



निर्वाचन आयोग, नेपाल
ELECTION COMMISSION, NEPAL

Report on Regional Workshop on

ELECTORAL DISPUTE RESOLUTION AND ELECTORAL JUSTICE



21-22 JULY, 2016

KATHMANDU, NEPAL

FOREWORD

I am pleased to have this comprehensive report on the Electoral Dispute Resolution and Electoral Justice as an outcome of the Regional Workshop on Electoral Dispute Resolution and Electoral Justice that materialised with the Election Management Body (EMBs) of South Asia and Republic of Korea. The report will provide just enough information and different perspectives on the EDR mechanism and EJ system that are inferred in different representing countries.



EDR and EJ will be instrumental in establishing democracy through free, fair and credible elections. The establishment of such mechanism will reduce the possibility of violence and make political parties and electoral stakeholders more accountable to the electoral processes. I believe that knowledge sharing from this workshop by different countries will help each other to adopt and acclimatise experiences into its area of working and intake best practices that will be useful for future references.

This report which is the output of the workshop would not have been possible from great contributions of the Members and Officials of the ECN making it a great success. Similarly, I would also like to thank UNDP/Electoral Support Project supported by EU, Norway, UKaid and Denmark for their technical and logistical arrangements for the workshop.

I would also like to thank the delegations representing the Electoral Management Body of South Asia and Republic of Korea for accepting our invitation to such an important workshop that was beneficial to all.

I would like to express my sincere gratitude to Rt. Honourable Chief Justice of Nepal Ms. Sushila Karki for accepting our request as a Chief Guest for the Regional Workshop on Electoral Dispute Resolution and Electoral Justice.

A handwritten signature in black ink, appearing to read 'Ayodhee', written over a dotted line.

Dr. Ayodhee Prasad Yadav
Chief Election Commissioner
Election Commission, Nepal

LIST OF ABBREVIATIONS

EDR	Election Dispute Resolution
EJS	Election Justice System
SAARC	South Asia Association for Regional Cooperation
NEC	National Election Commission
IEC	Independent Election Commission
ECN	Election Commission of Nepal
EMB	Election Management Body
FEMBoSA	Forum of Election Management Body of South Asia
EDSRR	Election Dispute Settlement Rules and Regulations
EDSB	Election Dispute Settlement Body
CA	Constituent Assembly
CEDSB	Central Election Dispute Settlement Body
DEDSB	District Election Dispute Settlement Body
LEP	Learning from Experience Programme
DEO	District Election Office
DRO	District Returning Officer
ARO	Assistant Returning Officer
RO	Returning Officer
CNIC	Computerised National Identity Card
SOP	Standard Operational Plan
KM	Knowledge Management
EIM	Economist Information Magazine
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
ESP	Electoral Support Project
EU	European Union
CoC	Code of Conduct
ICCPR	International Covenant on Civil and Political Rights

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EXECUTIVE SUMMARY

Electoral Dispute Resolution (EDR) and Electoral Justice (EJ) needs utmost attention to ensure free, fair and credible elections to safeguard the rights of the people and give legitimacy to the overall electoral processes. A setting up an EDR mechanism will ensure actions, procedures and decisions complying with the law. Similarly, EJ processes will ensure every step is in line with the law and protect fundamental and electoral rights to vote, to contest as a candidate or party, to be elected, to assemble and to form and join political parties.

There are various agencies responsible for addressing disputes and complaints pertaining to electoral processes. In many instances, through formal mechanisms it is commonly the Electoral Management Bodies (EMBs) that are established entities for settling disputes. These practices are mostly common in the South Asian Countries.

In South Asian countries, EDR mechanisms and EJ processes are not very distinctive in nature but structurally have differences. Most of the EMBs have outlined legal regulations and procedures for resolving the dispute for all three periods: pre-election, election-day and post-election.

Having an EDR mechanism and dealing of the dispute at an early stage is necessary as it is specific in nature with time bound action. If the cases are not dealt properly and decisions are delayed, there can occur potential violence to a much larger scale. Moreover, an established EDR mechanism can also minimize the number and intensity of electoral violence with further support in establishing sustainable democracy.

EDR mechanism and EJ processes should be simpler in manner. It should simplify the process and making it accessibly easy for people and stakeholders. Therefore, more outreach activities should be targeted for reaching out to political parties, their agents and voters to make them aware of the process to acclaim their rights. It should try to modernize its approach thereby using IT to embed in the system for giving more trust to people. This will also help in gathering evidence and facts for resolving disputes and expedite the process.

1. BACKGROUND

Electoral Dispute Resolution (EDR) and Electoral Justice (EJ) systems require utmost attention in order to ensure free, fair and genuine elections around the world which safeguard political rights of citizens and legitimacy of the overall electoral process. However, due to the technical complexity and politically divisive nature, electoral processes are vulnerable to fraud and disputes throughout the electoral cycle period. In recent times, the tendency of election disputes or even non-acceptance of electoral results by the losing contestants are on the rise. Therefore, the design of appropriate EDR and EJ systems including their periodic review, play decisive role to ensure consolidation of democracy and adherence of legal framework both in established and emerging democracies.

The new Constitution promulgated on 20 September 2015, has institutionalized the federal democratic republican system of governance in Nepal restructuring the state to have federal, provincial and local levels. Following the promulgation of the new Constitution, the drafting of a number of laws that imbibe the spirit of the Constitution and contribute towards the implementation of federalism have been initiated. The Constitution has expanded the responsibilities of the Election Commission of Nepal (ECN), to conduct, supervise, direct and control elections of the President, Vice-President, the Federal Parliament, Provincial Assemblies and Local level. The Commission is currently engaged in drafting of laws and making other preparations to manage elections at various levels in the near future.

On this backdrop, ECN organised a regional level workshop with the participation of the Electoral Management Bodies (EMBs) from South Asia (Member countries of Forum of Electoral Management Bodies of South Asia - FEMBoSA) on Electoral Dispute Resolution (EDR) and Electoral Justice in Kathmandu, Nepal.

2. SUMMARY OF THE PROGRAMME

The two-day regional workshop on EDR and EJ was inaugurated on 2st July 2016 by Rt. Honorable Chief Justice Mrs. Sushila Karki with the head of constitutional bodies, parliamentarians, legal practitioners, representatives of political parties, representing government agencies and development partners. In the inaugural sessions, Honorable Chief Election Commissioner, Dr. Ayodhee Prasad Yadav delivered the opening remarks, Election Commissioner Ms. Ila Sharma welcomed the participants with her welcome speech and Secretary Mr. Sharada Trital thanked the participants and dignitaries including participants of EMBs of SAARC countries through his speech. The inaugural sessions was followed by technical sessions on EDR and EJ through EMBs from Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka and Republic of Korea.

3. INAUGURAL SESSION



Opening Speech



**Hon'ble Election Commissioner,
Ila Sharma**

The Rt. Hon'ble Chief Justice of Nepal, Hon'ble, Chief Election Commissioner of Nepal, Distinguished Guests, ladies and gentlemen

Good Morning,

On behalf of the Election Commission of Nepal, I am extremely delighted to welcome the Rt. Honourable Chief Justice of Nepal Ms. Sushila Karki as the Chief Guest, who kindly accepted our invitation to inaugurate this High Level 'Regional Workshop on Electoral Dispute Resolution and Electoral Justice'. Nepal currently has the privilege of a rare coincidence- of having the first ever woman President, the first ever woman Chief Justice and the first ever woman Speaker of the House- all at the same time.

I would also like to extend a warm welcome to the delegates from the member of Election Management bodies of South Asia (FEMBoSA) and from the Republic of Korea.

It is a matter of great honour and privilege for Election Commission of Nepal to host this gathering of distinguished guests and participants who are eminent personalities contributing to strengthening of democracy. Election Commission of Nepal is an independent constitutional body responsible for conducting supervising directing and controlling different tiers of election according to the constitution of Nepal.

Elections are essential first step of any democratic system to give people the rights and access to a process where the country is ruled by the people. It gives power to the people enabling them to choose their representatives who decide for them. However, elections alone cannot bring about democracy unless accompanied by the establishment of rule-of-law institutions, by electoral reforms conducive to creation of a level playing field, an environment free of intimidation, empowered and informed voters and by the proper development and growth of political parties.

Electoral Dispute Resolution (EDR) and Electoral Justice are the fundamental to build up stable political and regular legal systems that safeguard the political rights of the citizens and legitimacy of the overall electoral process. These systems should be able to contribute to protect the fundamental rights and strengthen the democratic governance. The systems should be able to ensure the rights of voters, candidates and political parties to lodge complaints and for effective remedies and also provide right to appeal to the court as a last resort. The Universal Declaration of Human Rights Article 8 also stated that everyone has the right to an effective remedy by competent national tribunals for acts violating the fundamental rights granted by the constitution and the law. Therefore, without a system to address situations where the validity of results or the actions of election officials courage, while occasionally faced by the hostilities and discouragement, binds the Electoral Management Bodies of the regional together.

I believe this two-day workshop will bring out experiences of electoral disputes in the course of our election management, and the efforts, methods and processes employed for resolving such disputes through institutional arrangements and legal provisions. I believe this exercise will be constructive in rolling out the concepts on electoral dispute resolution and developing a framework for institutional capacity in the thematic areas.

I would like to wish the distinguished delegated a pleasant stay in Kathmandu. On behalf of the Election Commission of Nepal, I would like to assure you that the Commission will make its best to make this workshop productive and memorable for all of us.

So, I once again welcome the participants to the regional workshop. As for our distinguished invitees for the inaugural ceremony please enjoy the inauguration.

Thank you.

Remarks



**Hon'ble Chief Election Commissioner,
Dr. Ayodhee Prasad Yadav**

Chief Guest - Rt. Hon'ble Chief Justice of Nepal, Ms. Sushila Karki

Hon. Ministers, Members of Parliament

Hon. Election Commissioner Ms. Ila Sharma

Excellences, Hon'ble and Distinguished Delegates and Participants, Respected Ladies and Gentlemen,

Namaskar and Good Morning!

On behalf of the Election Commission, I have the honour and privilege to extend a warm greetings to the Rt. Hon. Chief Justice of Nepal, Ms. Sushila Karki and all distinguished delegates for your gracious presence at this Regional Workshop on Electoral Dispute Resolution and Electoral Justice.

Election Commission of Nepal is pleased to host this workshop with objective of facilitating exchange of best practices, lessons learnt, institutional and legal mechanism, and models for responsive EDR and Electoral Justice in the South Asia and other EMBs. I believe that the workshop will promote regional dialogue on effective EDR and Electoral Justice leading to credible and inclusive electoral processes.

Nepal has been successfully holding several hallmark Elections paving the way for formation of governments since over half a century. The first parliamentary election was conducted in 1959, followed by other several legislative & parliamentary elections in and local elections. Two Post-Conflict Constituent Assembly Elections were also organised in 2008 and 2013 under the Interim Constitution 2007. These elections paved the way to strengthen democracy in Nepal.

All the above elections witnessed some degree of breaches of the Code of Conduct in the form of violence and intimidation. Electoral Disputes are not unusual in Nepal. ECN has also witnessed incurrence of electoral violence cases, petitions, re-polling, killings, intimidation, fraud and electoral malpractices in past elections. However, 2013 CA Election recorded

relatively violence-free Election and Code of Conduct has found greater acceptance among electoral stakeholders.

The promulgation of the Constitution of Nepal by the Constituent Assembly in Sept 2015 ensured to institutionalize Nepal as a secular, federal republic with multiparty democracy. Presidential, national, provincial and local Elections under the Constitution are envisioned in next 18 months. The Council of Ministers has recently endorsed constitution implementation work-plan which includes conduct of three elections before 21st January, 2018. Election Commission has adopted universal electoral cycle approach and continues to make necessary legal and technical preparations to hold these elections as mandated in the Constitution. The Commission is constitutionally mandated to conduct, supervise and control all types of elections and referendum.

Nepal has been also practicing judicial resolution of electoral disputes. It has adopted comprehensive EDR framework that inspires citizens' confidence in the electoral processes. So, we have undertaken appropriate electoral reforms to provide electoral justice and effective EDR mechanism. Some of the key measures taken in mitigating EDR petitions and complaints during the elections are:

- "Elections (Offence and Punishment) Act 2006" and Electoral Dispute Resolution Directive to effectively address EDR related cases;
- Constituent Assembly Court- a constitutional body with three sitting judges from the Supreme Court constituted in both 2008 and 2013 CA Election;
- A high-level Electoral Violence and Mitigation Assessment study to identify potential triggers, preventive measures and devise mitigation strategies;
- Election Code of Conduct 2015 in line with the international best practices and the lessons learnt from the past elections and 2013 CA Election. The CoC contains relevant provisions to control illegal acts by voters, candidates and political parties;
- Constitutional Bench under Supreme Court as per Article 137 of the Constitution. The Bench comprises of Chief Justice and other four Justices to address disputes concerning federal parliament and provincial assembly elections.

