



The Carter Center Electoral Dispute Resolution System Observation and Analysis [TEMPLATE] [COUNTRY] – [DATE]

Part 1: The Legal Framework for Election Dispute Resolution

A. International Legal Framework

[This section should provide an overview of all sources of public international law relevant to electoral disputes resolution systems in an observed country. Most relevant to analysis of electoral dispute resolution systems will be consideration of the following international obligations, as based on the observed countries specific multilateral treaty commitments.

- The Right to a fair and impartial hearing
- The Right to an effective remedy
- The obligation of states to take necessary steps to ensure such Rights in practice

As election management bodies often times play a role in the resolution of electoral complaints and disputes, careful analysis of relevant obligations regarding the mandate and structure of election administrators may also be appropriate.]

B. Domestic Legal Framework

[This section should discuss the domestic legal framework for electoral dispute resolution in an observed country. Short summaries should be provided concerning all relevant sources of law, their date of passage, and their status of acceptance. Documents for consideration may include:

- The Constitution
- The Electoral Law(s)
- Other relevant law(s) concerning administrative law and civil justice
- Any relevant peace accord or transitional framework law
- Legally binding directives/resolutions issued by bodies with the mandate to interpret or implement law regarding the election dispute resolution system

This section should also include consideration of the extent to which the international obligations described above have been domesticated into this national legal framework.]

Part 2: Review of Bodies Tasked with Election Dispute Resolution System

A. Administrative Bodies

[Where administrative bodies are tasked with the resolution of electoral complaints throughout the electoral process, the legal framework for elections should be reviewed to ensure an understanding of the role of these bodies in the functioning of the EDR system.]

Evaluation of the Structure and Mandate of Administrative Bodies

Specific topics for discussion should include:

- Mandate of administrative bodies tasked with EDR
- Structure of administrative bodies tasked with EDR
- Evaluation of these bodies fulfillment of International obligations regarding requirements for independent and impartial judicial tribunals

Evaluation of Access to EDR through these Administrative Bodies

Specific topics for discussion should include:

- Filing deadlines
- Decision deadlines
- Filing fees
- Standing

B. Judicial Bodies

[Where judicial bodies are tasked with the resolution of electoral complaints and disputes, the legal framework for elections should be reviewed to ensure an understanding of the role of these bodies in the functioning of the EDR system. In particular, courts entrusted with resolving Constitutional challenges and electoral results should be considered.]

Evaluation of the Structure and Mandate of Judicial Bodies

Specific topics for discussion should include:

- Mandate of judicial bodies tasked with EDR
- Structure of judicial bodies tasked with EDR
- Analysis of these bodies case-load capacity (dependent on whether the system requires creation of separate electoral courts, or assigns EDR within the pre-existing court structure)

Evaluation of Access to EDR through these Judicial Bodies

Specific topics for discussion should include:

- Filing deadlines
- Decision deadlines
- Filing fees
- Standing

Part 3: Analysis of Types of Electoral Complaints and Disputes

[Recognizing that complaints and disputes occur at various points throughout the electoral process, not just in the postelection period, analysis of all possible types of complaints and disputes is necessary.]

Specific complaints procedures to be considered may include:

A. Complaints during the Pre-election Period

Complaints regarding constituency delimitation

Specific topics for discussion should include:

- Standing to file complaints regarding constituency delimitation
- Deadlines for filling complaints regarding constituency delimitation
- Deadlines for decisions regarding complaints
 - o Process, if any, of appealing these decisions
- What judicial/administrative body is tasked with resolution of such disputes
- What are potential remedies

Complaints regarding candidacy/party registration

Specific topics for discussion should include:

- Standing to file complaints regarding candidacy/party registration
- Deadlines for filling complaints regarding candidacy/party registration
- Deadlines for decisions regarding these complaints
 - o Process, if any, of appealing these decisions
- What judicial/administrative body is tasked with resolution of such complaints
- What potential remedies exist

Complaints regarding voter registration

Specific topics for discussion should include:

