



# OAS

More rights  
for more people

## Observing Electoral Justice Systems:

A MANUAL FOR OAS ELECTORAL OBSERVATION MISSIONS

### OAS Cataloging-in-Publication Data

Observing electoral justice systems: a manual for OAS Electoral Observation Missions / [Prepared by the Department of Electoral Cooperation and Observation of the Secretariat for Strengthening Democracy of the Organization of American States].  
p. ; cm. (OAS. Official records ; OEA/Ser.D)

ISBN 978-0-8270-6913-8

1. Elections. 2. Election law. 3. Election monitoring.

I. Organization of American States. Secretariat for Strengthening Democracy. Department of Electoral Cooperation and Observation. II. Series.

III. Title: A manual for OAS Electoral Observation Missions.

OEA/Ser.D/XX SG/SFD/III.45

COPYRIGHT© (2019) Organization of American States. All rights reserved under International and Pan American Conventions. No portion of the content of this material may be reproduced or transmitted in any form, nor by any electronic or mechanical means, totally or partially, without the express consent of the Organization.

Prepared and published by the Department of Electoral Cooperation and Observation / Secretariat for Strengthening Democracy (Contact: [deco@oas.org](mailto:deco@oas.org))

The contents expressed in this document are presented exclusively for informational purposes and do not represent the opinion or official position of the Organization of American States, its General Secretariat or its Member States.

Main editor: Gonçalves Figueiredo, Hernán.

The following persons also contributed to the final content of this manual (in alphabetical order): Brenes Diego, Castillo Arturo, De Icaza Gerardo (DECO Director), Espinosa Arturo, Fernández Cristobal, Ferreiro Martín, Guevara Alverto, Hernández Peguero José Manuel, Kouznetzov Serguei, Méndez Yerutí, Neyra Ana, Pérez Juan Carlos, Rodríguez Fernanda, Santamaría Brenda, Vargas José Luis, Zavala Marco Antonio.

Requests for permission to reproduce or translate all or any part of this publication should be made to:

GS/OAS

17th St. & Constitution Ave., N.W.

Washington, D.C. 20006

USA



Kingdom of the Netherlands



**TRIBUNAL ELECTORAL**  
del Poder Judicial de la Federación

This publication was prepared with the financial Support of the Electoral Tribunal of the Federal Judiciary of Mexico and the Government of the Kingdom of the Netherlands. The analysis or recommendations in this document should not be considered as an official opinion of these donors.



**OAS** | More rights  
for more people

**Observing electoral justice systems:  
a manual for OAS Electoral  
Observation Missions**

General Secretariat  
Organization of American States

**Luis Almagro**  
Secretary General

**Néstor Méndez**  
Assistant Secretary General

**Francisco Guerrero**  
Secretary for Strengthening Democracy

**Gerardo de Icaza**  
Director of the Department of  
Electoral Cooperation and Observation



**TRIBUNAL ELECTORAL**  
del Poder Judicial de la Federación

**Electoral Tribunal of the  
Federal Judiciary of Mexico**

Chief Justice  
**Felipe Alfredo Fuentes Barrera**

Justices of the High Chamber

**Felipe de la Mata Pizaña**  
**Indalfer Infante Gonzales**  
**Janine M. Otálora Malassis**  
**Reyes Rodríguez Mondragón**  
**Mónica Aralí Soto Fregoso**  
**José Luis Vargas Valdez**

# FOREWORD

SECRETARY GENERAL LUIS ALMAGRO

Since their emergence in the 1960s, the Organization of American States' (OAS) Electoral Observation Missions (EOMs) have continuously consolidated their professional expertise and in the process have become an indispensable tool for the strengthening of electoral processes across the region. As governments have increasingly come to rely on the quality of their reports, these missions are now a common feature of inter-American international relations.

Electoral observation contributes to the identification of the strengths of electoral systems, as well as any opportunities for improvement. Additionally, it promotes the exchange of international experiences and good practices with a view to strengthening the capacity of electoral institutions and improving the overall efficiency of electoral administration. The work of EOMs has led to substantial advances in the way that electoral processes are carried out across the region and have reinforced their democratic nature.

Currently, in the vast majority of countries in the Hemisphere, party systems are more pluralistic, and as a result electoral processes have become increasingly competitive. There are now real struggles for power, which has inevitably given rise to conflicts of a different nature. The peaceful resolution of these conflicts through a legal perspective, rather than a political one, constitutes a vast improvement in the region.

As a result of this transformation, electoral justice has taken on a key role as a guarantor of the transparency and legality of elections. The credibility of electoral authorities and citizen confidence in their decisions are fundamental for bestowing legitimacy to electoral processes.

Having followed the political and institutional developments in the region, the Organization of American States has designed the current methodology in an effort to professionalize the analysis of electoral justice systems. Based on international standards in the field, this resource will allow for the formulation of observations and recommendations that will help to perfect electoral dispute resolution mechanisms. In short, this manual provides another tool with which the Organization hopes to fulfill one of its founding principles: the strengthening of democratic institutions in the region.

# FOREWORD

**DR. FELIPE ALFREDO FUENTES BARRERA, CHIEF JUSTICE  
OF THE ELECTORAL TRIBUNAL OF THE FEDERAL JUDICIARY OF MEXICO**

---

Electoral justice strengthens confidence in democracy. It is the instrument that allows for the resolution of electoral conflicts within the context of social peace and political stability, which is the primary requisite of democratic governance. It is also society's best guarantee for the protection of political rights and ideological plurality, both of which afford legitimacy to the electoral process. For these reasons, over the last few decades international efforts have increasingly focused on strengthening electoral justice.

OAS Electoral Observation Missions (OAS/EOMs), widely acclaimed for their methodological quality and rigor, have played a pivotal role in this context. This form of horizontal cooperation has made it possible to share best practices among the Member States of the Organization, thus bolstering the institutional capacities of their respective electoral systems.

As part of its commitment to democracy, it is particularly relevant that the OAS has produced a manual specializing in the observation of electoral justice systems. The manual contributes to the guarantee of free, fair, and authentic elections, which are indispensable for safeguarding the political-electoral rights of citizens, protecting the ideological plurality of society, and contributing to the peaceful resolution of electoral controversies.

Electoral Tribunal of the Federal Judiciary of Mexico (TEPJF) has had the privilege of collaborating in the production of this Manual for the Observation of Electoral Justice. In close collaboration with the team of the Department of Electoral Cooperation and Observation (DECO), the TEPJF shared its vast experience and knowledge in this area to enrich the design of this observation methodology.

This manual is particularly important as it establishes minimum standards for access to and the delivery of electoral justice, as well as defining the criteria to offer precise analysis and recommendations to electoral authorities. When elections and mechanisms for dispute resolution are open to public scrutiny, public confidence in the law and democratic institutions is bolstered. Hence it is of great importance that EOMs continue to promote the exchange of experiences and the issuance of recommendations in order to improve electoral procedures.

The justices of the Electoral Tribunal of Mexico affirm the institution's commitment to the work carried out by the OAS to promote international cooperation and strengthen democracy throughout the hemisphere.

# TABLE OF CONTENTS

5	<b>FOREWORD</b>
8	<b>INTRODUCTION</b>
10	<b>I. ELECTORAL JUSTICE AND THE QUALITY OF ELECTIONS</b>
12	<b>II. CONCEPTUAL FRAMEWORK</b>
12	1. THE RECOGNITION AND PROTECTION OF POLITICAL RIGHTS IN INTERNATIONAL LAW
14	2. WHAT IS ELECTORAL JUSTICE?
15	3. PRINCIPLES AND GUARANTEES OF THE ELECTORAL JUSTICE SYSTEM
17	4. INTERAMERICAN STANDARDS FOR THE DELIVERY OF ELECTORAL JUSTICE
20	<b>III. OBSERVABLE CHARACTERISTICS OF ELECTORAL JUSTICE</b>
20	CHARACTERISTIC 1: INDEPENDENT AND IMPARTIAL ELECTORAL DISPUTE RESOLUTION BODIES
23	CHARACTERISTIC 2: ACCESS TO JUSTICE
24	CHARACTERISTIC 3: FAIR AND EFFECTIVE PROCESS
26	CHARACTERISTIC 4: ADMINISTRATION AND TRANSPARENCY OF THE ELECTORAL JUSTICE
29	<b>IV. METHODOLOGICAL FRAMEWORK</b>
29	1. CRITERIA FOR OBSERVING ELECTORAL JUSTICE SYSTEMS
30	2. STRUCTURE OF THE ELECTORAL OBSERVATION MISSION AND THE OBSERVATION OF ELECTO- RAL JUSTICE
36	<b>V. TOOLS FOR THE OBSERVATION, GATHERING, ORDERING AND PRE- SENTING OF INFORMATION</b>
36	1. DOCUMENT CHECKLIST
36	2. GENERAL QUESTIONNAIRE ON ELECTORAL JUSTICE
43	3. FORMAT FOR THE PREVIOUS REPORT
44	4. FORMAT FOR THE FINAL REPORT
45	<b>ANNEX 1: NON-BINDING INSTRUMENTS</b>

# INTRODUCTION

The elaboration of the manual for the observation of electoral justice systems is yet another milestone in the evolution of Electoral Observation Missions, which have evolved in tandem with the political, institutional, and cultural changes that have marked the region. The first EOMs were limited in both their scope and their impact; there were no methodologies or international standards in the field, and the number of observers deployed was small.

Over the years, the Missions became more ambitious; the number of observers increased, as did the duration of time they spent in the field. Later missions began to incorporate new methodological tools, extending the scope of observation beyond election day and looking more closely at other factors that could impact on the fairness and transparency of electoral contests. Based on the principles enshrined in the human rights protection instruments of the Inter-American system, the OAS developed various observation manuals that focus on areas such as the use of electoral technology, access to media, gender equality, the participation of indigenous peoples and Afro-descendants in the electoral process, and political electoral financing systems.

The creation of these manuals has resulted in qualitative advances by the EOMs in the field of electoral observation, providing solid technical recommendations in each area of analysis. The Manual for Observing Electoral Justice Systems further advances the work of the OAS in this field, offering tools that facilitate the uniformity of observation criteria, the production of comparable data, and a nuanced understanding of electoral processes. The methodology contained in this manual has been applied and tested in numerous elections throughout the region from 2015 onwards, including Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, and the Dominican Republic.

This manual contains three sections. The first section defines the concept of electoral justice and how it affects the quality of an election, as well as outlining the inter-American standards in electoral processes. The second section identifies characteristics and indicators that should be included in the process of analysis.

The third section presents the methodological framework of OAS Electoral Observation Missions and the responsibilities that a specialist in electoral justice must assume. This chapter identifies and classifies the sources of information that need to be evaluated, as well as offering a step by step guide to the activities that should be carried out at each stage of the Mission. The third section of the manual contains the tools required for the observation of the electoral justice system.

OAS/EOM Nicaragua's general elections of 1990



## I. ELECTORAL JUSTICE AND THE QUALITY OF ELECTIONS

Elections are democratic in as much as they are inclusive, clean, competitive and that they constitute a route to high public office.<sup>1</sup> Such conditions are only verifiable if the observation includes diverse elements; some of which, while not as visible as voting, have the potential to impact on essential aspects and credibility of the electoral process. These conditions include equality in the administration of the electoral process and oversight of the campaigns; the origin and destination of money directed towards political actors; new information and communication technologies; and the accessibility and efficacy of the system of electoral justice.<sup>2</sup>

One of the elements that has contributed to improving the democratic quality of electoral process is the strengthening of the respective legal frameworks. Even though there is still much room for improvement in areas such as civic culture, citizen participation, and party systems, the existence of more robust legal structures has led to significant improvements in the organization and administration of elections, and in the reliability of election results. These improvements have direct and tangible effects on the authenticity of the results and the fairness of the electoral contest.