I believe that the Workshop will be a milestone to collectively understand the best practices, discuss different EDR mechanisms and produce an outcome. Election Commission of Nepal will embrace Outcome of this Workshop to further strengthen EDR and electoral justice for conduct of upcoming elections in a more free and fair manner.

Finally, on behalf of the Election Commission and on my own, I would like to extend sincere gratitude to the Rt. Hon'ble Chief Justice for inaugurating this important Workshop today. I also express my heartily gratitude to all distinguished delegates and participants for your valuable presence. I would also like to take this opportunity to extend our gratitude to the development partners particularly European Union and UNDP for their generous support in organising this Workshop. I wish all international delegates a memorable and pleasant stay in Nepal and that you will be also able to enjoy natural and cultural beauty of our beloved country.

Thank you.

Inauguration Speech by the Chief Guest



**Rt. Hon'ble Chief Justice of Nepal,
Sushila Karki**

Chairperson, Hon'ble Chief Election Commissioner, Dr. Ayodhee Prasad Yadav
Foreign Delegates, Distinguished guests and participants
Ladies and gentlemen

Good morning and Namaskar to all!

I am pleased to have this opportunity to attend the Inauguration Ceremony of the Regional Workshop on Electoral Dispute Resolution and Electoral Justice.

First of all, I would like to express my appreciation to the Election Commission of Nepal for organising this workshop which I think is quite relevant to Nepal as the country is in the process of implementation of the new Constitution.

As all of us are aware, SAARC is a region of proliferating democracy. Most of the countries have embraced and practiced democracies for several decades while a few others are slowly gravitating towards embracing democracy.

Periodic elections are crucial for institutionalising democracy. A free, fair, credible and acceptable election is essential for the actual reflection of the will of the people. For free, fair, credible and acceptable election, Electoral Dispute Resolution Mechanisms and Election Justice should be effective.

Electoral Dispute Resolution Mechanisms and Election Justice are essential components to determining whether the election can truly be considered genuine. However, due to the technical complexity and politically divisive nature, sometimes electoral processes are vulnerable to disputes.

In order to have credible election in any country, it is necessary to have a transparent and effective dispute resolution mechanism which would lead to successful elections. On the contrary, unresolved electoral disputes can trigger election-related violence and erode the faith of the people in governments.

The judiciary plays an important role in the adjudication of electoral disputes. In many cases, election management bodies also have an additional role as arbitrator of election disputes in addition to administering elections.

In Nepal, the Election Commission of Nepal is involved in arbitration of certain disputes as guided by the law of the land. There were provisions of the Constituent Assembly Courts during 2008 and 2013 election which were responsible for giving final verdicts on the election-related disputes.

Now, Nepal is in the process of implementation of the new Constitution. Elections are to be held for local to national levels within the timeframe stipulated by the Constitution.

In the backdrop, the design of appropriate Election Dispute Resolution and Election Justice Systems, including periodic review, plays decisive role to ensure consolidation of democracy and adherence of the legal framework.

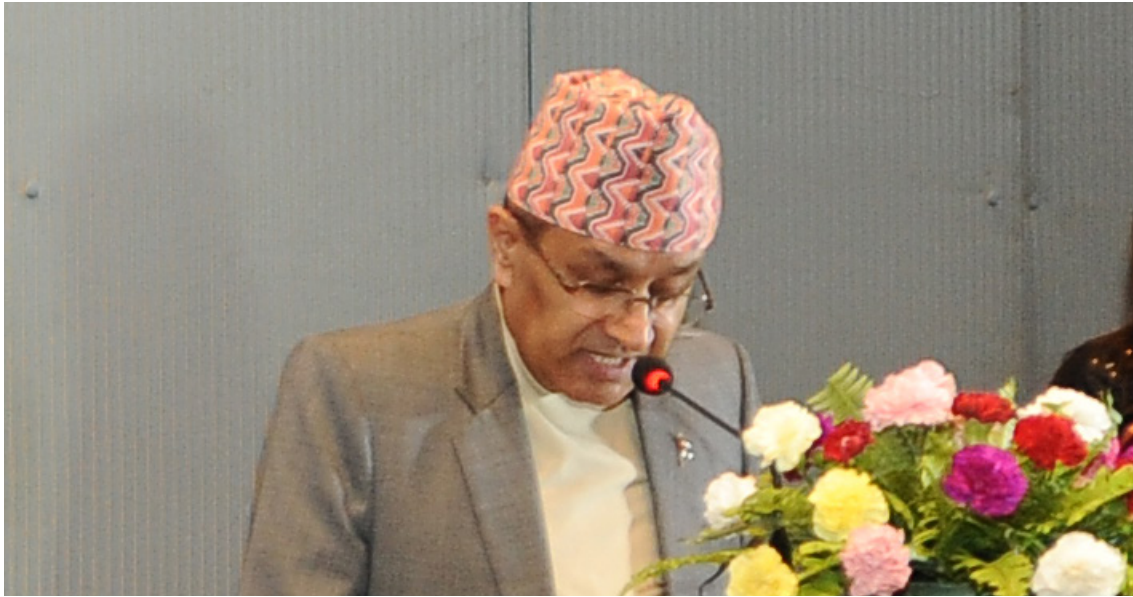
I believe this high-level workshop will provide an opportunity to share the best practices and knowledge among participating countries that could be incorporated in the legal framework of our own country.

I would like to express my best wished for the success of this high-level regional workshop. I hope some new ideas will emerge from this workshop for making future elections free, fair, credible and acceptable to all stakeholders.

Finally, I wish all the delegates a pleasant stay in Kathmandu.

Namaskar and Thank you all.

Vote of Thanks



**Secretary, Election Commission, Nepal
Sharada Prasad Trital**

Chairperson of this ceremony, Hon'ble Chief Election Commissioner,
Chief Guest, Right Honourable Chief Justice of Nepal,
Honourable Commissioner of the Election Commission of Nepal,
Honourable Election Commissioners and distinguished delegates from the Forum of election
Management Bodies of South Asia and National Election Commission of Republic of Korea,
Excellences, Distinguished Participants, Ladies and Gentlemen,

I am honoured to have this opportunity to deliver the vote of thanks on behalf of Election Commission of Nepal on this auspicious ceremony of inauguration of the regional Workshop on electoral dispute resolution and electoral justice. It is a very memorable day in the history of Election Commission of Nepal with the gracious presence of the Chief Guest, Rt. Honourable Chief Justice of Nepal. We have the trust that the overall objective of this Workshop for enhancing the capacity in Electoral Dispute Resolution and Electoral Justice System with the exchange of ideas will be realised and the rights of all the electorates to elect and be elected are fully protected.

I would like to extend heartfelt gratitude on behalf of Election Commission of Nepal to the Chief Guest Rt. Honourable Ms. Sushila Karki, The Chief Justice of Nepal for inaugurating this regional workshop. The statement made by Rt. Honourable Chief Justice in the inaugural address is contextual and inspiring for the Election Commission of Nepal.

We also would like to acknowledge our gratitude for all the Election Management Bodies of Afghanistan, Bangladesh, Bhutan, India, Maldives, Pakistan, Republic of Korea and Sri Lanka for the participation and high level of representation in this programme. In fact, the Forum of Election Management Bodies of South Asia (FEMBoSA) has always been a recognised platform for sharing electoral experience and introducing new innovations in the South Asian Region.

We would like to extend a deep sense of appreciation to different Government Agencies for facilitating the management of this workshop. The Ministry of Home Affairs and the Ministry of Foreign Affairs have jointly been working with us for preparation to smooth management of this workshop.

We express our sincere thanks to all the former Ministers, Chief Election Commissioners, Election Commissioners and Secretaries of the Government of Nepal for your valuable presence and intellectual contributions for managing electoral knowledge. We are thankful to all the former Chief Election Commissioners and the Commissioners for the contributions made to upgrade the efficiency and effectiveness of the Election Commission of Nepal and bringing it to the present status.

We are grateful to all the members of international communities, diplomatic missions and international development partners. We have been working with the international communities to share knowledge and experience for enhancing sanctity of free and fair elections. We would like to extend our sincere thanks especially to UNDP Electoral Support Project for making this event possible. We acknowledge your contributions for global mapping of electoral knowledge.

We are thankful to all the audio, video, online and print media. The openness of election management and our friendliness have always encouraged stronger ties for the shared goal of free and fair elections. Now, the presence of our valued media houses and media persons here will further take the issue of Electoral Justice in the unreached sections of societies.

We would also like to thank the leaders and representatives of different political parties. It is clear that one of the integral parts of democracy is proactive political parties and we have always adopted a participative approach with the political parties. We are sure that this workshop will be one of the milestones to deepen our mutual understandings on electoral justice system.

Finally, on behalf of Election Commission of Nepal, I would like to extend our sincere thanks and appreciations to all our invaluable guests for your participation in this programme. We would always like to remember your efforts and cooperation in the days to come.

Thank you.

4. OBJECTIVE

The following key subjects related to EDR and EJ will be discussed, and the best experiences will be shared at the workshop:

- To have in-depth discussion on the electoral disputes that are encountered in course of electoral management and the methods and processes that are being utilized to resolve such disputes
- To share on the legal provisions and institutional structure for EDR and EJ and
- To highlight on the new concepts related to EDR and electoral justice. The common outlook of the participating EMBs towards EDR and electoral justice shall be announced at the end of the meeting.

5. TECHNICAL SESSION



5.1 Theme Paper Presentation on ‘ Electoral Dispute Resolution (EDR) and Electoral Justice (EJ)’

Mr. Bhoj Raj Pokharel, Former Chief Election Commissioner of Nepal

Concepts/Principles

Since one of major source of election dispute is through electoral violence, the context starts from the very beginning of the electoral violence is South Asia. Since 1960 until 2010, we have seen the examples of pre-election and post-election violence. However, in the latter years like 2010, there are more cases of post electoral violence is a concern globally and to the region as well. In regards to the proportionate of the series of violence, the 90s trend relatively shows more violence than the earlier period. In global scenario, the South Asian region has been clouded with violence if compared to countries of the Americas and Europe.

It is high time to think to develop strategy to mitigate violence and bringing justice in the forefront. In Nepal, pre-election is Constituent Assembly 2008 Elections, 64% perpetrators belong to the political parties and their affiliates and victims calculating 67% also belonging from the same group. Therefore, a focus is needed in the future to strategize the mitigation of violence.

Electoral processes are means of regulating and deciding political competition and are usually highly competitive. Electoral violence is understood to be form of political violence which is often to influence electoral outcome and therefore, distribution of political power. This political risk is particularly high with systematic longstanding and unreserved grievance combined with winner takes all approach- to competitive politics- Nepal is one of the best example.

Violence is not necessarily committed with the intention to pervert the process or its outcome which is misunderstood sometimes. But, it may be well known that it is an expression of protest that was seen was unfair. We have closely witnessed successful elections and also elections with severely crisis within this regions. In addition to other several factor, efficient and effective EDR and EJ are the key factors in this region that needs more focus.

It is the fact that injustice invites disputes creating more imbalance and a sound justice system leads to peaceful settlement. Therefore, it is a challenge have an equilibrium. On one hand, an election which is not administered properly and on the other does not reflect the will of the electorate will definitely spark election related violence. Perceiving fear in the process is just as important as fearing of the results. If there is a system that we can guarantee justice and are perceived positively by people even if the results are not in their favour. This would ultimately give a sense of positivity to the people towards the justice system.

International Standards and Practices

Electoral rights are based on fundamental human rights. Civil and political freedom, Freedom of expression and opinion, peaceful assemblies that are established globally and regionally that are based on under international and regional tools, instruments and protocols. Principles of United Nations Human Rights Declaration has been incorporated in the Constitution and also in national laws.

Where there is a right, there must be remedy. In democracy, every rights comes with judicial remedy. Electoral Justice Processes exist to ensure every step is in line with the law and protect fundamental/electoral rights to vote, to stand as a candidate, to be elected, to assemble and to form and join association (political parties). Fair, excess and treatment for all potential candidates through electoral processes can reduce disputes and settle fairly when they arise.

