholders The public	Therese Pearce-Laanela, Adhy Aman, Frank McLoughlin
12.30–13.00	Breakout session reports	Plenary	Fritz Siregar and Frank McLoughlin
13.00–14.00	Lunch		
14.00–15.00	Introduction (plenary)	How might the Assessment Guide serve you and your community?	Adhy Aman and Frank McLoughlin
15.00–15.30	Coffee break		
15.30–16.30	Wrap-up plenary	Closing thoughts, feedback and next steps	Fritz Siregar and Therese Pearce-Laanela / Ms. Titi Anggaraini
16.30–16.35	Group photo		

## About the organizations

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### **Badan Pengawas Pemilihan Umum Republik Indonesia (Bawaslu)**

The Indonesian General Elections Supervisory Board (Badan Pengawas Pemilihan Umum Republik Indonesia, Bawaslu) was formed in 2007 as an independent election supervisory body. It replaced a former ad-hoc institution, the General Election Supervisory Committee (Panwaslu), which was originally created in 1982 under the General Elections Commission (KPU) but which became independent in 2003, during Indonesia's reformation era.

After several years of debate and discussion, Indonesia's parliament finally approved Law No. 22 of 2007, which made Bawaslu an election supervisory body equal to the KPU. Bawaslu was authorized to supervise election supervisory bodies in provinces, districts and subdistricts, and abroad (which was still an ad-hoc body). The law gave Bawaslu the authority to supervise the whole process of elections, from the confirmation of voters through to the approval of voting results.

However, in practice Bawaslu has faced limitations to its authority. In order to reinforce supervision of the upcoming 2019 presidential and parliamentary elections, parliament drafted a new election law, Law No. 7 of 2017, under which Bawaslu received wider authority to resolve election disputes and permanent status from provisional monitoring to the regency. This means that Bawaslu can monitor and enforce laws relating to administrative or election-related crimes, and becomes a quasi-judicial body. Bawaslu hopes that its members will improve their work and also encourages the Indonesian people to be more pro-active in supervising the electoral process.

<<http://www.bawaslu.go.id>>



## International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

### What do we do?

In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work.

International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge on good international democratic practices; offers technical assistance and capacity-building on democratic reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

### Where do we work?

Our headquarters is located in Stockholm, and we have regional and country offices in Africa, the Asia-Pacific, Europe, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations and is accredited to European Union institutions.

<<http://idea.int>>

On 2–3 May 2018, the Indonesian Election Supervisory Board (Bawaslu) and International IDEA hosted a Pilot Conference with key stakeholders to gather input to the drafting and prospective implementation of the draft *Electoral Justice System Assessment Guide*.

Developed by International IDEA, the Assessment Guide consists of a series of researchable questions regarding universal, organizing principles integral to the quality and robustness of a country's electoral justice system.

Prior to the Pilot Conference, Bawaslu became the first electoral institution in the world to 'road test' the draft Assessment Guide, in order to assess the state of electoral justice in Indonesia, as well as its own strengths and weaknesses as an electoral management body.

The Pilot Conference therefore presented an opportunity for Bawaslu to report back on its self-assessment, and for International IDEA to gain valuable insights into how the Assessment Guide could be improved and adjusted to suit specific contexts.