Any electoral system should be based on two fundamental premises:

1. On one hand, that people have the fundamental right to participate in the organization of public affairs through the designation of their representatives via the full exercise of suffrage.

2. On the other hand, that citizens can have full confidence that the authorities were chosen in accordance with the voters' preferences as expressed at the polling booth.

In this sense, in all democratic systems the legitimacy of those who govern depends on public confidence in the electoral process. If citizens believe that there were errors in carrying out the electoral process or in the counting of votes that have resulted in an outcome that is not an accurate reflection of voters' preferences, then there must be a mechanism through which they can express their objections and demand that electoral results are verified.

This is why electoral justice, understood as the set of dispute resolution mechanisms within an electoral process, is such a crucial element in determining whether elections have been fair and transparent.

In order to offer guarantees to all the actors involved in the electoral process, electoral justice should abide by the principles of **constitutionality** and **legality**, which is to say that it should respect the norms established in the constitutional and legal frameworks of each country. This implies that the system for electoral dispute resolution, which includes the processes for filing complaints, providing evidence and resolution by the competent judicial organ, should function in accordance with all technical-judicial requirements.

Unlike political dispute resolution, legal control has the following unique characteristics:

- It has an objective basis since the control parameter is a pre-existing normative framework that is not determined by the jurisdictional body;
- It is based on legal or judicial grounds;
- It is binding (the decision-making body must necessarily exercise such control).

<sup>1</sup> Criteria for Electoral Observation: A Manual for OAS Electoral Observation Missions. General Secretariat of the Organization of American States (2008)

<sup>2</sup> OAS has produced electoral observation manuals for each of these topics.

Under these premises, the OAS has prepared this manual for observing electoral justice systems to verify the extent to which the jurisdictional structure of a State, its legal system, its practices, and the dispute resolution mechanisms that it employs conform to in-

ternational standards. At the same time, the manual helps to determine how effective the system is in protecting the free exercise of suffrage, the authenticity of voting results, and the peaceful transfer of power in public institutions.

Electoral Tribunal of the Federal Judiciary of Mexico (TEPJF)



## II. CONCEPTUAL FRAMEWORK

### 1. THE RECOGNITION AND PROTECTION OF POLITICAL RIGHTS IN INTERNATIONAL LAW

Several international legal treaties guarantee the full exercise of political rights (along with other human rights) and provide legal and technical guarantees for their adequate protection. Among the instruments that the OAS member states have signed and ratified are:

- **The Universal Declaration of Human Rights:** “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” (Art. 8).
- **The American Declaration of the Rights and Duties of Man:** “Article XVIII. Right to a fair trial. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.” (Ch. One, Art. XVIII)
- **The International Covenant on Civil and Political Rights:** “3. Each State Party to the present Covenant undertakes:” To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (Pt II, Art. 2, Ap. 3, Sub-s.a) “To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy”; (Pt II, Art. 2, Ap. 3, Sub-s. b) “To ensure that the competent authorities shall enforce such remedies when granted”. (Pt II, Art. 2, Ap. 3, Sub-s. c). Furthermore, “all persons are equal before the

courts and tribunals. Everyone shall have the right to a fair and public hearing by a competent, independent and impartial tribunal established by law” (Pt III, Art. 14, Ap. 1)

- **General Comment 25 adopted by the Human Rights Committee of the United Nations (UN)** The Right to Participate in Public Affairs, Voting Rights, and the Right to Equal Access to Public Service ( Art. 25, ICCPR, 1996),): [.] “An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant [.] There should be independent scrutiny of the voting and a counting process and access to judicial review or other equivalent processes so that electors have confidence in the security of the ballot and the counting of votes.” (Art. 20).
- **The American Convention on Human Rights “Pact of San José, Costa Rica”. Right to a Fair trial:** “Everyone has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law [.] for the determination of his rights and obligations of a civil, labor, physical, or any other nature.” (Pt. I, Ch. II, Art. 8, Ap.1). Concerning the **Right to Judicial Protection:** “Everyone has the right to a simple and prompt recourse, or any other effective recourse, to competent court or tribunals for protection against acts violating the fundamental rights recognized by the constitution or laws or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.” (Pt. I, Ch. II, Art. 25, Ap. 1):”The States Parties undertake: a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b. to develop the possibilities of judicial remedy; and c. to ensure that the competent authorities shall enforce such remedies when granted.” (Pt. I, Ch. II, Art. 25, Ap. 2, Sub-ss.a,.b.,c).

- **Inter-American Democratic Charter, OAS:** “Any person or group of persons who consider that their human rights have been violated may present claims or petitions to the inter-Ameri-

can system for the promotion and protection of human rights in accordance with its established procedures.” (Pt. I, Art.8, Par. 1)

**Table 1.** Political rights in international instruments.

Instrument	Article or reference	Topic
Universal Declaration of Human Rights (1948)	8	Effective remedy before the competent national courts
American Declaration on the Rights and Duties of Man (1948)	XVIII	Access to the courts
		Simple and timely procedures
International Covenant on Civil and Political Rights (1966)	2°, ap. 3, inc. a)	Effective Remedy
	2°, ap. 3, inc. b)	The judicial, administrative, and legislative or other competent authority shall decide and deliver the possibilities to dispute.
	2°, ap. 3, inc. c)	The designated authorities will carry out all processes that will qualify for an effective remedy.
	14	Equality before the courts of justice.
Due process before an authorized, independent, and impartial body established by law.		
General Comment 25, adopted by the Human Rights Committee art. 25 ICCPR (1996)	20	Independent electoral board to oversee the electoral process and ensure that it is conducted in a fair and impartial manner and in accordance with legal provisions compatible with the Covenant
		Independent scrutiny of votes and counting process with the possibility of judicial review or other equivalent processes

Instrument	Article or reference	Topic
American Convention on Human Rights-Pact of San José de Costa Rica- (1969)	8	Due process before a competent, independent and impartial judiciary or tribunal previously established by law
	25.1	Simple and timely resolution or any other effective remedy before the members of the competent judiciary or courts.
	25.2	The commitment of the State to provide possibilities of judicial recourse
Commitment of the state to ensure compliance with any decision resulting from an appeal		
Inter-American Democratic Charter (2001) <sup>3</sup>	8	Independent scrutiny of votes and counting process with the possibility of judicial review or other equivalent processes

3 Although the IDC is not a treaty, it is a tool for interpreting the founding Charter of the OAS.

## 2. WHAT IS ELECTORAL JUSTICE?

Electoral justice can be defined as a series of protective means and mechanisms designed to uphold the principles of free, fair and legitimate elections, as well as to safeguard the political-electoral rights of all people.<sup>4</sup>

In general terms, electoral justice implies the possibility that all acts, procedures or resolutions associated with the electoral process may be contested as a way to ensure their adherence to the applicable constitutional and legal framework of each country in order to help guarantee the full exercise of political-electoral rights. In this sense, electoral justice plays a fundamental role in ensuring the integrity of electoral registries; the eligibility or validity of electoral candidates; respect for the rules of electoral campaigns; access to the media or the financing of political parties; and the authenticity of electoral results.

The international legal instruments previously cited do not necessarily take the topic of access to electoral justice into consideration. However, the Inter-American Court of Human Rights<sup>5</sup> states that conditions must be established to ensure “effective judicial protection,” which includes the protection of all human rights provided for in the treaties, including political and electoral rights. As such, except for some specific references to criminal issues, the precepts of the aforementioned treaties address all fundamental rights in a more generic manner.

It is worth noting that the administration of electoral justice contains one peculiarity: in some countries the authority that resolves electoral disputes is not part of the judicial branch. Indeed, although in general electoral dispute resolution tends to be managed by the judiciary<sup>6</sup>, either through ordinary or specialized means, there is in some cases an electoral organ directly responsible for the administration of elec-

4. Orozco Henríquez, José de Jesús. (2013). Electoral Justice: IDEA International Manual, ed. IDEA International, et al.

5. Castañeda Gutman versus United Mexican States (2007).

6. For example, Argentina, Brazil, Canada, the United States of America, Mexico and Paraguay.

toral disputes that is autonomous and independent from the three classical powers (Executive, Legislative and Judicial).<sup>7</sup>

Entrusting the resolution of electoral disputes to a body that has judicial functions is considered good practice, even if the overall purpose of the body is administrative. This is due to the fact that various international instruments recognize the human right to have “an effective remedy before a competent, independent and impartial judge or tribunal”<sup>8</sup> and because its decisions must be founded on the provisions stipulated in the law, a judicial body is ideal.

Bearing in mind the set of characteristics described above, the purpose of this manual is to discern the

degree to which the legal structure responsible for electoral dispute resolution complies with international standards in the field (regardless of whether or not it belongs to the judiciary). This analysis takes into account both the legal system in which the electoral justice system operates and how the law is applied, paying close attention to the governance of the following processes: the prevention, processing and resolution of conflicts concerning the validity of candidacies; the organization of campaigns; access to the media or the financing of parties; the exercise of suffrage; the authenticity of voting results; the validity of candidacies; respect for the rules of the electoral campaign; and transfer of power in public institutions.

### 3. PRINCIPLES AND GUARANTEES OF THE ELECTORAL JUSTICE SYSTEM

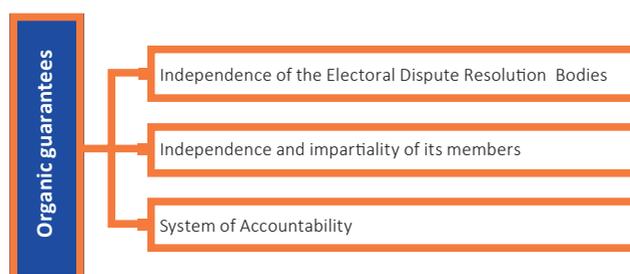
Electoral justice must align itself to the founding principles of the electoral system, and abide by general legal principles, particularly those found in procedural law. The system of electoral justice must also function in accordance with the guarantees incorporated in the legal framework, particularly those

that defend citizen’s rights. These guarantees can be both organic and procedural, and their purpose is to ensure that elections are carried out in accordance with the law; that they are conducted in a free, fair and genuine manner, and that they protect or restore electoral rights.<sup>9</sup>

**Table 2.** Principles and guarantees of the electoral justice system

Principles	Guarantees
On electoral matters	Organic
General legal matters	Procedural

**Figure 1.** Institutional guarantees of Electoral Justice



7. For example, Costa Rica, Nicaragua, Uruguay.

8. As in articles 2 (3) (a) and 14 (1) of the International Covenant on Civil and Political Rights.

9. Orozco Henríquez, y José de Jesús (2013). Electoral Justice: International Manual of IDEA International et al. pp86-87.