In this case, the question why there is a need of EDR and EJ system. These system are required to utmost attention in order to ensure free, fair and genuine elections which safeguard political rights of the citizens and legitimacy overall electoral processes. Effective EDR mechanism can play a vital role in democratic processes is to ensure every actions, procedures and decisions of every electoral processes complies with the law. This is where the region is lagging behind.

Generally, the sources and disputes are mostly from the non-compliance with laws and rules which has been felt practically experiencing it. There are other sources too especially

when the decisions and conduct of EMBs and its staff and inappropriate, lack of judicial level playing field and behaviour of the other election actors.

Through the sources of disputes there are several potential consequences of irregularities and allegations. Disputes and complaints are natural in election and are evitable in democracy given the fact that election is a competitive process that can actually be seen as an indicator of the bi-principles of the process and stakeholder understanding EDR. It becomes a problem when the system becomes ineffective and is not able to handle many disputes or where the number exceeds up to the point and threatens the credibility of the entire EDR process and citizen considers reasserting to electoral related violence. If it managed properly, Electoral Justice system needs to be positively geared in achieving- preventing and identifying irregularities, and providing means and mechanisms for correcting irregularities and punishing the perpetrators. Thus, an efficient EJ system exist for preventing and resolving the electoral disputes , reinforcing the credibility of an electoral process, supporting the legitimacy of the winners, assisting with a peace transition of government and providing an alternative to post-election unrest.

Disputes and complaints arise during the entire electoral cycle that is from the developing the legal framework to the post-election period. If the disputes are resolved from the beginning, it would create an enabling in an enabling environment for successful elections with integrity. To make it more clear with an example, during drafting of a legal framework, question often arises on how that would create dispute. In 2015 Myanmar Elections, around 1 million people were systematically deprived from exercise their voting rights and questions remains that how much that can contribute to the stability of the country is unimaginable. Similarly, during the Constituent Assembly (CA) Elections in 2008 in Nepal, the elections were postponed three times. The reason simply being the non-agreement to the electoral principles and provisions in the electoral laws especially there were many changes in the electoral laws in the interim Constitution in aftermath of the conflict situation. Another example can be cited is in the Constituency Delineation in CA 2008 Elections in Nepal. A Constituency Delimitation Commission is formed to delineate the electoral constituency boundaries and its report is considered final as stipulated the Constitution and cannot be filed any petition against the report. Some of the political parties unsatisfied to the report because of not consulting, not transparent and biasness. This resulted in stopping the business of the parliament for 19 days. Several negotiations between political parties were held and thus the interim constitution was amended making way for the elections. Another example of Nepal, one of the constituencies, it was a close contest between two candidates with a margin of 4-5 ballots and the officer was showing every ballot to the political parties and candidates' agents. One of the agents seek to see the ballots from close and suddenly grabbed the ballot paper from the officer in charge and swallowed. To find a remedy for such cases is challenging. Therefore, disputes and complaints challenges should be dealt as a part of EDR and EJ not only during post-elections but also since the beginning of the electoral cycle for creating an enabling environment to accept the final results.

Categories or types of complaints and disputes can be different looking at the nature from administrative, to electoral offence and crime and also those that may impact results. Electoral offence and crime are not the same which creates a confusion among election practitioner too. Therefore, to deals with complaints and disputes it is better to use tools such as code of conduct, electoral legislation criminal code, constitution, security laws etc. In some countries code of conduct have more add value like Myanmar, whereas in South Asia it is more dealt with the legislation. Thus it is important to set clear laws so that the players would know the rules of the game.

A Few Examples

Depending on the nature of disputes and complaints there are various agencies responsible for addressing it. In most of the cases, administrative bodies like the EMBs are common entities for settling the disputes. In some countries there are the law enforcement authorities whereas Latin American countries have experience through tribunals except for Argentina where the final verdict or decision are made by the parliament. In Myanmar, the tribunals are created by the Election Commission and the final authority to the petition filed in the tribunal are then passed by the EC. Similarly, in Nepal and South Asia, the UK electoral bodies are more engaged but in Thailand there is the constitutional court. Similarly, there are other formal and informal international alternative mechanisms depending on the context. Countries like Cambodia, Bosnia and Herzegovina have formal mechanisms whereas some are informal for creating vibrant environment for settling the disputes. In some cases, regional human rights organisations are also involved like American Human Rights Court, European Human Rights Court are also kind of formal mechanism.

In recent times there are trends of informal mechanism also called Alternative Electoral Dispute Mechanisms. However, it is not a substitute of the formal mechanism. In 1999 South African elections, the identified different eminent personalities different societies, teachers, doctors, lawyers, and were trained on electoral issues. These professionals were mobilised to mediate the dispute whenever necessary. Similarly, in Nepal 2008 CA elections, just three days before the elections day a dispute occurred between political parties which later turned into violence killing 6 people belonging to a single political party and injuring many. The elections were unsure and EMB of Nepal took immediate action of mobilising the peace negotiators at the violence scene and was discussed all night making all political parties agreeing to conduct elections on the stipulated date. Likewise, in Cambodia, they have a legal Consultation Committee based on community. However, in the last election, it was experienced that those committees were operating in the line of ruling political parties. This is an example of formal mechanism and failed to do justice. But informal mechanism or actors can undermine legitimate claims, on the other hand formal mechanism like the Cambodian experience can also not solve the disputes and complaints. When alternative mechanisms are in place they should also operate with pre-determined standards and processes to resolve otherwise the disputes can be dealt differently and can have impact in a different way.

In global practice formal mechanisms key actors like EMBs and courts are mostly engaged in dispute resolution than any other informal mechanisms. It is important to note that EMBs priority EDR mandate and has the legal resources and capacity to do so. It is equally important that Justice Mechanism such as court has crucial role and to cooperate with them is necessary because dispute resolution are very specific and time sensitive. To be precise with the example of the Kingdom of Jordan, the EMBs have joint workshop with judiciary on EDR process to build understanding and coordination. In Europe, EMBs has the highest level of dealing with the first instance of the election dispute with 37.2% that is when they receive the complaints and later to the court. This shows the important role an EMB has to play in regards to this issue. In terms of Asia there are at least two levels of adjudication for disputes related to political party or candidate registration for legislative elections. The principle of the judicial review administrative decisions is set out general comment 25 ICCPR, in most cases citizens should have the ability to appeal against the decision of the EMB, this right of appeal to help them strengthen electoral justice.

In Kenya 2007, post electoral violence killed more than 1000 people. Millions of people

went homeless because of severe violence. There were too many international attention to the elections. Several commissions were set up among to investigate and recommend for the future and the reason for the violence was because of the absence of appropriate dispute resolution mechanism. In contrary, in 2013 elections the whole part of flipped, scenario was changed, challenge occurred this time too, they reform the constitution, reviewed electoral mechanisms, process, dispute mechanism, that created confidence that we can get justice within the system. This time contender filed a petition to the court and the Supreme Court gave verdict validating the announcement of results by the Election Commission and the dispute was peacefully settled.

Countries especially in the situation of post-conflict elections, new democracy, emerging democracy, we witness violence. In vixen democracy, when your rights are robbed, there is court to be looked upon but in new democracy, they resort to violence and questions arises why people do not trust the system and institution. To change this perception is by practice and experience and not by legislation. Recently, in Austria, all parties agreed the court verdict to have re-elections because of the non-acceptability of the results. This shows the trust of the institution or justice mechanism and have to think to develop that belief and trust towards the institution in this part of the world. Another pertinent issue that are faced is that there many actors in the process, and if there are any wrong-doings for an actor EMB will be blamed and also need the capacity to face such challenges. In these situation it is wise not react which might face consequences.

Even in established democracies there can be crisis and society is not static threatening to peace and stability if the political parties does not balance the adequate and emerging opinions, needs and interest. There are increasing trend of sophistication among political actors in learning on manipulating electoral rules example is the recent political campaigns during election in the United States of America. It is wise for EMBs to prepare from such kind of manipulations beforehand to provide adequate justice and resolve disputes.

The Nepalese case

Like in many other countries, in Nepal there are two stages- once the nomination are filed and when the results are announced- the adjudication is with the court. However, post-election, all the disputes and settled through court. In Bangladesh 20 hours of the polling day court ordered to remove certain candidates name from the ballot paper and to include some. But, somehow they manage. The issues are managing operationally, new candidates campaigning at the last minute and many others. Nepal too has a long list of legal tools but it doesn't guarantee providing justice. It should the well enforceable. The multiple legislation generates confusion among stakeholders and the solution is to consolidate which would make it easy for Commission's officials and citizens. For example, Cambodia has 900 pages of legislation and enforcing is complicated and a herculean task. Therefore, it is important to know for whom we are developing the legal procedures for. In regards to sanctions and punishments, there are from minor administrative nature to fines to imprisonment, losing elected seats whatever is the enforcement is the key. In 2008 elections, while developing the legislation, Election Commission of Nepal asked the parliament for the authority to conduct free and fair elections. The parliament agreed and provided the authority even to cancel the candidacy if the behaviour is against the rules. But when it came to enforcement because of the several factors hindered the process despite giving the authority by the parliament and later criticised for such step.

Nepal needs to focus in updating and consolidating of laws and institutions which is

underway. It will be good to establish an EDR unit by providing EDR handbook and kits management system and implementing capacity development activities and more resources outreach programmes. There are times when EMBs learn from international experience on EDR but is never embedded in their work. It is high time they start incorporating their learnings into their work.

There are 7 standards covenant from international instruments such as the UDHR and ICCPR, and are key to ensuring an effective EDR/EJS process that protect the rights of citizens. For example, if the decisions are not given on time and the consequences that follows. In the past, there has been a case verdict was given after the parliament was dissolved.

Key elements for considering resolving election disputes that gives clear picture for the process. These are important elements for strengthening electoral dispute system and mechanism when implementing EDR system and providing information to the stakeholders like political parties, agents, and observer groups. Because there are different types of complaints that can arise in the electoral processes different remedies are available either through election commission that could be voiding of ballots, removal or inclusion in voters list, rejection of candidate nomination, disciplinary actions against election officials etc. or through courts for disqualification of candidate, imprisonment, fines declaring an election void etc.

An effective remedy can be considered for decision can be applied for dispute resolutions of complaints adjudication. Several principles can be considered like ensuring the spirit of the law is realised in practice and is it enforceable. Others can be providing decision in a timely manner, leading to deterrence or a change in behaviour in question and reinforcing the perception of fairness and credibility of the process. Similarly, for complaint adjudication, it should consider to see the complaints filed in writing to avoid rumour-based allegations that can undermine the election and more clarity and cooperation between institutions which is important. Additionally, distinction between malpractice (negligence and fraud (intentional) which both are legitimate complaints that should be addressed for adjudication. There should be consistency in investigation across institution to avoid the perception of arbitrary decisions and builds trust in the process and considering the deadline which will help with a timely remedy.

The Way forward

The fundamental principle is bringing legal and institutional/regulatory reform while dealing with EDR and EJ system. The reform should simplify the process for the people making them easily access which can be through a handbook or publications unlike those of 900 pages document in Cambodia. It should give clarity on the process where even political agents can understand or know the next step for filing complaints or anything related to irregularities. Another way to focus is on the outreach activities where not only agents but all electoral stakeholders would understand the system and respective mechanism to address their issues and concerns regarding electoral disputes. Capacity development should be given priority by EMBs to other stakeholders in knowledge transfer to the grassroots level because it's their concern that needs to be brought out to exercise their rights. Similarly, there should be a system for collecting information for example number of cases, status of such cases which can be provided to the observers groups and media for garnering more trust on EMBs. Finally, there should a shift from the conventional style of system to more modern approach like using the Information Technology and social media for EDR and EJ system.

5.2 Summary of the presentation by Independent Election Commission (IEC), Afghanistan

The Independent Election Commission (IEC) of Afghanistan is an independent constitutional body established according to Article 156 of the constitution of Afghanistan. It is mandated by the constitution to administer and control all types of elections including Referendum in Afghanistan. As per the constitution, 7 types of elections, viz. 1) Presidential, 2) Lower House, 3) Provincial Councils, 4) District Councils, 5) Village Councils, 6) Mayors and 7) Municipal Councils have been mandated to be conducted by the Independent Election Commission of Afghanistan. The first presidential election was held in 2004. So far, the commission has conducted presidential, lower house and provincial council elections. District council, village council, mayors and municipal council elections have not been able to take place due to political, technical, security and financial issues. District council along with lower house elections are expected to take place by 2016 or 2017. Structurally, the IEC has two arms, viz. Policy Making Arm and Executive Arm. Policy making arm is the policy making body of the commission composed of nine commissioners appointed by the president. The president appoints 9 commissioners, who conduct an internal election to elect the Chief Election Commissioner/Chairman, Vice Chairman and Secretary. Executive arm is led by the Chief Electoral Officer.