- Standing to file complaints regarding voter registration
 - o May third parties file complaints regarding another individuals registration
 - o If third parties may file, what process for notification for the affected party is required
- Deadlines for filling complaints regarding voter registration
 - o Comparison of this analysis against legal provisions for the public posting and review of an interim voters register
- Deadlines for decisions regarding complaints
 - o Process, if any, of appealing these decisions
- What judicial/administrative body is tasked with resolution of such complaints

Complaints on election day

Specific topics for discussion should include:

- The process for filing complaints at the polling station, during voting hours
- How complaints at the polling station are recorded
- The process for consideration and resolution of such complaints
 - o Process, if any, of appealing these decisions
- Standing to file complaints at the polling station

- May complaints be filed regarding the action of a third party
- May voters file complaints, or only party agents
- What body is tasked with resolution of such disputes
 - What role do polling station staff play in the resolution of such disputes

B. Disputes in the Post-election Period (Challenges to Results)

[In the post-election period, challenges primarily center around allegations of violations in election administration and its potential impact on electoral results. Specific issues to consider when evaluating the legal framework for these types of disputes include the following.

- What types of complaints regarding election administration violations and the impact on results may be heard by administrative bodies
 - May the election commission adjudicate claims to which it is party
 - Does this constitute a violation of the right to have claims adjudicated by an impartial tribunal
- Are complaints regarding certification of electoral results resolved through administrative or judicial means
 - May the election commission invalidate electoral results
 - Is a special court required to certify electoral results
- Who has standing to file complaints regarding electoral results
 - Are any candidates restricted from filing such complaints (for instance is there a threshold of support required to be granted standing to file a dispute, if so what are the potential problems with such restrictive standing)
 - May party representatives at a sub-national level file disputes, or must the originate at the party's central headquarters

Part 3: Substantive Analysis of the Legal Framework for EDR

[Similar to the larger gap analysis done for purposes of analyzing the entire legal framework, a gap analysis should be completed for the legal framework with regards to electoral dispute resolution. As appropriate, analysis written for the larger gap analysis may be included verbatim in this section. However, when specifically considering EDR, the legal analyst should add any necessary detail or more in-depth analysis to this gap analysis as appropriate.]

Electoral Dispute Resolution

[This section should include analysis of any potential issues regarding the electoral dispute resolution system in the observed country. Illustrative issues may include:

- Any potential shortcomings in the framework for the resolution of electoral complaints and disputes with regard to international obligations for a fair and impartial hearing and effective remedy of election disputes
- If bodies tasked with resolution possess adequate independence and expertise to resolve such disputes
 - If administrative bodies tasked with dispute resolution potentially curtail the right to a fair and impartial hearing by a judicial body (for instance if administrative

- bodies which may resolve disputes fail to meet requirements to be considered a judicial tribunal and the system does not allow for judicial appeals)
 - If the appointment procedures for such bodies is adequately independent as to ensure impartiality
 - If these bodies are created specifically for resolution of electoral disputes, or if the law allows for a decrease in other case-loads to allow for timely resolution and ensure adequate staff capacity
- If the timeline for filing disputes and for their resolution is in line with international obligations regarding effective and timely resolution of disputes
- If there are inappropriate filing fees or other restrictions on access to the dispute resolution system
- Any potentially negative restrictions on standing before dispute resolution bodies
- Any potentially negative restrictions regarding unduly heavy evidentiary burdens or lack of ability to gain access to necessary documents for use in adjudication
- If remedies for electoral violations are effective and appropriate
- If potential punishments for electoral violations are overly harsh or inadequate

Part 4: Observing the Legal Framework for EDR in practice

[The extent to which in-depth observation of the implementation of EDR processes in an observed country will necessarily be defined by the mission’s duration, staff capacity, and resources. While the particular nature of observation is mission dependent, the following section summarizes potential activities and their role in analyzing the effectiveness of the EDR system.]

Observing EDR Trainings

[Where polling station workers or other election administrators are tasked with the resolution of electoral complaints, these persons should receive training on the proper way to record, submit and resolve such complaints. Where such trainings are open for observation attendance and participation may provide significant information about the training process, and the overall effectiveness of the system of EDR. Where written training materials are provided, these should also be evaluated.]