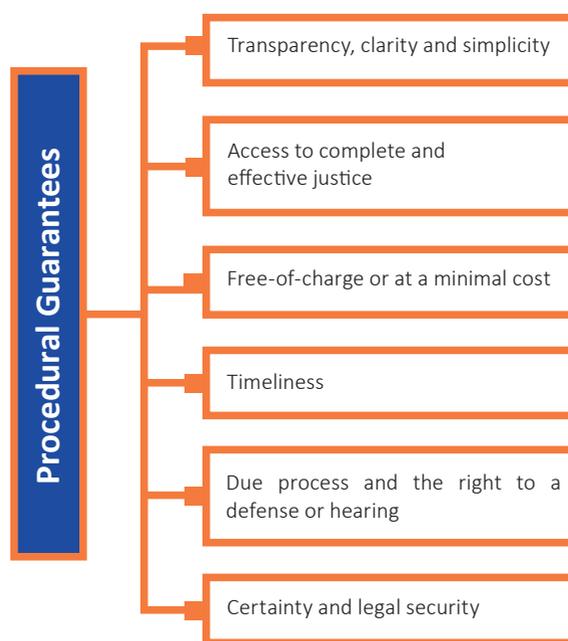
**a. Independence of the Electoral Dispute Resolution Bodies (EDRBs)** refers to the separation of dispute resolution bodies from any form of subordination to other powers (executive, legislative, and judicial). For this purpose, both the Constitution and current legal norms should provide for the functional, administrative, and financial autonomy of the institution responsible for electoral justice.

**b. Independence and impartiality of the members:** the independence of the institution itself is insufficient; members should also act with absolute independence, impartiality and professionalism. Careful selection and appointment procedures

should exist, and the nomination of personnel should fit the strict criteria of suitability and professionalism. Regulatory provisions should ensure stability in the position, as well as defining which posts are incompatible with the performance of the judicial function. There should also be statutory provisions for the resolution of legal challenges concerning court members, including protocol on causes for dismissal, and conflicts of interest.

**c. System of Accountability:** this organic guarantee refers to aspects such as transparency, publicity, and the system of responsibilities assigned to the members of the judicial body.

**Figure 2.** Procedural Guarantees in electoral justice



**a. Transparency, clarity, and simplicity:** Constitutional, legal and regulatory provisions that oversee controversy or appeals in electoral matters should be drafted in clear and straightforward language to ensure that it is easily understood by stakeholders, observers, and especially by dispute resolution bodies.

**b. Access to full and effective justice:** The provisions outlined in the electoral procedural rules must be accessible in terms of time, distance, and cost. It must be possible to obtain a timely resolution that defines the substance of the conflict without unjustified procedural requirements or obstacles.

**c. Free-of-charge, or at least, at a reasonable cost:** In principle, access to electoral justice should be free. In countries where the service has a cost to those who decide to file a lawsuit, care should be taken to ensure that this can be done for a reasonable and accessible sum and that it does not constitute an impediment.

Another standard measure is the establishment of sanctions or fines against those who file lawsuits, complaints, or frivolous reports without factual or legal support.

**d. Timeliness:** As a general rule, judicial processes must reach a quick solution. The importance of timeliness in electoral affairs is paramount, and the principle of legal finality takes precedence. Given that there are legally specified periods for each electoral phase, decisions must be both timely and definitive. This implies that conflicts must be resolved before the conclusion of each respective phase of the electoral contest (e.g., any questions arising around the validity of an electoral candidate must be resolved conclusively before the electoral registration period has been completed).

**e. Due process and the right to a defense or to be heard:** this guarantee refers to a person's right to present their case before the authorities. It is the duty of the legal authority to hear and study the arguments presented. Likewise, all parties must be guaranteed the right to present evidence in support of their claims; and the respective authority has an obligation to weigh up the evidence and to evaluate the claims presented by both parties. The principle of equality between the parties should apply at all times.

**f. Certainty and legal security:** As a procedural guarantee, this principle obliges the institutions responsible for electoral dispute resolution to interpret and apply constitutional, legal, and statutory norms in a coherent and consistent manner. When a change of circumstances warrants the need to review existing legal interpretations, these changes should be exceptional and fully justified. This will ensure the independence and impartiality of the authorized body.

#### 4. INTERAMERICAN STANDARDS FOR THE DELIVERY OF ELECTORAL JUSTICE

It is relevant to take into account the scope of the aforementioned international norms. The Inter-American Court of Human Rights (IACHR) establishes that in order to fully understand the norms of the American Convention, it is essential to analyze both the wording of the treaty and the way that it has been interpreted by this Court.<sup>10</sup> In this sense, the following criteria should be considered as complementary to international norms:

**a. Judicial Function:** Decisions issued by internal bodies on electoral matters may affect the enjoy-

ment of political rights. Therefore, the minimum guarantees enshrined in Article 8.1 of the Convention must also be observed in this area, insofar as they are applicable to the particular procedure.<sup>11</sup>

All organs exercising functions of a materially judicial nature have the duty to adopt fair decisions based on full respect for the guarantees of due process established in Article 8 of the American Convention, and in accordance with the principles of constitutionality and legality.<sup>12</sup>

10. ACHR. Case of Almonacid Arellano, Judgment of September 26, 2006, Series C No. 154, paragraph 124 and Case of López Mendoza v. Venezuela, Judgment of September 1, 2011, paragraph 95.

11. Case of López Mendoza v. Venezuela, Judgment of September 1, 2011, paragraph 76

12. Ivcher Bronstein Case, Judgment of February 6, 2001, Series C No. 74, paragraph 102; Baena Ricardo et al Case, Judgment of February 2, 2001, Series C No. 72, paragraph 124; Constitutional Court Case, Judgment of January 31, 2001, Series C No. 71, paragraph 69; and Judicial Guarantees in States of Emergency (Articles 8, 25, and 27.2 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, para. 27. Case of Yatama vs. Nicaragua, Case de 23rd June 2005, paragraph 149

**b. Non-judicial authority:** Article 8.1 of the Convention, which refers to every person's right to a hearing by a competent legal body that has the authority to rule over the "determination of his rights," is equally applicable to the supposition in which a non-judicial authority issues a decision affecting the determination of such rights.<sup>13</sup>

**c. Due legal process:**<sup>14</sup> The right to due process refers to a series of formal requirements that must be observed in order to protect the rights of persons involved in a legal dispute. It is a guarantee that the Rule of Law must provide in order to ensure a fair solution for the parties. Due process comprises the following rights and principles:

- *The right of access to justice:* the right of access to a system of administration of justice governed by pre-established, impartial and independent judicial bodies, with authority to declare the right to be contested or to restore the violated right, interpreting it and applying it in specific cases. In electoral matters, these bodies may be specialized bodies.
- *Procedural equality:* implies the right to universal access to justice for all persons, regardless of their sex, age, color, nationality, origin or background, or any other social condition. Procedural equality also establishes the need to ensure equal treatment of all concerned parties (though it is possible to make justifiable distinctions when the party in question belongs to a group known to have been discriminated).
- *The effective and efficient management of justice:* disputes must be resolved (definitively) within a reasonable time frame, taking into account the complexity of the case, the procedural activity of the interested party and the conduct of the judicial authorities. In the field of electoral justice, this guarantee acquires even greater relevance due to the potentially irreparable effects or irregularities that can

arise as a result of being excluded from any given stage of the electoral process.

- *Legality:* the rules of the process are subject to the formal law. In this sense, the procedural law must be sufficient to regulate the judicial responsibilities, as well as that of the parties concerned.
- *Right to defense or hearing:* Equal opportunities must be granted to the parties throughout the legal process. All parties have the right to present and analyze evidence, lodge appeals, and express arguments or observations that correspond to their rights, based on the concept of equal rights for all. This concept also contemplates the right to defense and/or justification in all procedural resolutions.
- *Principle of pro sententia:* All procedural rules should be interpreted to facilitate the administration of justice and not as an obstacle to achieving it.
- *Consistency and completeness:* The sentence must be founded on scrutinized facts, the arguments put forward by the parties and the evidence received during the legal process.

**d. Control of conventionality and constitutionality:** The right to effective judicial protection must include the possibility of verifying, in a timely and effective manner, that the practices, resolutions, and norms that are sanctioned do not contradict constitutional principles or International Human Rights Law (conventionality control).<sup>15</sup>

**e. Obligation to provide ground for decisions:** Any decisions taken by internal bodies that may affect human rights, such as the right to political participation, must be duly substantiated and legally motivated.<sup>16</sup> To the contrary, such decisions would be considered to be arbitrary. To substantiate or motivate means to express legally valid reasons that support the decision taken, in a coherent and orderly manner.

13. Case of Yatama vs. Nicaragua, Case de 23rd June 2005, paragraph 149

14. Rodríguez Rescia, Víctor Manuel. Due legal process and the American Convention on Human Right. Interamerican Court on Human Rights. San José, Costa Rica. 1998. Available in: <http://www.corteidh.or.cr/tablas/a17762.pdf>.

15. ICDH, Report No. 113/06 Case 12.535 (Jorge Castañeda Gutman) October 26, 2006, paragraph 140. Anex 32

16. Ibid, paragraph 152

There are three aspects to correct substantiation and motivation:

1. The grounds on which the decision has been based must be clear<sup>17</sup>, demonstrating a rigorous and systematic treatment of the evidence provided by the parties, and substantiating the legal grounds for the overall assessment.
2. To substantiate the legal basis of the decision demands an exercise of interpretation and argumentation that goes beyond the mechanical application of the statutory provisions.
3. The substantiation of the legal reasoning must include all elements of the dispute presented by all parties and acknowledge the entire body of evidence. It should be written clearly and precisely.<sup>18</sup>

**f. Provision of an effective judicial remedy: effectiveness, accessibility, and efficacy:** The main purpose of international Human Rights Law is to protect individuals against the arbitrary exercise of state power. In this regard, States are obliged to provide citizens with effective **judicial remedies** to protect them against possible violations of their fundamental rights.<sup>19</sup> The guarantee of effective legal remedy is a basic pillar, not only of the American Convention, “but also of the very rule of law in a democratic society”.<sup>20</sup>

### i. Effectiveness of the remedy

The remedies available to achieve judicial clarification of Human Rights violations must be more than a mere formality; they must adequately protect the right to justice of persons under the judicial of the State and provide the person with a real possibility of lodging an appeal.<sup>21</sup>

An effective judicial remedy must offer a solution to a legal dispute. Effectiveness implies that the judicial body has evaluated the merits of the complaint.<sup>22</sup> For legal protection mechanisms to be truly effective, the body to which the complainant turns must be trusted to arrive at a well-reasoned conclusion, demonstrating a rigorous assessment of the merits of the case, and the ability to identify possible compensation for any possible infringements of their rights.<sup>23</sup>

### ii. Efficacy of the appeal

In this context, efficacy means that the formal requirements to lodge an appeal are minimal and do not constitute an obstacle to access justice, nor impede the resolution of the legal dispute in any way.<sup>24</sup> Efficacy implies that the series of assumptions on which a case is based draws on existing legal provisions, thus allowing all acts to be subjected to appeal.

17. Ibid. Paragraph 153

18. Iberoamerican Code On Judicial ethics. XIII Iberoamerican Judicial Summit, Chapter III, Motivation. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_57.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_57.pdf)

19. Article 25 of the American Convention of Human Rights.

20. Caso Lopez Mendoza v Venezuela, Judgement on 1st September of 2011. Paragraph 76

21. Ibid

22. Castañeda Gutman versus United Mexican States. Judgement 21 march, 2007, paragraph 58.

23. Ibid paragraph 63

24. Guarantees for the Independence of Justice Operators: Toward Strengthening Access to Justice and the Rule of Law in the Americas, Inter-American Commission on Human Rights, OAS/Ser.L/V/II. Doc. 44, December 5, 2013

## III. OBSERVABLE CHARACTERISTICS OF ELECTORAL JUSTICE

### CHARACTERISTIC 1: INDEPENDENT AND IMPARTIAL ELECTORAL DISPUTE RESOLUTION BODIES

The essence of any electoral justice system lies in the credibility of its authorities to resolve conflicts inherent in any contest for power. This credibility is built on the impartial nature of the system's institutions, which should be independent of political or partisan interests.