In 2004 and 2005, the elections in Afghanistan was conducted by a joint EMB with major input from the United Nations. 545 international staff worked as technical advisors during the elections in 2004 and 2005. IN 2009, IEC and UNDP ELECT shared electoral management responsibilities. The number of international technical advisors reduced to 155 and the rest of the positions were replaced by Afghan nationals. In 2010, IEC led the elections with hands on support from UNDP ELECT and further decreased international assistance to 85 advisors. In 2014, they called it Afghan led elections. It was totally led by Afghan nationals and had international technical support in specific departments and provinces with 55 international advisors. Hence, the number of international advisors was reduced from 545 to 55 in a period of 10 years.

Independent Electoral Complaints Commission (IECC)

The Independent Electoral Complaints Commission (IECC) is responsible for the legal provisions and institutional arrangement of EDR and EJ. It is not a constitutional body like IEC. In 2004, IECC was established according to the decree of the President because there was no law on Structure. The Structural Law was passed in 2012 and thereafter the ICC functioned as per the structural law. The mandate of the IECC is to adjudicate all complaints concerning the electoral process. IECC, according to the Structural Law, has 5 commissioners appointed the same way as the IEC. The administrative work is done by the Secretariat. At the time of operations, they also establish provincial electoral complaint commissions, which has 3 members. There are 34 provinces and in every one of the provinces, there are 3 commissioners in the IECC.

In 2004 and 2005, 3 out of 5 commissioners of IECC were international technical staff from the United Nations who were nominated by the Secretary General. In 2009, 3 out of the 5 commissioners were international UN staff and 2 were national. In 2010, it was reversed – there were 2 international staff and 3 national staff. In 2014, when the Structural Law was passed and issued by the President, there was no space for international members in the IECC. All the 5 members were Afghan nationals.

Methods & Processes for EDR and EJ

Who can complain?

Any registered voter, candidate, observer, or party official can file a complaint. The IECC can also take cases on its own initiative if there is something that needs to be adjudicated or investigated. It is up to the IECC to adjudicate complaints regarding the registration process - the registration of, or refusal to register specific persons as voters. Everyone can file a complaint with regards to the nomination of candidates, their qualifications and eligibility. Financial disclosures by political entities, their candidates and independent candidates; violations of the Code of Conduct for political parties, candidates and their agents; errors or dishonesty in polling and counting of votes; complaints and challenges over primary results; and any other matters that affects the right to vote and participate in the election are areas where the IECC can receive complaints or can themselves adjudicate.

How are the complaints received and adjudicated?

The complaints can be submitted to the IECC at the polling station level, provincial level (where they have provincial offices) and Headquarter level. The IECC then retrieves all the complaints from the polling stations, provincial offices and headquarter and carry out an intake assessment of the process. In the assessment, they quickly sort out all the complaints they receive to make sure that the complaints are genuine. Before the complaints are handed over to the Commissioners, an Investigation Team comprising of legal professionals, go through each and every complaint and provide their notes to the Commissioners. When the notes are provided to the commissioners, it is called adjudication of the process. After that, an open session is held for everyone including media and agents of the political parties to adjudicate all the complaints that they have received. After the adjudication, when they decide on acceptance or refusal of the complaints, they publicize and disseminate the decisions. They publish it in their website where everyone can see the status their complaint.

If something goes wrong, the IECC issues a warning to an offending individual or organization to take remedial actions. If it doesn't work then they order an offending individual or organization to take remedial actions. The first step is a soft issue of warning and the second step is an order. The third step is to impose a fine. The fine imposed is up to 100000 AFN, which is equivalent to US \$1800. If they find something wrong in the polling and counting process then they order an audit process to audit a polling station or a polling center. In some cases, they order repeat polling in a district, area, province or specific polling centers. During the candidate nomination process, they can also remove candidates from the list. For example, if one files a complaint against eligibility of a candidate and when they find the person guilty after adjudication, they have the right to remove candidates from the candidates' list. The final one is prohibiting the offending individual from serving in the IEC or its Secretariat. This is called blacklist. If the staff of the IEC or IECC are found guilty then they are blacklisted. The blacklisted people can never work for the IECC in future.

Challenges of EDR & EJ in Afghanistan

Invalidation of ballot papers – In 2009, 1.5 million ballots were invalidated by the IECC. The ruling party was ruling the government as well so the leading candidate was the president. They invalidated 1.5 m ballots of the ruling candidate. This created chaos as invalidation is a very serious issue. In such cases, IECC's decision is final and nobody has the right to say anything to their decision because their decision is final.

Special Electoral Tribunal - In 2010, there was one of the constituencies that was ethnically divided – all members of the Parliament came from one specific ethnic group. This lasted for 2 years and finally the President established a Special Electoral Tribunal, which was not mentioned in the law. The special tribunal put together all the electoral processes from IEC and AECC and started investigation of the process. The team did not find anything and did not announce any results. The files were eventually transferred to ECC.

Closed doors in case of allegation – In 2014, both IECC and ECC came under allegations. In the second round of election, one of the two candidates publicly announced that he doesn't trust IEC and IECC. In this case, there was no door to knock on and ask for assistance. It was named the longest elections in the electoral world. At the end, since there was no solution they formed a National Unity Government. The most voted candidate became the President and the second one became the Chief Executive Officer of Afghanistan.

5.3 Summary of the presentation by Election Commission of Bangladesh

Election Disputes Resolution (EDR) refers to the terminology through which every electoral action or procedure can be legally challenged. The system of “Election Dispute Resolution” aim is to ensure real protection and effective enforcement of the political rights to elect or to be elected. To do so, the system ensures to all participants (political parties, citizens and candidates) that the voter’s decision will prevail. The system aids in the protection of certain values that support every electoral action and every electoral procedure in terms of legality, certainty, objectivity, impartiality, authenticity, clarity and justice. The purpose of election disputes is to safeguard the political rights of citizens and legitimate the overall electoral process. Election Disputes are divided into three stages, viz. i) Pre-poll, ii) during poll, and iii) After poll. Pre poll disputes are further divided into two kinds- i) pre poll disputes related to civil matters, and ii) pre poll disputes related to criminal offences.

Pre poll disputes related to civil matter are any kinds of civil disputes that are required to be resolved before or after poll in the High Court Division according to Article 102 of the Constitution of Bangladesh. Pre poll disputes related to criminal offences are defined in Conduct Rules that are designed separately for each kind of election. In Presidential Elections, the disputes are dealt without problems or irregularities because it happens in the Parliament and majority party votes in favor of their candidates. Whereas, in Parliamentary Elections, civil rights violations and criminal offences are committed so there are Conduct Rules for every election.

During poll disputes are also divided into two kinds –i) during poll day disputes related to civil matter; and ii) during poll day disputes related to criminal offence. During poll day, in case of election dispute related to civil matter, such as conspiracy in counting ballot paper, corruption in obtaining result, the aggrieved party has to present the petition before the tribunal constituted by the Commission. After election result is published, there is the government result and after someone is elected, they can challenge the election as a whole or counting of votes or eligibility of candidates within 30 days. During poll day, in case of violation of Conduct Rules and committing criminal offences specified in the concerned election rules, Executive Magistrates and Judicial Magistrates may impose penalty in the form of fine or imprisonment or both because after two years any offense committed by an offender can be resolved by the executive magistrate.

After poll disputes are also divided into two kinds –i) after poll disputes related to civil matters, and ii) after poll disputes related to criminal offence. If any civil matter arises during poll day or after poll, grievance is to be presented by election petition before the specified tribunal and the jurisdiction of such tribunal starts functioning after the publication of election result in official gazette. A petitioner may claim as relief any of the declarations: (a) that election of returned candidate is void, (b) the petitioner or some other person has been duly elected, and (c) that the election as a whole is void. These can be challenged in the form of election petition with the respective tribunals for the respective elections. For after poll disputes related to criminal offence, the same procedure followed on the poll day by the Executive and Judicial Magistrate is followed. The election tribunal shall try to conclude the trial within six months from the date on which the election petition is filed. In Bangladesh, there are 2.6 million cases that have been pending in the subordinate judiciary that has been handled only by 1400 judges. Even in the High Court, there are only 91 judges and 50-60

benches who have to handle 300000 cases. The Supreme Court has two divisions, viz. the appellate division and high court division. The appellate division has 2 benches and they have to handle more than 12000 cases. This is a problem faced in the country. The election tribunal cannot dispose the cases within the mandated time of 6 months. Sometimes takes up to 5 years when it is already time for the next elections. The election tribunal, upon the conclusion of a trial of an election petition, may make an order to dismiss the petition, declare the election of the returned candidate to be void, the petitioner or any other candidate to have been duly elected, or declare the election as a whole to be void.

Special Features of Election Dispute in Bangladesh

- Election Disputes mean any kind of violation of electoral laws including criminal offence and civil wrong.
- To resolve election disputes, tribunal and Magistrate's jurisdictions are fixed by the Election Commission in each election by specific gazette notification.
- In case of Parliament Elections, the civil disputes are resolved in the High Court Division of Bangladesh and all other civil disputes are resolved in the tribunal constituted by official gazette. If any disputes arise after election, at the gazette notification of any member of the Parliament, he can challenge the election by filing election petition before the High Court Division. This is a special feature but all other elections can be challenged before the subordinate judiciary in two tiers- tribunal and appellate.
- The disposal rate of civil disputes by the tribunal is at risk of being unable to comply at the specified time mentioned in certain law as the number of cases are huge in comparison to the number of tribunals. For the Union *Parishad* election, there are so many cases filed before the tribunal but there is a single tribunal from the Election Commission so even though the stipulated time is 6 months, it is impossible to dispose within that time.
- As the tendency of complying the Conduct Rule by the political parties, supporters and activists is very low, the Mobile Court by Executive Magistrate and Summary Trial Court by Judicial Magistrate are to take cognizance of such offences to uphold the law and order situation better.
- As per Art-125(c) of the Constitution of Bangladesh, no order can be passed without giving notice to the Election Commission after declaring the schedule of Parliament Elections.
- Election Commission constitutes an appeal authority to determine the candidature of members whose nomination paper is rejected by the Returning Officer. This is applicable only for Parliamentary Election. If any member of the Parliament's candidature is rejected by the Returning Officer, he can appeal before the Election Commission.
- To resolve civil disputes that arise from *Upazilla* Election (Sub District Election), City Corporation Election, *Pourashava* Election (Municipality Election) and Union *Parishad* Election (Village Council Election), Election Tribunal is constituted by Assistant Judge and Election Appeal Tribunal is constituted by District Judge to dispose election cases. All these tribunals are formed by the Election Commission of Bangladesh with the purpose to resolve election related disputes.
- In case of Union *Parishad* Election, Appeal Tribunal is formed with two members, one is Joint District Judge and other is Additional District Magistrate.

5.4 Summary of the presentation by Election Commission of Bhutan

Election Dispute Settlement System in ECB

Prior to the first Parliamentary Elections held in 2008 in Bhutan, there was no system to resolve electoral disputes. Election Commission of Bhutan (ECB) formed a committee to resolve issues related to electoral disputes. Through the learnings and experiences of the Parliamentary Elections, ECB promulgated and adopted the Election Dispute Settlement Rules and Regulations (EDSRR) in 2009 with Election Dispute Settlement Body (EDSB) in 20 districts. A review of the rules is carried out after every election based on the recommendations provided by the Election Officers and other relevant stakeholders.

A special feature of the Election Dispute System in Bhutan is that the jurisdiction of courts is barred. Court has no authority to contradict the legality or actions taken by the ECB. ECB, during the election period, has the sole authority to implement anything that relates to election disputes. Court has no authority to interact with ECB's activities during the elections period. ECB has all the power related to electoral disputes. They also have the Rule Making Power, which is clearly mentioned in Section 466 of the Election Act.

The Election Dispute System is divided into 3 tiers- at the national level, district level and highest appellate level. At the district level, Election Dispute Settlement Body is chaired by the Chief Election Coordinator. Chief Election Coordinator can be any civil servant of the highest rank (high bureaucrats). At the national level, EDSB is chaired by one of the Election Commissioners. At the highest level, there is the Election Commission as a whole that comprise of 3 Commissioners.

Election Complaints

Not all Election Officers have the authority to receive election complaints. The Chief Election Commissioner, Chief Election Coordinator, National or Micro Observer and Returning Officer- only these 4 people have the authority to receive complaints. In terms of the content, the complaint should clearly indicate the case of controversy, breach & grounds; contain material facts; state the name against whom complaint being filed; should be signed by complainant with full details; and be in written form.