Observing EMB Meetings

[If the EMB is tasked with the resolution of complaints, and EMB meetings are open for public viewing critical information may be gathered by attending these meetings to assess the process by which complaints are considered and resolved by the body.]

Interviewing Stakeholders Involved in the EDR Process

[One means of evaluating the EDR process may be by seeking qualitative information about EDR bodies, procedures, and effectiveness from a variety of relevant stakeholders. Interviews may be conducted by both core staff and long term observers. Illustrative questions to consider when conducting interviews may include the following:

- *Bodies/courts tasked with EDR*
Illustrative questions may include:

- How many complaints have they received?
- What steps have they taken to follow up on the complaints?
- Have they forwarded the complaints to the appropriate bodies?
- What has been the response of those bodies to the complaints?
- What was the basis of those complaints?
- What do they think about the complaints mechanisms? Do they think that they are effective?
- Political Parties
Illustrative questions may include:
 - Are they bringing any complaints regarding electoral violations? On what basis?
 - Do they understand how the EDR mechanisms work?
 - Do they have adequate resources to bring complaints?
 - How do candidates bring complaints through the parties?
 - What do they think about the regulatory framework for the EDR?
 - Do they think that the remedies given by the framework are effective?
- Election Management Bodies
Illustrative questions may include:
 - Does the EMB have a role in resolving election disputes?
 - If so have they received complaints in need of resolution?
 - What is the basis of complaints?
 - How do they plan to follow up on these complaints?
 - How do they interact with the complainant?
 - What kind of remedies do they provide to complainants?
 - Do they think that the EDR framework is effective?]

Tracking Administrative Complaints

[Where resources allow for targeted observation of EDR resolution in the post-electoral period, core staff and LTOs may track a set of complaints through the resolution process to assess whether complaints were properly resolved, allowing for an effective remedy where appropriate.]

In tracking complaints, the following data should be collected:

- Docket/case number of complaints being tracked
- Filing party's allegations
- Place and time at which complaint was filed
- When the complaint was considered and by what body
- Was this consideration complete within specified deadlines
- What was the outcome of this consideration
 - Was the complaint resolved, dismissed, or left unresolved
- If remedy was granted, what was the remedy
- If the case was dismissed, what was the reason
- If the case remains unresolved, what was the reason given for this lack of resolution

Other data to be considered may include:

- The total number of complaints filed at this body
- The % of complaints resolved, dismissed, and left unresolved

Tracking Judicial Cases

[Similarly, where resources allow for targeted observation of EDR resolution in the post-electoral period, core staff and LTOs may also track a set of disputes through the judicial process to assess whether complaints were properly resolved, allowing for an effective remedy where appropriate.]

In tracking disputes, the following data should be collected:

- Docket/case number of disputes being tracked
- Filing party's allegations
- Place and time at which dispute was filed
- When the dispute was adjudicated and by what tribunal
- What was the outcome of this adjudication
 - o Was the complaint resolved, dismissed, or left unadjudicated
- If remedy was granted, what was the remedy
- If the case was dismissed, what was the reason
- If the case remains unresolved, what was the reason given for this lack of resolution

Other data to be considered may include:

- The total number of disputes filed to electoral tribunals
- The % of disputes resolved, dismissed, and left unresolved

Evaluating Public Knowledge, Access, and Confidence in EDR Procedures

[The difficulty in evaluating the effectiveness of EDR systems often stems from the fact that central problems in the system may be un-observable. This may include issues such as:

- A lack of public confidence in the system which precludes complaints from being filed
- A lack of understanding of legal rights and the process for seeking a remedy for violations of such rights
- A lack of access to EDR bodies, either through financial, geographic, linguistic, or informational barriers

Assessing these barriers and their impact on the process may be difficult. However, interviews with members of the public, civil society organizations, and other domestic stakeholders may help to inform analysis of these issues. In addition, consideration of social and political science evaluations of the justice sector and public opinion regarding respect for the rule of law may be relevant.]