International treaties regard the courts as the ultimate guarantors of fundamental rights, given that the courts provide the greatest guarantee of impartiality within a republican system of government. The judicial branch is entrusted with the interpretation and enforcement of the legal order in the resolution of conflicts, the prosecution of illegal acts and, more generally, with upholding and protecting citizens' rights in accordance with due legal process. In systematizing international standards to ensure the independence of the judiciary, the Inter-American Commission on Human Rights (IACHR) insists that members of the court are key players in the protection of human rights in a democratic state. The judiciary also ensures adherence to due process where the State is authorized to issue sanctions.<sup>25</sup>

Given that international electoral norms include effective legal appeal as a protection of political rights, the standards for judicial independence previously established in various international instruments and systematized by the Commission should also apply. In this sense, the principles that guide the professional conduct of members of the judiciary should be the benchmark for persons, ordinary courts, and specialized courts responsible for the governance of electoral justice. These principles are also applicable to specialized electoral authorities

who are not officially ascribed to the judiciary, but who nevertheless have judicial functions.

Therefore, in order to guarantee the autonomy and impartiality of bodies responsible for electoral dispute resolution, their legal independence should be ensured at the highest possible level. Thus, the separation of powers must be established at the constitutional level, where it should be clearly stated that the electoral judicial body is independent of the Executive and Legislative branches and that it is not subordinate to either of these powers.

The same logic of separation must be applied to the electoral authority or the legally recognized independent electoral body. National constitutions and laws must enshrine this principle, and the system of administration of justice as a whole must be organized in such a way that guarantees the independence of the Judicial and Electoral branches.

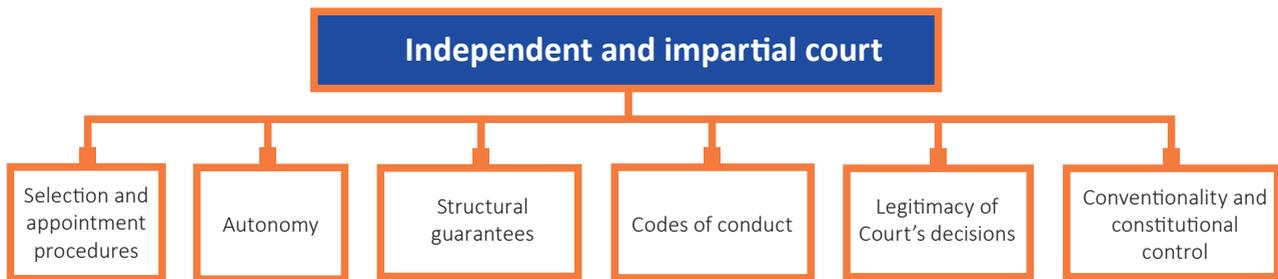
As specified by the United Nations Commission on Crime Prevention and Criminal Justice any situation in which the functions and responsibilities of the judicial branch and the executive branch are not clearly distinguishable or in which the latter can control or direct the former is incompatible with the concept of an independent tribunal.<sup>26</sup>

However, this guarantee must move beyond the theoretical realm. Situations such as excessive financial dependence on parliamentary budgetary allocations should be avoided. The independence of judicial bodies should be manifested in practices such as the respect for the timely appointment of authorities; the upholding of a fair and transparent process of selection of the authorities responsible for the administration of justice, respecting their independence in deliberation processes, their decisions, the general functioning of the judiciary, and disciplinary procedures that offer the aforementioned guarantees.

25. Ibidem

26. United Nations Basic Principles on the Independence of the Judiciary. United Nations (UN). Adopted by the General Assembly in 1985.

**Figure 3.** Indicators of an independent and impartial court system



**a. Selection and appointment procedures:** An adequate process for the selection and designation of authorities is crucial in order to guarantee the independence and impartiality of the authorities responsible for the administration of electoral justice. In the absence of minimum standards, the selection mechanism could affect the impartiality of the authorities, resulting in partisan allegiances.<sup>27</sup>

So as to guarantee the autonomy, independence, and objectivity of the justice operators, it is essential that the selection and appointment process be based on the personal merit and professional capacity of the candidates, giving importance to their experience and their suitability to the specific functions they are expected to perform.

**b. Autonomy:** An essential way to guarantee the institutional independence of the electoral judicial authority is to ensure that it does not depend on the financing granted by other powers/institutions and that it has sufficient resources to guarantee the successful execution of its functions.

The legal framework should designate a percentage of the general budget for electoral justice, in order to avoid situations in which the amount of the budget is determined discretionally by the executive branch, legislative branch (or any

other public institution). Negotiations based on the need to ensure the allocation of an adequate budget could significantly compromise the autonomy of electoral justice.<sup>28</sup>

According to the recommendations made by the IACHR regarding the judicial branch, prosecutor's offices and defense attorney's offices, the electoral justice system should be able to participate effectively and publicly in the preparation of their budget, as well as other internal decisions that directly concern them.<sup>29</sup> With regards to budgetary management, one way to guarantee independence is to entrust the administration of financial funds directly to a corresponding entity, or to an independent body in charge of their government and administration.<sup>30</sup>

**c. Structural guarantees:** The exercise of electoral justice must provide the following guarantees:

- **Objectivity in the assignment of cases:** The mechanism for assigning cases should be based on objective criteria, such as the random allocation of cases through an automatic distribution system based on either alphabetical order or on the order of entry. The allocation criteria must be public and sufficiently precise to avoid manipulations in the system of case allocation.<sup>31</sup>

27. Guarantees for the Independence of Justice Operators: Towards Strengthening Access to justice and the Rule of Law in the Americas, InterAmerican Commission for Human Rights OEA.

28. Ibid. Paragraph 50.

29. Ibid. Paragraph 53.

30. Ibid. Paragraph 54.

31. Ibid Recommendation 11.

- **A professionalized career service:** There should be predictable clear and objective criteria for the promotion and career development of professionals working within the branch of electoral justice, based upon their merits and professional capacity.<sup>32</sup> It is recommended that the electoral body has its own civil service, which is responsible for the professionalization of officials within the branch of electoral justice.
- **Predetermined remunerations:** Decisions related to the remuneration of officials working within the branch of electoral justice should not form part of political negotiations nor be used as a pressure tool to condition the decisions of judges.
- **Security and protection of justice operators.** There should be guarantees of protection for personnel working in the field of electoral justice. When their lives or personal integrity are at risk, comprehensive strategies of prevention should be devised in order to avoid attacks, aggression, or harassment against them.
- **Duration of the appointment:** Fixed terms of appointment for high officials is a condition for the independence of the judicial electoral authorities. A predetermined and sufficient period of time in the role allows the professionals in this field the necessary stability to carry out his or her work independently and autonomously without pressure or fear of being subjected to the confirmation or ratification of subsequent authorities.

**d. Codes of Conduct:** Disciplinary proceedings against those that form part of the authorities governing electoral justice must ensure full adherence to due process and legal principles.

This type of legal process must comply with minimum guarantees, in addition to procedural safe-

guards, which are indispensable to avoid arbitrariness. These include:

- That the law specifies conduct that may lead to the imposition of disciplinary measures.
- That the law indicates the gravity of the offense.
- That the law indicates the type of disciplinary sanction that will be applied to each offense.

States should refrain from resorting to disciplinary measures as a means of retaliation against the legal judgment emitted by judicial officials related to their resolutions.<sup>33</sup>

Disciplinary proceedings should allow for the possibility to appeal to a hierarchical superior, ensuring a careful analysis of the facts and evidence in relation to the protection of affected rights. The solution must offer a suitable and effective judicial remedy that should be directly proportional to the legal process in question.<sup>34</sup>

**e. Court's decisions:** It is recommended that the judicial body responsible for electoral justice be the last to interpret the legal and constitutional norms within its mandate. While rulings of the electoral body may be subject to review, this should be under exceptional circumstances and not common practice. However, reviewing the decisions of the electoral authorities should not delay the delivery of the ruling in question. This recommendation is of particular relevance to Supreme Courts or Constitutional Courts in cases where the electoral authority belongs to the judicial branch. It may also be applicable to any other judicial authority when the authority does not form part of the Judicial Branch. The regulation of these provisions must take into account the particularities of the electoral process.<sup>35</sup>

32. Ibid Recommendation 12.

33. Ibid Recommendation No. 22.

34. Ibid Recommendation No. 25.

35. Explicitly stated by the Interamerican Court on Human Rights in the *Yatama v. Nicaragua* case. Judgement from June 23, 2005, paragraph 152.

**f. Conventionality and constitutionality control:** Effective judicial protection includes the right of every person to question the constitutionality or conventionality of any law that allegedly violates a fundamental political-electoral right. It is therefore important to identify whether the system of electoral justice authorizes the body of

electoral justice to carry out this function. While the absence of this function cannot necessarily be considered a deficiency, imbuing the electoral justice authority with the power to exercise such control – be it diffuse or concentrated-- can strengthen the independence of the institution in question from other authorities.

## CHARACTERISTIC 2. ACCESS TO JUSTICE

All activities associated with the administration of elections should be subject to judicial review in the event of being challenged by a dissatisfied party. The legal framework should regulate the means, procedures, and persons authorized to challenge electoral activities, as well as any limits on the timeframe in which this should be done. Procedural requirements should not constitute unreasonable obstacles to the

full enjoyment of the right to effective legal protection. This means that there should be reasonable constraints on the inadmissibility of claims or legal remedies. Finally, the laws and regulations must be clear and constant, and there should be no modifications without due warning. When changes are made to the procedures, this should be done well in advance of the electoral process to which they apply.

**Figure 4.** Indicators of access to justice



**a. Legally challengeable actions:** Although in principle, all stages and activities associated with electoral administration should be subject to judicial control, it is particularly important that the legal framework contains the rules and means for the presentation of legal challenges and consultations to the relevant electoral authorities.

The following processes should be closely monitored: electoral registration or exclusion of voters from the electoral rolls; registration of political parties and other entities who are legally permitted to nominate candidates; registration and approval of candidates; respect for the rules of the electoral campaign; enforcement of

sanctions against parties or candidates; access to the media or public financing of the parties; the validity of the votes deposited at the polling stations; administration of election day logistics, polling and tally of the results. The grounds on which electoral votes can be annulled at a polling station should be clearly stated, be it the partial or total annulment of the votes that have been cast at a given voting table.

**b. Authorized legal actors:** The legal framework must guarantee broad access to legal protection to anyone claiming that their political rights have been infringed upon. The following rules could serve as a general outline:

- Political groups should be able to challenge the electoral register;
- Citizens must be able to challenge their inclusion in or exclusion from the electoral register;
- Citizens must be able to challenge the refusal to register their candidacy or the postulations of other candidates, as well as any violation of their political-electoral rights;
- The electorate should be able to demand the protection of the right to suffrage when the full enjoyment of this right unduly prohibited or if their freedom to exercise their rights is affected in any way;
- Citizens must be able to denounce the non-compliance of the electoral campaign norms;
- Political groups and candidates should be able to question the allocation or distribution of public funding or spaces for the dissemination of electoral propaganda in the media;
- Political groups and/or political contenders in the election must be able to challenge the validity of votes considered individually; of the election in a given voting table or of the election as a whole, insofar as they refer to the category in which they participate;
- The electoral authority must have the broadest legitimacy to promote, among others, any of the processes referred to in the previous sections.