Upon receipt of a complaint, Chief Election Commissioner or Chief Election Coordinator will see if the complaint is genuine or not. If it is not genuine then they will dismiss the complaint for want of prima facie case or conduct Summary Hearing. If the complaint is genuine then they will further give instruction to investigate the case by forming Investigation Committee led by a lawyer and guided by the Investigation Manual. The concerned party should be notified of the hearing within 3 days in advance.

After having received the complaint, if it is due for investigation and there will be a hearing, the concerned party should be notified 3 days in advance. The parties also need to be informed about their rights and given full opportunity to be heard. Before the hearing, they have to be provided with necessary inputs as to how the hearing has to be conducted. There will be a maximum of two hearings before a decision is given. The decision is based on findings of investigation and hearings; majority opinion of members as per the legal provisions; and is final and binding unless appealed within prescribed appeal period.

In terms of penalties, at the district level, at the first instance there is warning, fine, forfeiture and restrain. In the second instance, they will be imposed fine, public reprimand and detained. At the central level, at the first instance, there is warning and fine; forfeiture; administrative action; and detainment. At the second instance, there is restrain/detainment, cancellation of nomination of candidate, nullification of election results, restrain from campaigning or ultimately deregistration of political party.

At the district level, the decision is final and binding unless appealed within 5 days. The appeal has to go to the Central Election Dispute Settlement Body (CEDSB) at the central level and the decision is final and binding unless appealed within 2 days. This appeal will go to the Election Commission. The last date of decision at the district level is 10 days before the poll day and at the central level is 7 days before the poll day. CEDSB gets dissolved 6 days before the poll day and District Election Dispute Settlement Body (DEDSB) gets dissolved 9 days before the poll day. After declaration of the result, the petition can take place 10 days after declaration of results. If it is Parliamentary Elections, it will go to the High Court and if it is Local Government Elections, it has to go to the Concerned District Court. The Election Officials are responsible to give testimony to Court as per Section 475 of the Election Act.

Essential Measures, Issues and Challenges

ESB focuses on awareness to the general public on EDSS during nationwide voter education programmes. Before the start of any Parliament or Local Government Elections, the election officials go to the field to conduct voter education with public. ECB also conducts adequate training for Dispute Settlement Bodies in districts and members of the central body on court procedures and related laws such as CCPC, Penal Code and Evidence Act to Election Officials. They also conduct Learning from Experience Programme (LEP) and workshops after Parliamentary and Local Government Elections. Through this workshop, people come up with lots of feedback, challenges and issues. ECB also takes support of the judiciary for clear and common understandings of the electoral system in the country.

One of the biggest challenges in EDR is gathering of facts, information and evidence. People never come up with issues at the right moment. Losing political party/candidates lodge complaints only after the declaration of election results. Most of the complaints are baseless, unsubstantiated and unjustified. But ECB gives due attention to each complaint. Training of election officials with no legal background is another challenge faced by ECB. All officials who are appointed as election officers, returning officers or micro observers do not have legal background and need to be trained on legal issues. Media coverage and public information is also a challenging issue because although media has an important role in elections, sometimes they give false information to the public.

5.5 Summary of the presentation by Election Commission of India

Disputes can be broadly categorized as i) Pre-election disputes, ii) Disputes during the election process and iii) Post-election disputes. Pre-election disputes can be further classified into three categories i) Disputes relating to Delimitation of Constituencies, ii) Disputes relating to electoral rolls and iii) Disputes pertaining to party symbol.

Disputes relating to Delimitation of Constituencies

After every Census (done in 10 years), a Delimitation Commission is enacted by the Parliament. The commission goes into the redrawing of the boundary of each of the constituency based on which the lower and upper house elections are conducted. The constituency's boundaries are redrawn based on the population. There are also certain reservations to particular communities such as scheduled castes and scheduled tribes. Under Article 327 and Article 328, the decision of the Delimitation Commission cannot be questioned anywhere in any court of law. However, the Delimitation Commission has to necessarily hear the objections and suggestions from all the stakeholders. They have to have the public hearing and each of the objection and suggestion has to be properly disposed of.

Disputes relating to Electoral Rolls

In India, there are 543 parliament constituencies and 6-7 assembly constituencies for each of the parliament constituency wherein the Electoral Registration Officer is in-charge of maintaining the electoral rolls and taking the claims and objections. Any person who turns 18 on 1st January of that particular year becomes eligible to be enrolled in the electoral roll. He files request in a given form to the Electoral Registration Officer and after field verification by the Field Officer, the decision is taken by the Electoral Registration Officer. Before passing any order for inclusion, the Officer has to display the claim being made for inclusion in the electoral roll by every citizen. Any individual (may or may not be a voter) can object to the inclusion of any person and the names are included after due hearing of the objection. If there is any dispute arising in the electoral roll maintained by the Electoral Registration Officer, the appeal lies with the District Election Officer. He takes up any appeal within 7 days against the order of the Electoral Registration Officer. If the District Election Officer's decision has to be given in appeal, the second authority is the Chief Electoral Officer. There is a Chief Electoral Officer in every State and he is the final authority in taking decisions about electoral roll related disputes. However, The High Courts and the Supreme Court can be approached, by virtue of writ jurisdictions, by the agitating or aggrieved parties, if they are not satisfied with the remedial action taken by the Election Commission.

Disputes pertaining to party symbol

The Commission is empowered to issue election symbols order in the light of power vested under Article 324 and 327 of Indian Constitution. The Commission has power to adjudicate any dispute related to newly formed parties and the allocation of symbol. As per the Symbol Order of 1968, the commission takes the decision regarding allocation of symbol or taking back the symbols if a particular party is not conforming to the provisions of the constitution, or if there is any split or merger of the parties, it is to be adjudicated by the commission. A very transparent system is in place wherein sufficient authority is given to the political parties, office bearers of the political parties and it is put in public domain so that any type of objection and suggestion can be taken into account.

Disputes during election

In India, all civil courts have been barred to take up any matter related to conduct of elections when the election process is on. Election process becomes on from the date on which Election Commission announces the schedule for elections for any particular State, States or Parliament. However, High Courts and Supreme Courts can take the writ jurisdiction to try any matter where they feel that a gross violation of the process or procedure is taking place. It is a very exceptional circumstance in which they would be intervening otherwise the Supreme Court has given a clear direction that the High Courts should also refrain from coming into picture when the election process is on. Once the election is over, within 45 days from the date of result declaration, anybody can go to the High Court and in the case of Parliament to the Supreme Court under the writ jurisdiction as election petition. This makes the conduct of elections free from any type of judicial interference during the conduct of election.

Dispute pertaining to election expenditure

As per the representation of Public Act, the expenditure for each of the candidate for State Legislature as well as Parliament has to be within a certain limit. According to Section 78 of R.P. Act, 1951, every contesting candidate is required to lodge a true copy of the account of his election expenses with the District Election Officer (DEO) within 30 days of the declaration of the result of the election. Failure to do the same without good reason or justification may result in disqualification of the candidate concerned by the Election Commission of India under Section 10A of R.P. Act, 1951. Any complaints regarding election expenditure is decided by the Election Commission. There are also Election Expenditure Observers who scrutinize the election process and see that the expenditures are booked properly so that no undue advantage is taken by people who have more money.

Post- election disputes

Post-election disputes arise either due to disqualification arising out of corrupt practices or due to holding of office of profit. After a particular candidate has been elected, he may be disqualified if he does anything that is a corrupt practice as defined by the constitution. Article 191 of Indian Constitution provides the ground of disqualification of a member of the Legislative Assembly or Legislative Council of a State, on the grounds of holding office of profit, unsound mind, insolvency, foreign citizenship, or disqualified by or under any law made by parliament. This has to be decided under Article 192 of the Indian Constitution. For the State Government, it is the Governor and for the Federal Government, it is the President who on complaint of any of the disqualification refers the petition to the Election Commission of India who after holding proper inquiry gives an opinion whether the disqualification is there or not.

Section 123 of the Representation of People Act, 1951, deals with corrupt practices, which include: a) bribery, b) undue influence, c) use of force/coercion d) refrain from voting on grounds of religion, race, caste, community or language, e) attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent, f) use of national symbols, national emblem, national flag prejudicially affecting the election of any other candidate, g) publication of any false statement of in relation to the personal character or conduct of any other candidate, or in relation to his/her candidature, h) false statements relating to elections expenditure, i) abetting or attempting to obtain the service of government servants and j) booth capturing.

5.6 Summary of the presentation by Election Commission of Maldives

Section 4 of the Elections General Act of Maldives states that all Maldivian citizens above 18 years have the right to vote and the mandate of Election Commission is stated in Section 4 of this Act to conduct and supervise all elections in Maldives. Section 7 of Elections General Act states that voting in an election shall be by secret ballot. The 3 types of elections held in Maldives are the Presidential Elections in 2013 (No. of Eligible Voters: 239109), the Parliamentary Elections in 2014 (No. of Eligible Voters: 240652) and the Local Council Elections in 2014 (No. of Eligible Voters: 240220)

Complaint Mechanism- Legal Basis

The Constitution of Maldives (Section 172) states that a person may challenge a decision of the Elections Commission concerning an election or a public referendum, or may challenge the results of an election, or contest the legality of any other matter related to an election, by means of an election petition presented to the High Court. Section 64 of the Elections General Act states that where any person does an act in contravention of this Act or regulations made hereunder, or the specific law pertaining to an election or regulations made thereunder, or a person is dissatisfied with a decision of the Elections Commission pursuant to a complaint raised under section 62 of this Act, or is dissatisfied with the results of the election, the dissatisfied person can file a petition with the High court. According to Section 53 (d) of Local Council Election Regulation 2013, any complaint regarding elections should be submitted to the Elections Commission within 05 (Five) days starting from the date on which the election was held. Complaints submitted to the Island elections committees, Atoll/City Complaints Bureau, and National Complaints Bureau shall be regarded as complaints submitted to the Elections Commission.

Section 10 of the Elections General Act regarding complaints regarding information in the Register of Electors and rectification of the Register states that all Maldivian citizens above the age of 18 years and political parties have the discretion to, raise complaints regarding information in the register of electors or lack thereof, or amendments needed to ensure accuracy of the Register, or removal or inclusion of information in the Register of Electors published pursuant to Section 9. If a complaint needs to be raised pursuant to subsection (a), such should be raised in writing within ten (10) days of publication of the Register Electors in the Government Gazette.

Section 16 of Local Council Election Regulation 2013 states that people wishing to submit complaints in relation to information included or omitted from the eligible voters registry, or in relation to an amendment required to be included or omitted from the registry to validate the registry, may submit complaints to the Focal Points or to the Elections Commission.

Section 10 of Elections (General) Act deals with Complaints regarding information in the Register of Electors and rectification of the Register. It states that within 5 days, the Elections Commission shall investigate the complaints and give its decision. The Commission must notify the complainant in writing of the reasons for the decision of the Commission within this period. Where a person is dissatisfied with a decision of the Commission and within 5 days of receipt of the decision of the Elections Commission, the individual is entitled to make an application to the High Court of the Maldives for a determination on the matter. The High Court of the Maldives shall give a decision regarding a matter raised within not more than 15 days of the application.

Section 21 of the Elections (General) Act deals with decision made on applications for candidacy. Where an applicant is dissatisfied with the reasons provided by the Elections Commission and the reasons go to whether the individual satisfies the criteria specified for candidacy for that election, the applicant has the right to file a petition at the Supreme court or where the refusal is for any other reason(s), the applicant has the right to file a petition at the High Court. A candidate wishing to petition the Supreme Court or the High Court should do so within not more than 5 days after the completion of 48 hours. The court shall make a decision on the matter within 7 days of the petition. Section 29 of Elections (General) Act states the code of ethics. During a campaign to get support for a particular candidate, no one should do anything to encroach on the election rights of any other candidates. Nor should any one use untruthful information regarding another candidate.

Election Complaints

As per Section 63 of Elections (General) Act, the people who have the right to complaints are every individual having the right to vote in the election; every candidate contesting in the election; political parties; election observers and election monitors approved under this Act by the Elections Commission; and elections officials. Section 49 of Local Council Election Regulation 2013 states that on announcement of the commencement of the process for applying for local council candidacy, a National Elections Complaints Bureau consisting of 5 members shall be established. An Atoll/ City Elections Complaints Bureau consisting of 3 members shall be established in every city and Atoll other than in Male, 10 days prior to the Election Day. On establishment of the complaint bureaus, the place of establishment of the bureaus, contact numbers, fax numbers, email addresses, and open hours shall be publicly announced.