**c. Formal procedural requirements:** In order to file a claim or make an appeal requesting the protection of a right, the following information must be provided: identification (name and surname) and signature of the person presenting the claim; an address to where any notifications can be sent; documents that prove the identity of the person presenting the claim; an account of the facts and a description of the event in question; the offence or wrongdoing that this act has caused to the complainant, including evidence where this is required. In the case of amendable errors or omissions, inadmissibility due to defects in matters of form should be applied restrictively.

Any error or fault in the identification, categorization, or qualification of the action, incident, appeal or affair in question, should not be an impediment to accessing justice. Legal admission of the dispute should only require that the facts are presented, the evidence is provided, and that the intention of the party is clear. The relevant court must give the complaint, action or appeal, the legal process to which it is entitled.

**d. Economic requirements:** Although accessing justice should be free-of-charge, it is acceptable to demand deposits, bonds, fines or other costs to avoid the presentation of malicious or frivolous claims. However, the economic cost for filing must be reasonable so as not to constitute an insurmountable obstacle to the access to justice.

### CHARACTERISTIC 3. FAIR AND EFFECTIVE PROCESS

Article 25.1 of the American Convention incorporates the principle that everyone has the right to an effective remedy that swiftly and effectively protects him or her against acts that violate his or her fun-

damental rights. This implies, among other issues, that the processing of electoral disputes must be adequate to resolve the case in a timely manner and provide an effective remedy to the affected right.

**Figure 5.** Indicators of a fair and effective process



**a. Timeliness:** The legal framework should determine specific timeframes for filing complaints, challenges, and appeals. These must be carried out in accordance with the predetermined stages of the electoral process. This may imply that certain activities must be challenged within an extremely limited timeframe, sometimes two or three days, a few hours or even immediately as the issue arises, so as to avoid irreparable damages.

It is important that the legislation establishes time limits for the resolution of all the challenges or inquiries. The electoral courts must offer timely resolutions to electoral disputes and have at their disposition the possibility to accelerate the established time constraints; or to offer even swifter resolutions should the circumstances so require. This is done in order to deliver an effective response to the complaint, challenge, or appeal. It is acceptable for higher judicial bodies to be granted longer time limits than those imposed on the first instance courts, provided that they emit a timely decision.

**b. Right to defense and participation:** Any citizen, political party or candidate that is affected, should have the right to participate in the contestation of candidacies, campaigns or the acquisition of credentials, as well as in demands for electoral annulment and in trials to protect political-electoral rights.

**c. Preclusion:** Procedural rules and fair legal practice must ensure that the proper stages are completed and that any resolution that has been issued, and that has not been challenged within the legally stipulated timeframe, is irrevocable.

There must be deadlines for lodging complaints regarding issues that have a direct effect on the advancement of the electoral timeline.

In particular, during the period of registration of candidacies, timeliness is of the utmost importance. It is therefore advisable to determine who is eligible before the election period begins. Challenges regarding the eligibility of candidates that arise after the registration period has ended, must be based on events dated after the official declaration of candidacy.

**d. Evidence:** There must be a catalog of evidence that can be presented before judicial authorities. It should be comprehensive, including evidence such as documents, testimonies, and expert witnesses. The basic inadmissibility of certain evidence should be accounted for in the law. However, in specific cases, particularly those that challenge the results of an electoral process, the judicial/legal body must have broad powers to allow only that evidence that is suitable or pertinent. The court should also have the authority to demand further evidence when necessary. In the absence of an explicit rule on the system of evaluation of evidence, the rule of sound criticism should be applied.

**e. Legal notification procedures:** The legal framework should establish notification procedures, both regular and alternative, as well as legal stipulations concerning the timing of legal notifications, and the legal consequences for non-compliance. In the case of electoral irregularities or discrepancies with the electoral results, resolutions should be put into effect swiftly and efficiently.

**f. Substantiation, and legal reasoning of the resolutions:** All resolutions should respect the principle of congruence. In other words, the resolution of the case must draw on the acts and events that were scrutinized by the legal authorities, and the evidence submitted.

The obligation to provide substantial explanation “is a guarantee linked to the proper administration of justice, which protects the right of citizens to be judged according to the motives that are provided for in the Law, and gives credibility to legal decisions within the framework of a democratic society.”<sup>36</sup>

Substantiation and motivation implies:

- Indicating the legal basis for the decision taken,
- Identifying the facts that indicate the non-compliance (legal grounds) analyzed in the sentence,
- The consequences of the adopted resolution.<sup>37,38</sup>

The duty to substantiate the judgment constitutes part of the right to defense since the interested party can only appeal the decision adequately if he can refute the legal grounds on which the decision is based.

**g. Available remedies:** The means or legal remedies available to challenge the electoral dispute resolution should be recognized as a procedural guarantee. There should be a minimum of two possible instances of review. The legal timeframes and the process of appeal should be made clear.

Challenges to the validity of votes cast, or to the election as a whole, should contemplate the following principles:

- Activities of electoral authorities: the assumption that the documentation prepared by electoral authorities at polling stations is assumed to be correct.
- The acts or resolutions that are not contested within the legally established timeframe are irrevocable and unquestionable.
- The grounds for annulment must be provided for in the law. The declaration of annulment must be interpreted and applied restrictively, and only when the legal and factual circumstances have been legally established.
- The declaration of annulment of an election based on the violation of constitutional norms, in the absence of taxative grounds, must be considered a last resort. This measure must only be applied under extenuating circumstances, in which it is manifestly impossible to identify the authentic expression of the will of the electoral body, and when no other less injurious remedy exists.
- Valid votes must not be annulled for acts, faults, or irregularities that do not affect the authenticity of the election.
- Unlawful acts, faults, or irregularities do not justify the annulment of the election if it is not proven that they modified the results and affected the assignment of positions.
- To the extent legally provided by the law, the recounting of votes should be the preferred outcome when there are well-established doubts about the results obtained through the electoral documentation.

#### CHARACTERISTIC 4: ADMINISTRATION AND TRANSPARENCY OF ELECTORAL JUSTICE

The demand for transparency in the workings of the authorities is based on the right of each person to seek and receive such information from the government and other authorities. This right, enshrined in Article 13 of the American Convention of Human

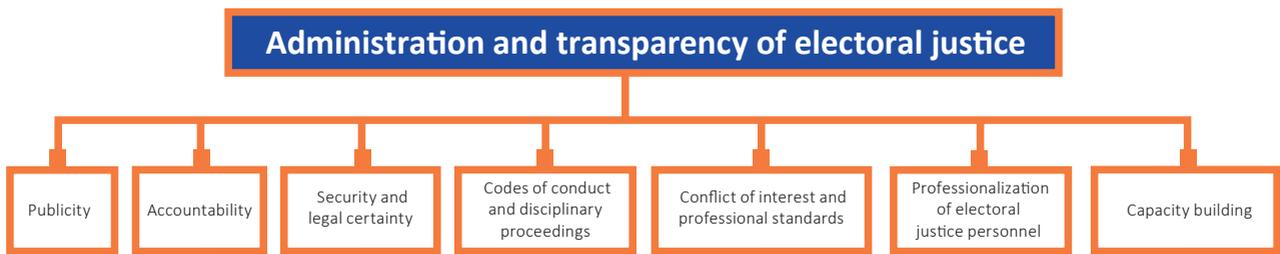
Rights, must also be implemented in the electoral context due to the high levels of citizen interest in the decisions and procedures that could impact on the exercise of their political rights.

36. IACHR. Case Chocrón v. Venezuela. Judgement July 1, Series C No. 227, paragraph 118.

37. IACHR. Case Yatama v. Nicaragua. Judgement June 2013, 2005. Serie C No. 127, paragraph 153.

38. Ibid Recommendation No 25.

**Figure 6:** Electoral justice administration and indicators of transparency



**a. Publicity:** The system of electoral justice should contain norms that uphold the principles of public accountability and transparency. All information regarding legal resolutions and the sessions in which they were issued should be made public and communicated in a language that is simple and accessible to facilitate the understanding of those who are not familiar with the specificities of electoral systems.

**b. Accountability:** Electoral justice is a public service that should be subject to a system of accountability. This ultimately serves to bolster the credibility of the judicial authority and its resolutions. Therefore, accountability should be understood as the judicial body's adherence to the law.

Similarly, accountability also implies the obligation to make public the information regarding the administration of the body in question. This includes information on public expenditure, income, human resources, and the hiring of third parties, amongst others.

It is also recommendable that the institution should build an archive, containing details of the work carried out by the institution, which should include a register of the electoral disputes processed and the sentences emitted. This information should be made publicly available.

**c. Security and legal certainty:** To provide security and legal certainty to those who participate in an electoral process, the applicable legal and nor-

native framework must be made clear. It is also imperative to emphasize that the legal framework cannot be modified at the last minute.

The ideal moment in which to introduce changes is between six and three months before the electoral process has begun, which ensures that both electoral authorities and political actors have a reasonable amount of time to adapt their internal regulations.

**d. Codes of conduct and disciplinary proceedings:** The codes of conducts of judges and of members of dispute resolution bodies is twofold<sup>39</sup>:

a) It is a guarantee that the removal of one of the judges will not take place unless it can be proven that they have carried out an act of professional misconduct.<sup>40</sup>

b) The institution guarantees that any of its members found to be engaging in improper conduct in the performance of their duties will be subject to sanctions, disciplinary measures or dismissal.

**e. Conflict of interest and professional standards:** Dispute resolution bodies should have explicit norms, practices, and codes of conduct for handling conflicts of interest. Practices such as the random assignment of legal cases to judges can bolster public confidence in dispute resolution bodies. The law may also provide for some instances in which a judge may turn down a case or hearing to avoid a possible conflict of interest.

39. Orozco Henríquez, op. cit. page 115.

40. Constitutional Court v. Peru (2001); and Camba Campos and others. (Constitutional Court) v. Ecuador (2013).

**f. Professionalization of electoral justice personnel:** Likewise, it is fundamental to have a system of professionalization of the authorities that deliver electoral justice. There should be a transparent system of career hierarchy, in which promotion is based on objective criteria that prioritizes the establishment of a system of professional merit.

**g. Capacity-building:** This guarantee implies that dispute resolution bodies are capable of carrying out their duties and electoral responsibilities with the legally established conditions, with increasing effectiveness and efficiency, and lowering costs when possible.

This requires that the State must provide a sufficient budget for the exercise of its functions, and also that it must be delivered promptly.

EOM in Costa Rica (2018) attending a meeting with the Superior Electoral Tribunal.



## IV. METHODOLOGICAL FRAMEWORK

### 1. CRITERIA FOR OBSERVING ELECTORAL JUSTICE SYSTEMS

**a. What to observe?** Observation of electoral dispute resolution mechanisms should take into account both the legal and constitutional framework of the host country and the practical implementation of norms and regulations.

The discrepancy between the norms, the structural organization of electoral justice and provisions for effective remedy can amount to a deficiency; for example, when it affects the independence and impartiality of the authorities responsible for upholding electoral justice. However, it is also conceivable that the legal system exceeds the minimum standard set out in the law, and promotes adherence to international standards. It is essential that the designated legal specialist identifies these traits, and that they are expanded upon in the report and taken into account when formulating conclusions and recommendations.

The purpose of this manual is to facilitate the uniformity of observation criteria and to contribute to the production of more homogeneous data. This serves to further professionalize the work carried out by the OAS/EOM and to deepen its understanding of electoral justice systems in the region. With this in mind, this manual contains a series of forms, outlines and checklists which provide an essential guide to the way information should be systematized.

Nevertheless, field experts in electoral justice are expected to broaden the criteria of observation and go beyond the scope of elements included within this manual, as long as they are careful to use normative and applicable criteria that have a tangible impact on the assessment of the electoral justice system and the resolution of electoral disputes.

**b. How to observe?** The observation of electoral justice systems should begin with a compendium of constitutional norms, national laws, and current regulations. Likewise, the specialist should consult current legal doctrine and jurisprudence in the related area, which will shed light on how previous cases in the field of electoral justice have been resolved.

Analysis of constitutional and legal norms permits the observer to evaluate the key legal instruments that underpin the administration of electoral justice, as well as bringing to light any gaping omissions. On this basis, the specialist can better evaluate the adherence to international standards; the independence, and impartiality of the institutions responsible for electoral justice; any impediments to the access to justice; the guarantees for a fair and effective process; and the transparency of the electoral justice system.

The information should then be gathered in the field, by conducting interviews with electoral authorities, representatives of political parties and candidates, in addition to prominent public or private institutions.

The specialist is expected to compare and contrast the information obtained through the interviews and corroborate it with what is known about the general functioning of the electoral justice. This process entails an assessment of whether the judicial body performance is in line with international parameters, whether current national norms are respected; and examples of applicable jurisprudence. These tasks should be carried out in such a way so as to avoid replacing the work or criteria of the designated authorities in the area.

**c. Sources of information:** The applicable norms - constitutional, legal, and regulatory - and the jurisprudence of the highest authority of electoral justice are considered to be primary sources.

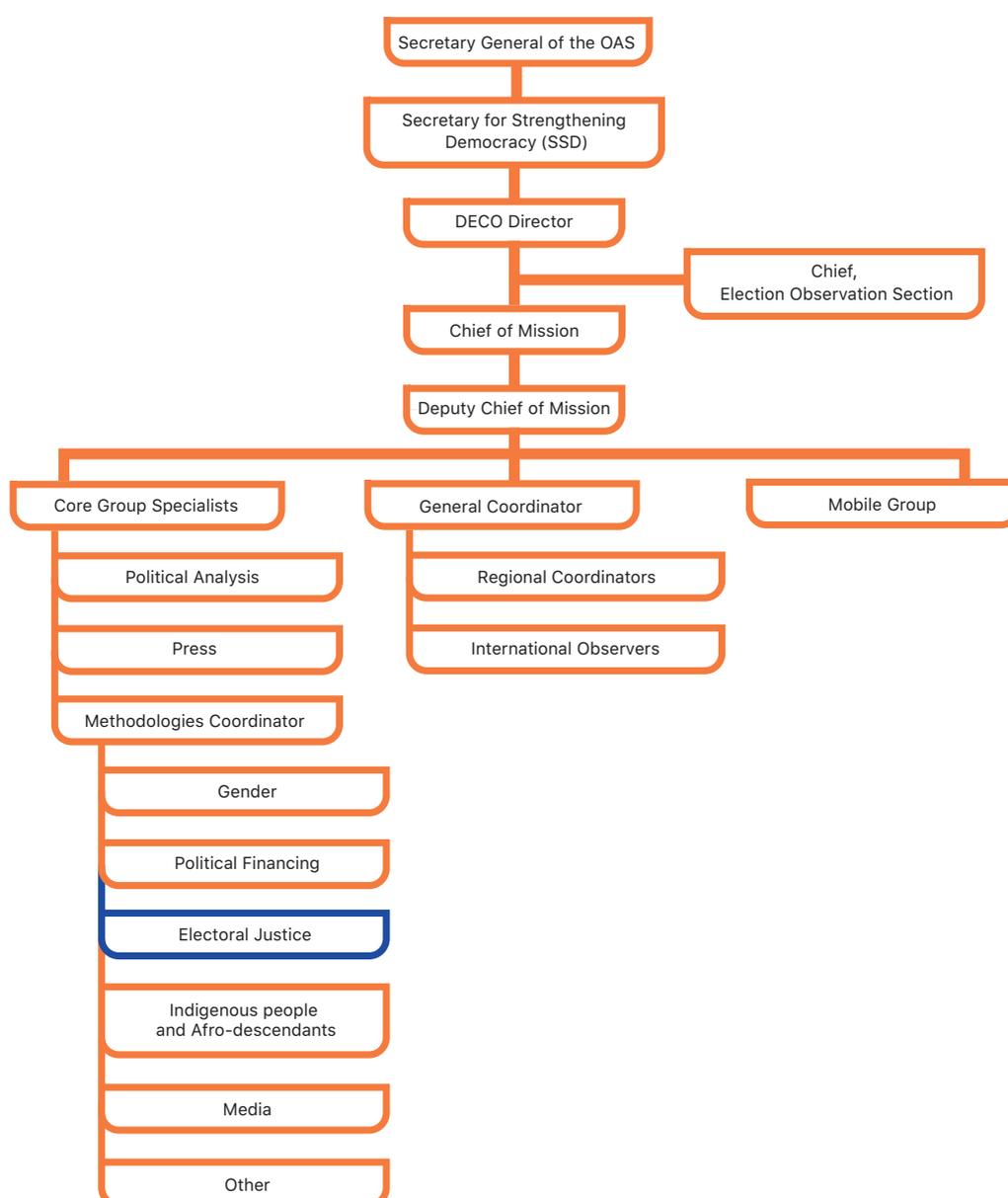
Jurisprudence helps to understand how normative provisions have been applied in the past. Additionally, a study of jurisprudence enables the expert to compare past and present application of electoral regulation, potentially shedding light on any resolutions issued during the electoral process being observed by the EOM. If a legal ‘precedent’ is overlooked, or if specific criteria in jurisprudence are ignored, the causes for this must

be observed and adequately explained by the electoral authority, bearing in mind that in such cases the duty to substantiate takes precedence.

The data extracted from interviews, legal doctrine, studies produced by private entities and journalistic texts are non-official secondary sources. The official sources are considered to take priority over these.

## 2. STRUCTURE OF THE ELECTORAL OBSERVATION MISSION AND THE OBSERVATION OF ELECTORAL JUSTICE

**Figure 7.** Structure of the EOM/OAS



**a. Duties of EOM specialists in electoral justice:**

Specialists in electoral justice are responsible for advising all other members of the Core Group on issues related to electoral justice. Additionally, they have the following functions:

- Formulate a work plan and present it to the Deputy Chief of Mission.
- Coordinate and perform all duties specified in the Methodology for Specialists in Electoral Justice.
- Collect and systematize the information needed to carry out the electoral observation, including the indicators of this methodology.
- Prepare a preliminary analysis on the system of electoral justice.
- Prepare for and carry out the observatory visit to the host country
- Coordinate and carry out meetings with key stakeholders in the country
- Participate in all meetings requested by the Chief and Deputy Chief of the OAS/EOM
- Inform the Chief and Deputy Chief of the OAS/EOM on aspects related to electoral justice throughout the electoral process.
- If necessary, systematize the information compiled by the regional coordinators.
- Present information concerning the most relevant aspects of electoral justice. The specialist will provide brief reports to be included in official press releases, interviews and press conferences organized and circulated by the OAS/EOM.
- Prepare the preliminary study, the preliminary report, and the final report using the data and findings obtained throughout the EOM. These should include specific recommendations aimed at strengthening dispute resolution mechanisms in the electoral process of the country being observed.
- Sign and abide by the Code of Conduct for International Election Observers.
- Fulfill other functions assigned by the DECO Director.

**Observation in the initial phase of the EOM**

The initial phase begins when the Member State requests the deployment of an EOM from the General

Secretariat of the OAS. It culminates in the deployment of the EOM in the host country. This phase of observation includes the following steps:

**Step 1: Design and approval of the work plan**

Once the OAS/EOM Electoral Justice Specialist has been appointed by the DECO Director, the first task entails the design of a work plan. The plan is put together by the specialist and subsequently approved by the Deputy Chief of Mission. The basis of the work plan is made clear in the steps outlined below.

**Step 2: Preparation of the preliminary study**

The objective of preparing a preliminary study is to obtain an initial assessment of the electoral justice system in the host country. The preliminary study provides a solid foundation on which to build a more detailed and nuanced analysis of the mechanisms for dispute resolution. The preliminary study should describe the current regulations as well as providing information on any legal reforms that have been put into place since the last elections.<sup>41</sup>

The preparation of the preliminary study requires compiling documents, systematizing available information, and drafting the text.

- The compendium of documents includes information on the normative framework that regulates the electoral justice system and dispute resolution mechanisms, as well as reports on the application and delivery of electoral justice.
- The specialist is expected to read all of the compiled texts and select the relevant information to draft the preliminary study. The General Questionnaire on electoral justice systems provides useful guidelines for the drafting of the report.
- A format is provided in this manual to assist the expert in drafting the preliminary study.

41. To include information on the practices observed in the previous elections, with special emphasis on examples of the most important cases decided by the tribunals in previous processes.

### Step 3: Using the General Questionnaire to prepare information (optional)

The General Questionnaire is designed to facilitate the task of gathering information and serves as a useful tool for systematizing and ordering information. Although not an obligatory tool, the General Questionnaire provides useful guidelines that can be used to orientate the specialist in the collection and systematization of data according to the methodology used by OAS/EOM. The use of these forms should be an ongoing process that begins prior to arriving to the host country, continues during the mission and ends upon completion of the EOM.

The use of the form begins immediately after delivery of the preliminary study and continues according to the format of the general questionnaire on electoral justice. The application of this tool is made up of three activities:

1. The collection and classification of all information obtained up to that point

2. The analysis and selection of key information to respond to questions on the form
3. The inclusion of information on the form

The expected product from this step will consist of the responses to those questions addressing electoral justice norms and, to the extent possible, advance information on the practices, institutions (composition, policies and programs) and other structures that make up the electoral justice system in the country where the EOM will take place.

### Step 4: Preparing on-site meetings.

In advance of the deployment of the respective OAS/EOM to the host country, a series of activities must be carried out, including the elaboration of the agenda and the systematization of all technical aspects to be covered during the meetings. The organization of the agenda includes drafting a list of institutions to be interviewed in situ. The meetings should be organized on the basis of pre-established criteria, (see table below) and approved by the Chief of Mission.

Priority	Type of actor/institution
Group 1	Representatives of the legal team of political parties and electoral justice authorities, particularly those responsible for the management of judicial complaints.
Group 2	Public institutions and civil society organizations or research centers working on related areas.
Group 3	International organizations and institutions based in the host country that have financed projects or initiatives in areas related to electoral justice.

Organizing the technical aspects of the initial visit include:

- Preparing the profiles of the institutions with which meetings will be held; to include an institutional description and its functions, as well its work or activities related to electoral justice.
- Designing the questionnaire to be used in the meetings.