The 3 bodies that play a role in EDR are Island Focal Point; Atoll Focal Point and National Complaints Bureau. The Chief of the Ballot box at every polling station shall be responsible for receiving the complaints arising in polling stations and undertaking the responsibility of the complaints officer. The complaints officer shall be responsible for investigating and resolving the complaints submitted to the Polling Station. Assistance of the Island Focal point or the Election Commission Administration shall be sought where the officer is unable to resolve a complaint. Complaints may be submitted to the Atoll/City Complaints Bureau where the person is dissatisfied by the decision of the Chief of the ballot box or complaints officer in relation to the problems arising at the polling station. Complaints shall be submitted to the National Complaints Bureau if in Male’.

Where a complaint relating to the Election is submitted to the Island focal point, necessary steps with regard to the complaint shall be made on a day-to-day basis. Where the Island Focal Point is unable to resolve the issue, the advice of the Atoll/City Elections Complaint Bureau may be obtained, if the Atoll/City Elections Complaint Bureau has been established. Prior to that the advice of the Atoll/City Focal point may be obtained. Where a complaint is submitted to the Atoll/City Focal point prior to the establishment of the Atoll/City Elections Complaints Bureau, the complaint shall be dealt with in the manner directed by the National Elections Complaints Bureau. And on establishment of the Atoll/City Elections Complaints Bureau, in the manner directed by that Bureau. Election related complaints in the Male’ City shall be submitted directly to the National Elections Complaints Bureau. Complaints submitted prior to the establishment of the Elections Complaints Bureau, shall be submitted to the Administration of the Elections Commission.

Regarding the complaints regarding Voter’s Registry, all complaints were accepted through

a specific form designed to report complaints. All complaints were based on the information given by the Voter's registration section of the Elections Commission. Regarding complaints of the elections in general, all complaints were dealt cooperatively with the appointed island focal points and atoll complaints bureaus. If any administrative information were needed, assistance from the Elections Commission was provided. In complaints where it was necessary, witnesses, the defender or chief of ballot box were presented to the bureau and their words were taken into consideration as well. All information regarding the complaint were fairly discussed with all the members of the bureau and a copy of a report signed by all five members were sent to the Elections Commission. The claimant was also being informed in writing about the decision of the bureau.

In 2013 Presidential Elections, a political party filed a complaint against the Election Commission with the Supreme Court regarding the validity of the elections. The verdict was heard against the Election Commission and they had to conduct the elections again. In Maldives, Supreme Court and High Court has power in electoral related disputes.

5.7 Summary of the presentation by Election Commission of Nepal

Election Commission of Nepal is an independent constitutional Election Management Body in Nepal. There are five Commissioners including the Chief Election Commissioner who works as the Chair of the Commission. The Constitution of Nepal has provided the rights and responsibilities of the Commission for conducting, supervising, directing and controlling the elections of the President, Vice-President, the Federal Parliament, Provincial Assemblies and the Local level. In Nepalese context, electoral dispute resolution can be analyzed from policy and structural levels.

In the policy area, the Constitutional Bench as ensured by the Constitution of Nepal, Election Commission Act, 2007; Election Offence and Punishment Act, 2007; and Election Code of Conduct constitute the guiding policy framework. Similarly, in relation to the structural arrangements, Constitutional Bench in the Supreme Court, Electoral Dispute Resolution Committees, Macro and Micro Election Monitoring Teams, Returning Officers, Regional and District Election Offices and Polling Officers have main roles for electoral dispute resolution.

In order to ensure the an effective dispute resolution mechanism in the Constituent Assembly Elections, 2008, there was Complaint Settlement Committee in the Commission while there were Code of Conduct Coordination Committees in each of the constituencies. Similarly in the Constituent Assembly Elections, 2013, there were Electoral Dispute Resolution Committee in the Commission, Election Code of Conduct Implementation and Monitoring Committee in each of the constituencies, Code of Conduct Implementation and Complaints Management Unit, and the Media Monitoring Mechanism. Moreover, Electoral Dispute Resolution Directive had also been brought to ease and systematize the dispute resolution processes.

There are some challenges of increasing awareness among the voters and the political parties about the electoral dispute and its resolving mechanism, reducing the fractions in political parties, managing increasing number of political parties, and regulating the campaign finance. To mitigate such challenges, the requirements of consolidation of the election related acts and avoiding ambiguities in them, introducing the provision of threshold, having regular interactions with the stakeholders and institutionalizing the dispute resolution mechanisms towards perfection have been felt.

5.8 Summary of the presentation by Election Commission of Pakistan

Electoral dispute resolution in Pakistan can be divided into three phases- Pre Election, During Election and Post-Election.

Pre-election

The pre-election activities comprises of several steps that need proper designated authorities for the redressal of complaints. The first activity during pre-election is Delimitation. It's the initial step for the identification of boundaries of a constituency. If the process is not transparent, it will lead to a number of complaints that will leave a question mark on the reputation of the Election Commission. The process of delimitation in Pakistan has been laid down in Articles 4, 5 and 6 of the Conduct of General Election Order, 2002 and sub-section 3 of Section 10 of Delimitation of Constituencies Act, 1974. The second activity is preparation of draft by Delimitation Authority. The Election Commission appoints the Delimitation Authority, who invites proposals for the delimitation of constituencies keeping in view the will of the people, geographical aspects and population of an area. The draft is prepared by the Delimitation Authority who is appointed by the Election Commission. After compilation of the draft, it remains on display for a period of 15-days. Any person who is entitled to vote at an election to a national or provincial assembly constituency may file a representation to Election Commission within this period. The Commission after hearing and considering the representation may alter or modify the draft / preliminary delimitation. The Commission has the powers to make amendments, alterations and modifications in the final list of constituencies at any time of its motion (Section 10A of Delimitation of Constituencies).

The process regarding preparation of Electoral Rolls and registration of votes has been laid down in Electoral Rolls Act, 1976 and Electoral Rolls Rule, 1974. For preparation of fresh electoral rolls, the staff is appointed from most of the government departments. If any person has objection regarding appointment of staff, he can approach District Election Officer, Provincial Election Commissioner or Secretary, Election Commission. On the basis of data compiled by the verification staff, draft electoral roll is published and it remains on display for a period of 21 days. As per Section 8 of Electoral Act, 1976, draft electoral rolls are published for addressing any claims and objections. In case of any complaint regarding registration of vote in particular or as a whole, the complainant may approach Revising Authority for filing an objection. The Revising Authority issues notices to both the parties for deciding the said application (Section 9 of Electoral Act, 1976).

The process of registration of single vote goes on round the year till the constituency is called upon to elect its representative. It freezes only in that period otherwise it remains active throughout the year. If a person intends to register himself as a voter, he can approach the Registration Officer and after due satisfaction according to the procedure and necessary documents, he can be registered as a voter. If he has any objection regarding registration of a single vote, he can approach Provincial Election Commissioner and Secretary of Election Commission in writing or complaint may also be filed with the Regional Election Commissioner.

Prior to elections, Election Commission appoints several functionaries for the conduct of an election viz. District Returning Officer (DRO), Returning Officer (RO) and Assistant Returning Officer (ARO). If any person or a party has objection regarding their appointment or impartiality, they can approach Provincial Election Commissioner and Secretary, Election

Commission. The Provincial Election Commissioner submits his report to the Secretary, Election Commission who can recommend a substitute for any of the functionaries.

During elections, a large number of complaints are filed regarding the establishment of polling stations. For the said purpose, the electoral act, 1976 provides under section 8 that polling scheme shall be published prior to 15-days of poll. If any person has objection regarding any polling station, he can approach Returning Officer, District Returning Officer, Provincial Election Commissioner or Secretary, Election Commission.

During Election

During the election process, two types of complaints are received that requires prompt redressal. These complaints either can be filed from a single person or from a political party. These are (i) violation of election laws and code of conduct and (ii) law and order.

The complaints relating to violation of election laws and code of conduct are dealt by Election Commission so designated authorities are instantly approached for resolution of the issue. Law and order are dealt by the Home Department and other law enforcing agencies. It is the prime responsibility of the Returning Officer to dispose-off all the assignments of election according to law. If any person is aggrieved about the decision of nomination paper, he can approach Appellate Authorities who are appointed for the disposal of appeals regarding disposal or acceptance of nomination papers. The provision is laid out in Sub-Section 5 of Section 14 of Representation of People Act-1976. If he is not satisfied with the decision of the Appellate Authority, he can approach the High Court or Supreme Court for the disposal of his claim. If there is any complaint regarding process of election, it is dealt by Provincial Election Commissioner and Secretary, Election Commission.

During the process of poll, objections may arise regarding genuineness of votes. If a voter who produces himself before a Presiding Officer shows that he is a voter but is not registered in that particular area, the Presiding Officer is the main authority to take up the complaint. A number of objections may arise during preparation of results that counting has not been done according to the laws and set procedure. These complaints are filed before the Presiding Officer and then the Returning Officer. During General Elections 2013, recounting for a single constituency was done 7 times and at the order of the Supreme Court, the 8th counting was done at the office of the Returning Officer. The result of that constituency was pending for 12 days.

A petition against any objection regarding announcement of results are filed before the Returning Officer and District Returning Officers (DROs). During General Election, 2013, 25 such applications were filed before the Election Commission. After hearing the parties, 11 petitions were accepted and 14 were disposed-off. Under Section 103 AA, such applications are taken up by Election Commission of Pakistan. There is a provision in Representation of People's Act that after an announcement of unofficial result, the Election Commission can hear the cases of any constituency and it can order re-poll, recount or re-election in that constituency. After the conduct of General Elections, 2013, 277 appeals were filed before Election Commission out of which 6 were accepted and 271 were rejected.

Post-Election

The Election Commission appoints Election Tribunals for the trial and disposal of Election Petitions. These are laid down under Section 57 of Electoral Act, 1976. However, if a person is aggrieved or not satisfied with the performance of the Election Tribunals, he can approach

the Election Commission of transfer of his election petition to any other tribunal. An appeal can be filed against the decision of Election Tribunal in High Court and Supreme Court within 30 days. However, if the complainant is not satisfied with the decision of High Court, he may approach Supreme Court for the redressal of his grievance.

Revolutionary Steps of Election Commission for complaint resolution

Computerized National Identity Card

Prior to General Elections held in 2008, electoral rolls were based upon National Identity Card Numbers. It only had thumb impressions and did not have other identification. A large number of complaints in this context were received that electoral rolls bear voters that actually do not exist in original or they have been registered twice or thrice. In order to resolve the issue, in 2008, Election Commission put on a proposal regarding adopting Computerized National Identity Card (CNIC) as the basic document for registration of vote. After comparison and removal of fake and duplicate voters from the electoral rolls, the number of voters in two provinces of country decreased about 1.5 million.

Recently, Election Commission has started process monitoring of elections. The Secretary, Election Commission appoints officers of one district to monitor election process in other district. These officers are directly monitored and controlled by the Provincial Election Commissioners and they submit their report to the Secretary, Election Commission.

Adoption of Pictorial Electoral Rolls

There was a general concept that votes on polling stations in some areas have been cast by a person who is not actually registered as a voter in that electoral area. Specially, such complaints were received from female polling stations that fake voters try to cast their votes, hence a large number of votes were challenged. The reason behind the problem was unavailability of pictures of voters on the electoral rolls.

The Election Commission adopted pictorial electoral rolls that are only used on polling stations and bears pictures of voters. These pictorial electoral rolls are not made public but only provided to the Returning Officers and they are placed in polling bags i.e. to be opened at the polling station and re-sealed after culmination of poll.

Appointment of Retired judges as Election Tribunal

From the experience of past elections, Election Commission appointed retired district and session judges as Election Tribunal to dispose-off election petitions after General Elections, 2013. Prior to that, judges from High Court were appointed as Election Tribunals and some of the election petitions took three to four years for disposal. By adopting this procedure, the Election Commission successfully gained trust of the people. After General Elections 2013, 387 elections petitions were filed throughout the country. 376 petitions have been disposed-off so far while 11 petitions are still pending due to the stay order passed by the Supreme Court in some cases.

Registration as voter at the time of attaining the age of 18-years

As per the provision of Section 6 of Electoral Rolls Act, 1976, a person is qualified to be registered as voter if he is 18-years old. The NADRA authorities issue CNIC on the basis of age at the time of issuance of CNIC, the person has to fill in a form showing area where

he intends to register his vote. Provided that he should satisfy the Registration Officer regarding his place of residence. If he has any objection regarding his place of registration, he can approach the Registration Officer for correction.