- Prepare a list of resources that the specialist was not able to access prior to the visit and that will be necessary to request during the deployment. To do so, the document verification sheet will be used.

## **b. Observation in the deployment phase of the EOM.**

The deployment phase begins when members of the Core Group and Mobile Group arrive in the host country and ends with the withdrawal of the electoral observation team. During this phase, the methodology for observing electoral justice includes the following steps:

### **Step 1: Meeting with Core Group specialists**

The person specializing in electoral justice should participate in the Core Group meetings to confer with other specialists on issues related to electoral justice systems and the procedures for processing and resolving electoral disputes in the country to which the OAS/EOM is deployed.

### **Step 2: Meetings with key actors**

The meetings with key actors are the most relevant section of the on-site visit and will include three main activities:

- Confirming meetings and coordinating the agenda.
- Conducting meetings.
- Compiling a document that contains the most important information obtained during the visit.

### **Step 3: Collecting the data obtained by the observers**

Electoral observers will gather data on disputes and claims that take place at polling stations and transmit them to the General Coordinator. The specialist in electoral justice should contact the coordinator to obtain this information.

### **Step 4: Continue filling out the forms (optional)**

The electoral justice specialist will fill in the general questionnaire over the course of the mission. This comprises:

- 1) Collecting and classifying the information obtained. The legal specialist should now have a file containing: preliminary studies, reports on meetings with key actors, the data collected by the regional coordinators, and reports collated by international electoral observers.
- 2) Reading and selecting the relevant information, to begin filling out the General Questionnaire.
- 3) Systematizing the relevant information using the forms provided.

The information accumulated thus far will be sufficient to answer pending questions on norms. However, above all it will serve to answer questions on common practice, on institutions (composition, policies, and programs) and on structural characteristics of the electoral justice system. Therefore, the information entered into the forms at this stage will focus exclusively on legal practices and the effectiveness of the norms.

At the end of this phase, it is expected that all the questions on standards and practices will have been answered.

## **c. Observation in the final phase of the OAS/EOM**

The post-election period begins when the election day has concluded and lasts until the official announcement of results. In this phase, the following tasks are carried out:

### **Step 1. Elaboration of the preliminary report**

The objective of the preliminary report is to provide a brief and timely examination of the most relevant findings obtained by the observation of the electoral justice system. Given the length of the document, only the most pertinent observations should be included. If requested by the Deputy Chief of Mission, additional information should be provided on the challenges presented during the process.

The preliminary document should assess the standards and practices in light of the indicators presented in this manual, identifying the

strengths and weaknesses of the system observed. The material included in the Mission's preliminary report should focus on rigorous and concise findings, as well as providing conclusions and recommendations on the electoral justice system in the host country.

## **Step 2: Compilation of complementary information**

The specialist must ensure that:

- 1) The collection and classification of information are complete. Information should be up to date and should include the list of documents included in the checklist. The information collected should refer to events that have taken place since the day of the election until the present.
- 2) The analysis and selection of useful information are completed. This will facilitate the completion of the forms.
- 3) Where appropriate, the information will be systematized and inserted into the appropriate forms.

It is important to bear in mind that lack of information can also be revealing. By identifying gaps or omissions in the regulatory framework, some less immediately obvious problems can be detected.

## **Step 3: Drafting and approval of the final report on the electoral justice system**

The objective of the Final Report is to have a complete assessment of the electoral justice system in the country being observed. This document will form part of the Final Report of the OAS/EOM. The resulting document should have the following characteristics:

- Be both descriptive and analytical, i.e., identify the key characteristics of the norms and practices and explain how they affect the role of the electoral judicial authority, access to electoral justice, and access to a fair and effective system of justice.
- It should be comprehensive.
- It should focus on the observed process and provide background information to broaden contextual understanding of the current state of affairs.
- It should be framed within the focus and thematic areas included in the manual.

The drafting of the text is the responsibility of the specialist in electoral justice and should respect the final report format provided in this manual.

Considering that the Final Report of the OAS/EOM must be presented to the OAS Permanent Council within three months after the election, the first draft of the final report on electoral justice must be presented by the specialist no later than 21 days after the elections are held. The Deputy Chief of the OAS/EOM will review the report and make comments. For the specialist to have a reasonable time to incorporate new material, the deadline for collecting information will be approximately 30 days after the elections are held. The expert will have a final chance to incorporate new information and comments into the report, before handing it back to the OAS for final approval. The report will serve as the foundation for the elaboration of the special annex on justice, included in the Final Report of the OAS/EOM.

OAS/EOM elections  
Haiti 2016-2017



# V. TOOLS FOR THE OBSERVATION, GATHERING, ORDERING AND PRESENTING OF INFORMATION

## 1. DOCUMENT CHECKLIST

Documents on norms and practices				
N°	Type of document	Yes	No	Observations
1	Constitution			
2	Electoral Code (electoral legislation)			
3	Normative regulations for electoral justice and mechanisms for dispute resolution			
4	International and Interamerican Human Rights instruments ratified by the country being observed			
6	The jurisprudence of the highest authority in matters of electoral justice			
7	Reports from the electoral body			
8	Academic documents and studies			

## 2. GENERAL QUESTIONNAIRE ON ELECTORAL JUSTICE

This questionnaire contains guidelines designed to orient the specialist in electoral justice with respect to the (desirable) characteristics that should be veri-

fied when observing the electoral justice system. Although this tool is not obligatory, it can help to guide the drafting of the final report.

Characteristic 1: Independent and Impartial Electoral Dispute Resolution Bodies (EDRB)					
Variables	Questions	Yes	No	Reason	Observations
I. Selection and appointment procedures	a. Does the selection and appointment procedures of the EDRB allow for the inclusion of members of political parties?				
	b. Does the selection and designation process of the EDRB allow political parties to nominate their candidates directly?				
	c. Is the selection of the EDRB members based on qualities such as personal merit and professional capacity of the candidates?				

### Characteristic 1: Independent and Impartial Electoral Dispute Resolution Bodies (EDRB)

Variables	Questions	Yes	No	Reason	Observations
I. Selection and appointment procedures	d. Is it necessary to have a specific professional background to work for the EDRB?				
	e. Regarding the selection of EDRB members, is there a legal provision that seeks to favor the inclusion of members of minority groups or disadvantaged sectors of society?				
	f. Regarding the selection of EDRB members, is there a legal provision to promote gender equality?				
II. Autonomy	a. Does the EDRB have its own budget?				
	b. Does the EDRB participate in the elaboration of its budget?				
	c. Does the EDRB have exclusive control over the exercise of its budget?				
	d. Does the EDRB receive the budgeted resources in a timely manner?				
	e. Is the remuneration of electoral judges subject to political negotiations or used as a tool to pressure in any way?				
	f. Are there guarantees to preserve the physical integrity of electoral judges?				
	g. Are there guarantees for the stability of the posts of electoral judges?				
III. Code of Conduct	a. Is there a disciplinary procedure, that respects due process, in the case of poor performance?				
	b. Are there means of challenging sanctions imposed for poor performance?				
IV. Nature of the Court's (EDRB) decisions	a. Are the sentences emitted by the EDRB on electoral matters subject to review by another body or instance?				
	b. Do appeals of EDRB judgments temporarily suspend the effects of the decision?				
	c. If the highest electoral authority is not a judicial one, is there a quick and straightforward way to conduct a judicial review of its decisions?				
V. Conventionality and constitutional control	a. Does the EDRB have the power to control the constitutionality of electoral norms?				
	b. Is it possible to conduct a review of the constitutionality of a law without the obligation of specific permission from the relevant authorities?				

Characteristic 2: Access to Justice					
Variable	Questions	Yes	No	Reasons	Observations
I. Legally challengeable actions	a. Are the procedures and requirements for lodging and processing legal challenges regulated?				
	b. Is it possible to challenge the electoral calendar?				
	c. Is it possible to challenge the electoral registry and/or the electoral roll?				
	d. Is it possible to challenge the party registry?				
	e. Is it possible to contest candidacies?				
	f. Is it possible to challenge sanctions affecting party participation?				
	g. Is it possible to challenge the allocation of public funding or the use of media?				
	h. Is it possible to denounce violations of the electoral campaign rules?				
	i. Is it possible to challenge events that have taken place at polling stations?				
	j. Is it possible to challenge or revise the counting of the votes?				
	k. Are the grounds for annulment of votes clearly specified?				
	l. Are there clear grounds for annulment of an election at a polling station?				
	m. Are the grounds for annulment of the election as a whole clearly stated?				
	n. Is it possible to challenge other violations of the political and electoral rights of citizens?				
II. Authorized legal actors	a. Is anyone entitled to challenge the electoral register and/or the electoral roll?				
	b. Can anybody challenge his or her inclusion or exclusion from the electoral roll and/or register?				
	c. Can anybody contest the candidacies?				
	d. Can anybody challenge any act that affects their freedom to vote?				
	e. Can anybody challenge the violation of election campaign rules?				
	f. Are political groups entitled to challenge the electoral register and/or the electoral roll?				
	g. Are political groups entitled to challenge the allocation of public resources and financing?				

Characteristic 2: Access to Justice					
Variable	Questions	Yes	No	Reasons	Observations
II. Authorized legal actors	h. Are political groups able to challenge the election and the results?				
	i. Can electoral candidates challenge acts or resolutions that affect their rights as candidates?				
	j. Are other public institutions allowed to challenge aspects of the electoral process?				
	k. Have subjects been unlawfully authorized to present challenges?				
III. Formal procedural requirements	a. Do the formal requirements for filing challenges represent an obstacle to access electoral justice?				
	b. Does the ERDB have the power to correct errors or omissions or request that they are corrected by the party in question?				
	c. Is there any evidence to suggest that the EDRB has used minor procedural errors committed by the applicant as a motive to obstruct the right to access justice?				
	d. Are there any concessions made in the formal procedural requirements that are designed to favor legal challenges filed by vulnerable groups?				
IV. Economic requirements	a. Is a bond or other financial means required to take part in the electoral justice system?				
	b. If so, is the amount reasonable?				
	c. Is there any mechanism that, due to the situation of vulnerability of the applicant, exempts him or her from paying a bond or fee in order to take part in the electoral justice system?				

Characteristic 3: Fair and effective process					
Variables	Questions	Yes	No	Reason	Observations
I. Timeframes	a. Does the legal framework establish time limits for filing claims and appeals?				
	b. Are the time limits for issuing decisions provided for in the law or regulation?				
	c. Did the authorities in charge of electoral justice unilaterally shorten the deadlines?				
	d. Are there legal consequences for non-compliance with deadlines?				

Characteristic 3: Fair and effective process

Variables	Questions	Yes	No	Reason	Observations
II. Right to defense and participation	a. Can persons affected by electoral judicial cases take part in the process?				
	b. Can those eventually affected by electoral disputes have access to free legal defense services and counsel?				
III. Preclusion	a. Can the procedural stages be reopened once a definitive decision has been issued?				
	b. Were candidates challenged or reviewed for pre-existing grounds after the deadline for doing so expired?				
	c. Were the election results challenged or reviewed for pre-existing grounds after the deadline for doing so expired?				
IV. Evidence	a. Does the law establish what are the means of evidence?				
	b. Does the law expressly establish the inadmissibility of any means of evidence?				
	c. Can those who administer electoral justice obtain evidence ex officio?				
	d. Does the law establish a system for the evaluation of evidence?				
V. Notification: Transparency and the duty to inform	a. Does the law contain provisions for notification?				
	b. Does the law stipulate at what moment to emit the notification?				
	c. Are alternative notification mechanisms provided when the interested party does not have a physical or electronic address?				
	d. Does the law establish when the notification takes effect?				
VI. Substantiation	a. Do those who impart electoral justice have a legal obligation to substantiate their decisions?				
	b. Have there been unsubstantiated judgments?				
	c. Is the reasoning of the decisions expressed in a way that is comprehensible to those that are unfamiliar with technical jargon?				