Permanent Polling Stations and SMS service

In view of the routine of complaints filed during elections regarding location of polling stations, the Election Commission is carrying out a process for establishment of permanent polling stations. For the purpose, a pilot project was launched in Islamabad and location of polling stations was successfully connected with Google provided with the picture of polling station and address. Any person who intends to check his vote can open the website of Election Commission and see his picture and with the SMS service, he can identify the polling station. The Election Commission is also taking advantage of GIS facility and coordinates of all polling stations is being collected with the help of teams comprising upon staff of Election Commission. For information of public, the Election Commission has started an information service through SMS wherein a person can send his CNIC to 8300 and he can obtain information regarding his place of registration and the polling station where he will cast his vote.

5.9 Summary of the presentation by Election Commission of Sri Lanka

Electoral Dispute Resolution & Electoral Justice in Sri Lanka

Sri Lankan election disputes can be categorized into the following:

1. Violence (Intimidation, Assaults, Loss of Lives, Damage to Property, Firing, Damage to Decorations)
2. Violation of Law (Abuse of public property; Abuse of public building; Involvement of public officers; Misuse of media; Distribution of goods, Illegal propaganda materials (banners, posters and etc.); Illegal meetings, rallies; Illegal appointments and promotions; Security; Obstruction to propaganda; Complaints related to postal voting)

In the last General Election 2015, there were 1705 total complaints (1663 violation of law and 42 violence). The electoral violence can be broken into three main categories as physical electoral violence (rough handling, beating or flogging, inflicting other types of injuries and even election-related assassination); psychological electoral violence (threat of the use of violence, especially threat of attacking polling stations and other voting venues); and structural electoral violence (institutional or legal frameworks to keep people disfranchise or keep them away from political relevance).

Practices in Electoral Dispute Resolution and Electoral Justice

National Investigation and Complaint Management Center

National Investigation and Complaint Management Center is established at the Election Secretariat for every election. The Center is a joint mission of senior civil officials and police officials. They operate it from the head office and has regional powered representatives at the regional level. Direct intervention to violence through police, complaint management, dispute resolution, complaint recording and making recommendations to the election management bodies are the key function of this center.

Complaints, Petitions and Appeals

There is a provision for complaints and petitions under different acts provided in each election. It is clearly stated that if anybody has any issue they can file petition with the court. In the constitution, there is a special chapter on elections, which clearly gives direction and power to the Election Commission to act independently.

Upholding the Fundamental Human Rights

During elections, fundamental human rights such as freedom of speech, freedom of opinion and ideas, information, assembly, movement and association must not be infringed in terms of the provisions of the Election Law.

Offences, Penalties and Maintenance of Order

While it is important to maintain peace and order at polling venues, efforts should be made to balance the potential intimidating effects of security officials and other agents deployed to

ensure the maintenance of peace and order. The task of maintaining order at polling stations should be assigned to police officers trained for the specific purpose. Each of the appointed election official may be provided with an extensive set of guidelines, rules and regulations to be in line with the election law and expected duties.

Media Access and Regulation

Sri Lankan election law provides legal provision to control over the public media. However in order to cover the private media a set of Media Guidelines has been issued with the approval of the Parliament. Media regulations and guidelines provide safeguards against illegal political censorship, unfair advantage enjoyed by incumbents and ruling party candidates and unequal access during campaign period.

Public Information and Voter Enlightenment Programme

Public enlightenment and voter education is carried out by the election commission and it is well accepted by the civil society. The information as to where, when, and how to vote, as well as on why voting is important is disseminated among public. They must be confident in the integrity of the process and in their right to participation in it. Furthermore, the non-violence political participation at the election process is always promoted. The commission does lots of campaigns and awareness programs. They also have Facebook and Twitter accounts for people to give their comments.

Observation and Verification

Representatives of political parties and candidates should be allowed to make observations and verifications of election preparations, voting and counting. This process is also reinforced by the presence of non-partisan election observers from national and international non-governmental and international organizations. Public confidence in the electoral process is retained through such strategies of transparency.

Legal Authority and Structure

Each election is facilitated and supported by the Parliament Acts and many of other regulations made by the Election Commission as and when necessary. In addition, all above Acts and regulations are based on the Constitution of the country which enshrines the political rights, freedom of expression, sovereignty, democracy and etc.

Guiding Principles for election officials

All election officials are government officials. As public servants, electoral officials have certain obligations towards the public and these should be reflected in their day to day conduct. Apart from the fact that the electoral officials are committed to the principles which are the foundation stones of electoral good practice and they are ever willing to provide high quality electoral service to all stakeholders. Their conduct, especially during election season, are guided by the following principles (Integrity, Impartiality, Independence, Transparency, Efficiency, Service-mindedness and Professionalism).

Code of Conduct

Code of conduct for political parties and candidates is issued by the Election Commission at every election especially for campaigning and propaganda activities.

Future Plans

- The Election Commission is planning to establish Election Disputes Resolution Committee comprising of a Rtd. High Court Judge (Chairman), Director General of Elections, Rtd. Secretary of a Ministry, Rtd. Senior Deputy Inspector General of Police (elections), Rtd Add. Commissioner of Election, Secretary of the Election Commission, Add. Commissioner of Election (Legal), Director Legal of the Election Commission, an Ass. Commissioner as Coordinator and the Chairman and Members of the Commission in advisory capacity.
- To get required legal provisions adopted for the committee to work on election conflict prevention and dispute resolution;
- To study and research similar practices and develop a Standards Operational Procedures (SOPs) for dispute management.
- To improve dispute management from single-track diplomacy to multi-track diplomacy; civic education programs with children and youth targeting on violence issues
- To improve gender activism and use of technology in election process as a tool of election dispute resolution;
- To identify conflict sensitivity indicators and introduce an early warning systems in conflict management; and
- To develop knowledge management setup (KM) for lessons learnt

5.10 Summary of the presentation by NEC of Republic of Korea

Introduction of NEC of Korea

Korea introduced modern democratic system in 1948 about 70 years. Since the first election, democracy and election has faced turbulent democracy before establishing as a stable democracy like today. The National Election Commission (NEC) established in 1963 and the first government was formed in 1948. Range of election crimes occurred during presidential election in 1960, introduced the amendment in the constitution and elevated NEC of Korea to the current status. NEC of Korea is independent, constitutional agency to organise elections and referendums. It also administratively manage political parties and political funds. It is an independent body separated from executive, legislative and judicial bodies. In order to ensure fair electoral management, key factors of NEC are neutrality and impartiality. NEC is composed of 9 commissioner- 3 members nominated by the President, 3 members nominated by the National Assembly and rest 3 members nominated by the Supreme Court will serve as a single 6 year term and serve consecutively for two-term by the law. However, the Commissioner shall be dismissed because of some of the following reasons:

- when are they are impeached, sentence to imprisonment, or heavy fined imposed;
- associated with political parties or participate in any political party activities;
- when is not a member of National Assembly

NEC has 4 tier structure having one National level office, 17 metropolitan regions offices, 251 counties or cities offices and 3,494 villages or town offices. It has 2800 polling staff working at all levels.

Duties of NEC- The polling officials manage presidential, national assembly elections, local elections, national referendums, resident referendums or recall vote. NEC also deal with political parties, political funds affair, and civic education on democracy and research on electoral and political system. These days NEC has also promoted international relationship with other countries and other election management bodies.

Electoral Dispute Resolution

NEC adopted a council system by which decision are made in consensus to enhance the independence of the EMB to prohibit all Commissioners to participate in any kind of political activity. In the Council, the chairperson is selected among from the Commissioners. The political parties in the National Assembly, can nominate a Commissioner to each Election Commission, except at national level. These each nominated Commissioner can participate in the whole process of every elections like printing ballot paper, counting, voting process etc. Candidates such as campaign manager, treasurers etc. shall be detained if has committed any serious electoral offences until the ballot is received. Even in election crime, for election crime investigating purpose, a warrant for a candidate or agent cannot issued during election period. These election laws stipulates political party, candidates, election campaigner, agents shall obey the election law and not doing any immoral or social orders, by guaranteeing fair election campaign. EMB hold a debate between candidates, put up candidate campaign, poster and distribute official campaign literature. Media, broadcast, social media, print media, and periodic media should be unbiased to the candidates when

reporting and commenting on their platform, policies and political values. Public officials are reported to maintain neutrality and shall not exercise any unreasonable influence over the election results. Candidates can spend their campaign amount within the ceiling as decided by NEC and should be recorded. The accountant must keep the record of the financial activity including all income sources, and expenditure of the designated bank accounts. After the election, political parties and candidates shall submit the financial report of all income and expenditure to the competent Election Commission for auditing and public disclosure.

Election Investigation and Enforcement

Election Commission has authority to investigate any election law violation and has the power to administer measures from the suspected violation. Further investigation is from the judicial authority depending on the nature of the offences. Also, the judicial authority such as prosecutor or police may probe into election fraud separately from the Commission. The Commissioners and the election officials may investigate any places where the election laws violated are suspected to have taken place. The people or any concern should submit a document related to violation if any suspected. Also they are permitted to confiscate any evidence from the scene, it is investigated to the suspect and the people in the scene to come to EC office or be present designated place. In addition, the Commission may also ask the perpetrators and victims to stop the unlawful activity if the criminal are caught from the scene.

During elections, workforce of election office is not enough to regulate election law violation. That is the reason each election commission has Election Surveillance Unit also called watch dog group. The watchdog group consisting of non-partisan citizens working with the Election Commission at each level in order to efficiently and effectively respond to election law violation occurring in the election process. They help election official collect evidence and assist in investigation. In non-election period watchdog group consists of only 10 members at each Election Commission, but during election period, it is increased to 30 members. Allowance are provided to the watchdog members by EC. Additionally, to prevent illegal election online activity that NEC operates, a Cyber monitoring group of 10 members in non-election time and 20 members during elections period are mobilised.

Since the nature of election offences is covert the EC introduced reward system, in order to encourage the citizens to report election offences. The system rewards up to 500,000 US dollars and identity of reports are thoroughly protected. Offender who surrenders to the EC, the punishment shall be mitigated or discharge in some cases. The citizen who receives money, meal, gifts from candidates may receive a fine up to 50 times what they receive.

Measures

If there are disputes or dispute over validation of results the mentioned measures are selected and relevant legal procedures are divided into three parts,

Administrative measure- To solve the disputes, through one of the examples - by law the observers nominated by political party or candidates are entitled to observe the entire process of counting. The counting process is also open to media. In particular, candidates and their spouse are also allowed to observe in person. In case of slight margin in number of votes obtained by each candidate or party, recounting of ballots can be conducted with the mutual consent with the candidates to avoid legal battle over the results. The counting is not time consuming and can be done quickly through the counting and sorting machines.

Electoral Petition- Election Petition should be filed with each Election Commission. For local election, we have relatively large number of candidates and disputes. Election Petition System lessens the burden of a judicial authorities and deal with all the cases. It saves time and cost for EC and review and promptly correct any mistakes and errors.

Electoral Litigation- Election litigation in the case of election law suit made in local elections, petition, a law suit be filed first in high court or supreme court if the candidate is not satisfied from the hearing of the petition. Jurisdiction or law suit in regards to national assembly elections or presidential elections remains with the Supreme Court relating to single trail system. In regards, to election litigation, if the law violations are reported, the court shall only invalidate the results of the elections provided it has deemed substantial effect on the results. If the result of elections are invalidated, there are two measures- invalidation due to errors in counting, winners will be re-determined. If invalidation is due to ineligibility of the elected, re-election will be announced. With a strict regulation mentioned above election law violations and close supervision by the EC, the practice of a corrupt campaign is time-out in Korea. EC strongly believes the value.

Conclusion

According to the Economist Information Magazine (EIU) the research and analysis and research of the economist group in the UK, the election system and management is Korea operate is in a world class manner. NEC in Korea has made several efforts to improve election culture. There has been lot of changes in Electoral System. However, we still have several challenges to cope with like low turnout, regionalism in elections etc. NEC truly believe in the future for more profound, research and analysis of the relationship between EMBs and election management and election fairness are needed resolving for election dispute.