Characteristic 3: Fair and effective process

Variables	Questions	Yes	No	Reason	Observations
VII. Available Remedies	a. Are the procedures and requirements for lodging and processing appeals regulated?				
	b. Is there a means to legally challenge the electoral calendar?				
	c. Is there a means to legally challenge decisions regarding registration and the electoral roll?				
	d. Is there a means to legally challenge the registration of political parties?				
	e. Is there a way to challenge decisions regarding the official registration of candidates?				
	f. Is there a way to legally challenge the sanctions that affect the participation of parties in the electoral contest?				
	g. Is there a way to legally challenge the distribution of public financing or spaces in the media?				
	h. Is there a way to legally challenge the violation of electoral campaign norms?				
	i. Is there a way to legally challenge the decisions of polling station authorities?				
	j. Is there a way to legally challenge or to demand a recount of votes?				
	k. Is there a way to legally challenge decisions on the validity or annulment of votes?				
	l. Is there a way to legally challenge decisions on the validity or annulment of an election at a polling station?				
	m. Is there a way to legally challenge decisions on the validity or annulment of the election as a whole?				
	n. Is there way to challenge other violations of the political-electoral rights of citizens?				

### Characteristic 4: Management and transparency of the electoral justice

Variables	Questions	Yes	No	Reasons	Observations
I. Transparency and Access to Information	a. Are court records available to the public?				
	b. Are court records published and available on the Internet?				
	c. Are the decisions of the electoral authorities made known to the public?				
	d. Are the decisions of the electoral authorities published on the internet?				
II. Accountability	a. Does the EDRB keep statistics on the processing and resolution of disputes?				
	b. Does the EDRB publish information on legal challenges and dispute resolution?				
III. Security and legal certainty	a. Were the rules applicable to the electoral process approved more than six months before the start of the electoral process?				
	b. Was the electoral legislation modified after the electoral process was initiated?				
IV. Codes of conduct and disciplinary proceedings	a. Are there rules to sanction or remove electoral judges?				
V. Conflict of interests and professional standards	a. Are there objective rules for the allocation of cases among the members of the court?				
VI. Professionalization of electoral justice personnel	a. Are there objective procedures and criteria for the promotion and advancement of justice officials?				
VII. Capacity Building	a. Are programs, tools, or campaigns promoted to disseminate knowledge of legal tools to strengthen the protection of political-electoral rights?				
VIII. Inclusive Administration	a. Are there measures of affirmative action in place to ensure the employment of minorities and vulnerable groups in electoral justice bodies?				
	b. Are there protocols for the treatment of complaints received regarding political violence against women?				
	c. Are there measures of affirmative action in place to ensure the employment of women in electoral justice bodies?				

### 3. FORMAT FOR THE PRELIMINARY STUDY

Observing electoral justice systems OAS/EOM (host country /date) Preliminary study	
<b>1. Introduction (1-page maximum)</b>	Describe the structure of the electoral justice system and the competence of the respective bodies.
<b>2. Electoral justice system: legal framework</b>	
2.1 Independent and impartial tribunal.	Describe the rules that define the makeup of electoral justice bodies, the authority accorded to its members, the claims that may be brought before it and, if relevant, indications of the parties responsible for ruling on constitutionality.
2.2 Access to justice	Describe the norms that regulate electoral dispute resolution: Causes for a legal challenge, who is eligible to lodge a complaint, procedures for lodging complaints, and the requirements for lodging a complaint.
2.3 Fair and Effective Justice	Describe the norms that regulate the distinct stages of the electoral process, the causes for appeal, the types of evidence accepted, deadlines for the presentation and resolution of electoral disputes, the obligation (if any) to substantiate the judgments of the electoral justice body and the means of notification of its decisions.
2.4 Administration and transparency of electoral justice	Check whether the electoral justice records are public and easily accessible on the Internet. Verify if information regarding EDR are transparent and accessible. Specify if there were changes to the electoral legislation without due (statutory) anticipation. If possible, describe the rules that define the assignment of cases, and the criteria that determine the promotion of those who form part of the authorities electoral justice.
<b>3. Conclusions (1-page maximum)</b>	

#### 4. FORMAT FOR THE FINAL REPORT

Observation of the electoral justice system OAS/EOM (host country /date) Final Report	
<b>1. Introduction (2 pages maximum)</b>	<p>Contextual information and any specific characteristics relevant to the electoral process in the host country. Synthesize the principles findings from the EOM</p> <p>Describe the structure of the electoral justice system and the competence of the respective bodies.</p>
<b>2. Legal framework and the delivery of justice (maximum two pages)</b>	<p>Presentation of the legal framework that underpins the electoral justice system: Institutionalality and a description of challengeable actions and available effective remedies.</p>
<b>3. Characteristics of the Electoral Justice System</b>	
<b>3.1 Independent and Impartial Court</b>	<p>The information for each indicator should be presented as a separate section, introduced with a subtitle. Each section should contain the following necessary information, although the specialist is encouraged to add any relevant information:</p> <ul style="list-style-type: none"> <li>→ A description of the norms and practices of each one of the variables of each indicator</li> <li>→ The effects and results of the norms and practices observed.</li> </ul>
<b>3.2 Access to justice</b>	<p>The information for each indicator should be presented as a separate section, introduced with a subtitle. Each section should contain the following necessary information, although the specialist is encouraged to add any relevant information:</p> <ul style="list-style-type: none"> <li>→ A description of the norms and practices of each one of the variables of each indicator</li> <li>→ The effects and results of the norms and practices observed.</li> </ul>
<b>3.3 Access to justice</b>	<p>The information for each indicator should be presented as a separate section, introduced with a subtitle. Each section should contain the following necessary information, although the specialist is encouraged to add any relevant information:</p> <ul style="list-style-type: none"> <li>→ A description of the norms and practices of each one of the variables of each indicator</li> <li>→ The effects and results of the norms and practices observed.</li> </ul>
<b>3.4 Administration and transparency of electoral justice</b>	<p>The information for each indicator should be presented as a separate section, introduced with a subtitle. Each section should contain the following necessary information, although the specialist is encouraged to add any relevant information:</p> <ul style="list-style-type: none"> <li>→ A description of the norms and practices of each one of the variables of each indicator</li> <li>→ The effects and results of the norms and practices observed.</li> </ul>
<b>4. Recommendations (2 pages maximum)</b>	
<b>5. Bibliography</b>	
<b>6. Annex</b>	

# ANNEX 1:

## NON-BINDING INSTRUMENTS

- **Code of good practice in electoral matters. European Commission for Democracy through Law (Venice Commission):** Existence of an effective appeal system (art. 3.3): 3.3. a) The appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible. b) The procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals. c) The appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body. d) The appeal body must have authority in particular over such matters as the right to vote –including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections. e) The appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station. In the event of annulment, a new election must be called in the area concerned. f) All candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections. g) Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance). h) The applicant’s right to a hearing involving both parties must be protected. i) Where the appeal body is a higher electoral commission, it must be able ex officio to rectify or set aside decisions taken by lower electoral commissions.
- **Handbook on Legal, Technical and Human Rights Aspects of Elections (United Nations):** The right to challenge election results and for aggrieved parties to seek redress should be provided by law. The petition process should set out the scope of available review procedures for its initiation and the powers of the independent judicial body charged with such review. Multiple levels of review where appropriate should be described as well (pt. 113). The effect of irregularities on the outcome of the elections must be established by law. Anyone alleging a denial of their individual voting or other political rights must have access to independent review and redress (pt. 114).

- **International Electoral Norms: Guidelines for the review of the legal framework of the elections (IDEA). Impartial and speedy adjudication.** The legal framework should make provision for a mechanism to process, adjudicate and dispose of electoral complaints in a timely manner (pt.6). **Counting procedures.** The law must also allow objections to counting procedures, including objections to criteria used to determine the validity of ballots (pt.13). **The effective date of certified results.** The legal framework for elections should clearly specify the timing of the final certification of the election results, the process of final certification including public announcement and notification to candidates of their election, and the terms of office of elected candidates. Additionally, the law must be clear as to what circumstances require a recount or new election in any or all polling stations. The law must be clear as to who can request a recount or new election, the deadline for the request, all necessary procedures to make the request, the deadline for adjudicating on the request, and the date of and procedures that will govern a recount or new election. Where technology is to be used in counting or tabulating, the law must be clear as to what the recount would entail e.g., whether the data would be re-entered, a parallel manual count be conducted, etc. The legal framework must provide for secure storage of all ballots and election materials until either the deadline for making legal challenges to the certified results has passed or, in case a legal challenge is made, the final adjudication of such a challenge is pronounced (pt.13). **Recording complaints and challenges.** The legislation should provide that any challenges to voters by the representatives of parties and candidates or complaints regarding the operations of the polling station must be recorded in writing by the polling station committee president (and preferably countersigned by the relevant representative of a party or candidate) and included with the polling station committee president's reports on voting submitted to the institution responsible for Electoral Dispute Resolution (pt.14). **Rights of representatives of the parties and candidates.** The legal framework should generally provide the following rights to duly accredited representatives of parties and candidates in polling stations: to challenge the right of any person to vote; to query any decisions made by polling officials with the polling station committee president and election management officials; and to make notes of any occurrences, make copies of any official documents and take note of any statements freely made by voters (pt.14). **Compliance with and enforcement of electoral law.** The legal framework should provide that every voter, candidate and political party has the right to lodge a complaint with the competent EMB or court when an infringement of electoral rights is alleged to have occurred. The law must require that the appropriate EMB or court render a prompt decision to avoid the aggrieved party losing his/her electoral right. The law must provide a right of appeal to an appropriate higher level of EMB or court with authority to review and exercise final jurisdiction in the matter. The decision of the court of last resort must be issued promptly. The legal framework should provide for timely deadlines for the consideration and determination of a complaint and the communication of the decision to the complainant. Some complaints can be determined immediately, others in hours, and some will take days. Deadlines must therefore allow for a degree of flexibility, taking into account the level of the EMB or court, and the nature of the complaint and the electoral urgency. Prompt resolution can frequently prevent escalation of a minor complaint into a major problem. However, certain types of dispute in some jurisdictions can only be raised by means of an election petition after the electoral process has concluded (pt.16).

- **Declaration of the Inter-Parliamentary Union on Criteria for Free and Fair Elections of 1994:** Every individual who is denied the right to vote or to be registered as a voter shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively. (Art.5 ss2.4).

Every individual and every political party has the right to the protection of the law and to a remedy for violation of political and electoral rights. (Article 5, ss3.6)

Every individual or political party whose candidature, party or campaign rights are denied or restricted shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively (Article 5, ss3.8).

Press conference of the Superior Electoral Tribunal of Brazil





**OAS** | More rights  
for more people

**OBSERVING ELECTORAL JUSTICE SYSTEMS:**

A MANUAL FOR OAS  
ELECTORAL OBSERVATION MISSIONS

ISBN 978-0-8270-6913-8