6. OUTCOME

Kathmandu Outcomes on Regional Workshop on Electoral Dispute Resolution and Electoral Justice

21 -22 July 2016

Election related disputes are an intrinsic part of the electoral process and the credibility of the settlement process is very important. The challenges to election results, or the conduct of elections, should not be considered a weakness of the electoral system, but a sign of its resilience. For effective and efficient Electoral Justice System, all concerned stakeholders including Election Management Bodies, Electoral Dispute Settlement Bodies, political Parties, candidates, voters and media have to abide by the electoral laws and adhere to universal democratic principles. The Electoral Management Bodies realize the significance of electoral dispute resolution and electoral justice system and of the importance of legal provisions, institutional structures and procedures adopted by all the participating Election Management Bodies (EMBs) of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Republic of Korea and Sri Lanka.

The participants have agreed on the following points in the Regional Workshop on Electoral Dispute Resolution and Electoral Justice, held on 21-22 July 2016 in Kathmandu and named it the KATHMANDU OUTCOME.

1. Electoral dispute settlement mechanism should be effective to contribute to enhance the credibility and general acceptance of elections at all levels,
2. Disputes must be resolved promptly in a fair and transparent manner contributing to electoral integrity,
3. Effective and efficient Electoral Dispute Resolution instruments and mechanisms are essential to ensure prevention of disputes in the first place to ensure free and fair elections particularly in emerging democracies,
4. We must also give due consideration to restorative justice for the victim while the disputes are addressed as promptly as possible,
5. Electoral Dispute Resolution mechanism should take due priority in all the EMBs for ensuring that everyone is entitled to a fair hearing by an independent and impartial tribunal, which may be an Election Commission or a Court of law, in the determination of his rights and obligations and of any criminal charges against him (Article 10 of UDHR & Article 14 of ICCPR)
6. Electoral disputes are likely in all three phases; Pre, During and Post, therefore, a permanent and dedicated mechanism and Common Standard Operational Procedures should be in place to address such issues in legitimate and timely manner,
7. Laws and mechanisms on dispute resolution should be simple and concise for electoral stakeholders to understand and practice efficiently.
8. Efforts are to be directed to adopt user-friendly ICT to promote transparency in EDR process to enhance the credibility of elections.

9. To ensure the common goal of free and fair elections along with ensuring accessible electoral justice system, concerned Election Management Bodies need to establish robust collaboration, sharing and partnerships between and among them.

7. CLOSING SESSION

Closing Remarks of Hon'ble Dr. Ayodhee Prasad Yadav

Namaskar and Good Morning, Respected Delegates and Participants!

I am delighted to join you at the closing session of The Regional Workshop on Electoral Dispute Resolution and Electoral Justice today. The Workshop brought together more than 100 distinguished delegates including former Chief Election Commissioners, Commissioners, Legal Experts, Politicians, Bureaucrats, High-Level EMBS officials from FEMBOSA member states and Republic of South Korea and as well as international experts and representatives of development partners, among others. Please join me in thanking all esteemed speakers for sharing their country specific EDR, instruments, mechanism, challenges and method of mitigating such EDR through their valuable insights, meaningful discussion and reflections. All the presentations were well structured and provided in-depth analysis of various aspects and diminution of EDR.

Several institutional, structural and procedural measures have been taken by each EMBs in the South Asia to manage electoral dispute and electoral justice legitimately. EMBs recognized the importance of adopting EDR instruments as a preventive measures to hold credible elections.

Former Chief Election Commissioner Bhoj Raj Pokharel presented Nepal's experiences on EDR and shared regional and global perspectives on effective EDR and Electoral Justice System. Kenya learned from violent Presidential election in 2007 and undertook appropriate legal and regulatory reforms to establish EDR mechanism before 2013 Presidential elections. Both emerging democracies and established democracies are vulnerable to electoral disputes in all phases of electoral cycle.

I am happy to learn that Afghanistan has a provision on imposing a fine up to USD 18,000 as one of the measures to manage election related disputes. Likewise, Bangladesh has a distinct categorization of pre-during-post poll election dispute related to civil matters and criminal offenses. Similarly, Bhutan has established Election Dispute Settlement System and has a provision of establishing Election Dispute Settlement Body at district level. India has been practicing a comprehensive legal mechanism and judicial tribunal to resolve electoral disputes; Maldives has established National Complaint Bureau to deal with electoral disputes. Pakistan has provision for election tribunals for resolving EDR related petitions and complaints.

In the same manner, Sri Lanka categorized election disputes in two categories of violence and violation of law in post-independence era, and established a dedicated Centre for investigation and complaints management, initiated knowledge management for EDR. In Nepal, EDR mechanism has been arranged in constitutional level with the provision of sound and efficient EDR mechanism. In South Korea, EDR comprises of precautionary measures,

election investigation and enforcement and, electoral petition and litigation, among other.

To sum up, I just want to emphasize EMBs should recognize EDR mechanisms and models “best fit” for country specific political and electoral contexts rather than “best practices”. Three forms of EDR practices either preventive system, or EDR system, or Alternative Dispute Resolution System are widely used to resolve electoral disputes in a timely, fair and transparent manner.

Before closing the Workshop, I will take this opportunity to urge all FEMBOSA member country and all to promote electoral integrity and credible electoral processes. Let’s also pledge our collective commitment to implement and embrace outcomes of this important Workshop.

Finally, On behalf of Election Commission of Nepal, I would like to thank everyone for your participation and excellent deliberations. I would also like to express my heartily appreciation for the hard work of my staff for making this Workshop possible and productive. Likewise, I would like to thank the hotel management for their hospitality during these two days. Last but not the least, I would like to thank the artists of Cultural Corporation of Nepal for their lively performance last night. Special thanks to UNDP Electoral Support Project Team for making necessary logistical arrangements for the Workshop.

I wish all international delegates a very happy excursion to our national heritage and landmarks in the Kathmandu valley this afternoon.

Thank you all and have a good day!

Closing remarks by Herath Mudiyansele thilakasiri Dissanayake, Secretary, Sri Lanka

We would like to express our sincere thanks to the Election Commission of Nepal (ECN) for organizing this valuable workshop on Electoral Dispute Resolution (EDR) and Electoral Justice (EJ) and inviting us to participate in this important event. Being South Asian, we have been practicing universal franchise through voting since the last six to seven decades. Among us, some are new to the system but most of the countries in South Asia are practicing this universal franchise for a long time. Disputes in elections are inherent and unavoidable. However, we faced and managed disputes and conflicts through our own ways, methods and legal provisions to ensure electoral justice. But it does not mean that we were able to reduce many conflicts and disputes during elections. After establishing FEMBOSA, we created a space to share our management practices and knowledge. However, nobody took initiation in the subject of EDR and EJ. The ECN has initiated this discussion and invited all of us to this forum. We must thank the ECN on behalf of the FEMBOSA members for this great initiation. During the 2-days forum, we could share our EDR practices and processes, legal provisions, unique approaches and experiences. The program structure and energetic participants contributed to fruitful discussions. On behalf of the Chairman of FEMBOSA, I must thank the ECN and all participants for their contribution to make this event successful. We all know that win-win situations are hypothetical so we should accept all disputes positively and transform the energy of the conflicts towards better situations. In doing that, we need skills and expertise. This sort of programs are very helpful for that. Finally, I would like to suggest all FEMBOSA members and other countries to continue this discussion on EDR and EJ annually until we develop common standards for the development of our regions as well as other countries.

8. ANNEXES

8.1 Agenda

21ST JULY 2016 (DAY FIRST)

Venue: Hotel Yak & Yeti, Regal Hall, Durbar Marg, Kathmandu.

08:00-08:45 Registration

08:45 All the participants and Guests to be seated

08:55 Arrival of the Chief Guest, Ms. Sushila Karki, Rt. Hon'ble Chief Justice of Nepal

A) INAUGURAL SESSION (9:00-10:00)

- National Anthem
- Welcome address: By Ms. Ila Sharma, Hon'ble Election Commissioner
- Inauguration of Program by lighting the lamp- By the Chief Guest, Ms. Sushila Karki, Rt. Hon'ble Chief Justice of Nepal
- Statement: By Dr. Ayodhee Prasad Yadav, Hon'ble Chief Election Commissioner
- Inaugural Address: By Ms. Sushila Karki, Rt. Hon'ble Chief Justice of Nepal and the Chief Guest of the Programme
- Vote of Thanks: By Mr. Sharada Prasad Trital, Secretary of the Commission

(10.00-10:10) Photo Opportunity

(10.15-10:30) Tea & Coffee

B) THEMATIC SESSION: Theme Paper Presentation on ' Electoral Dispute Resolution (EDR) and Electoral Justice (EJ)' (10:30- 13:00)

Presentation: Mr. Bhoj Raj Pokharel, Former Chief Election Commissioner of Nepal

Chair: Mr. M. Hussain Gorziwani , IEC Commissioner, Afghanistan

Moderator: Mr. Herath Mudiyanseelage Thilakasiri Dissanayake, Secretary, Sri Lanka

Plenary Discussion: Contribution by All Participants

13:00-14:00 Lunch

C) TECHNICAL SESSION-I: Country Paper Presentation on 'Electoral Dispute Resolution(EDR) and Electoral Justice (EJ)' (14:00- 15:05)

Presentation:

a) Afghanistan

b) Bangladesh

Chair: Mr. Waseem Ahmed, Deputy Director, Pakistan

Moderator: Mr. Pema, Sr. Dzongkhag Election Officer, Bhutan

Plenary Discussion: Contribution by All Participants

15:05-15:20 Tea Break

D) TECHNICAL SESSION-II: Country Paper Presentation on 'Electoral Dispute Resolution(EDR) and Electoral Justice (EJ)' (15:20- 16:25)

Presentation:

c) Bhutan

d) India

Chair: Mr. Mohammad Abu Hafiz, Election Commissioner, Bangladesh

Moderator : Mr. Neel Kantha Uprety, Former Chief Election Commissioner of Nepal

Plenary Discussion: Contribution by All Participants

16:25-16:40 Tea Break

E) TECHNICAL SESSION-III: Country Paper Presentation on 'Electoral Dispute Resolution(EDR) and Electoral Justice (EJ)' (16:40- 17:45)

Presentation:

e) Maldives

f) Nepal : Ms. Ila Sharma, Election Commissioner

Chair: Mr. Sandeep Saxena, Deputy election Commissioner, India

Moderator : Mr. Lee Jindal, Head of a Regional Office, Republic of Korea

Plenary Discussion: Contribution by All Participants

17:45-18:00 Tea & End of the Day

19:00-20:30 Cultural Programme followed by Dinner

22ND JULY 2016 (DAY SECOND)

F) TECHNICAL SESSION-IV: Country Paper Presentation on 'Electoral Dispute Resolution(EDR) and Electoral Justice (EJ)' (09:00- 10:25)

Presentation:

g) Pakistan

h) Sri Lanka

i) Republic of Korea

Chair: Mr. Amjad Musthafa, Vice-Chairman, Maldives

Moderator : Ms. Ila Sharma, Election Commissioner, Nepal

Plenary Discussion: Contribution by All Participants

10:25-11:00 Tea Break

G) CLOSING SESSION (11:00- 12:30)

Chair: CEC, Election Commission of Nepal

Discussion on Kathmandu Outcome on 'EDR and EJ',2016 moderated by Ms. Ila Sharma, Hon'ble Election Commissioner

Concluding Remarks by the Current Chair of the FEMBoSA

Closing remarks: Dr. Ayodhee Prasad Yadav, Hon'ble Chief Election Commissioner

12:30-13:30 Lunch

14:00 - 18:00 Sight Seeing (Bhaktapur Durbar Square)

Note:

- Thematic Session will have an hour presentation followed by 1 hr.30 minutes of plenary discussion.
- Each technical session will have two or more presentations and each presentation will have 20 minutes.
- Each technical session will have a plenary discussion of 15 minutes.
- 5/5 minutes will be allotted for Moderator and Chair in each session.

8.2 List of Participants

S N	Name	Designation	Election Management Body
1.	Hon'ble Mr. Ayodhee Prasad Yadav	Chief Election Commissioner	Election Commission of Nepal
2.	Hon'ble Ms. Ila Sharma	Election Commissioner	Election Commission of Nepal
3.	Hon'ble Mr. M. Hussain Gorziwani	Commissioner	Independent Election Commission Afghanistan
4.	Mr. Ahmad Jawed Habibi	Deputy Chief of Operation	Independent Election Commission Afghanistan
5.	Hon'ble Mr. Mohammad Abu Hafiz	Election Commissioner Director	Election Commission of Bangladesh
6.	Mr. Mohammed Shahjahan	Joint Secretary (Law)	Election Commission of Bangladesh
7.	Mr. Ugyen	Sr. Language Coordinator	Election Commission of Bhutan
8.	Mr. Pema	Sr. Dzongkhag Election Officer	Election Commission of Bhutan
9.	Mr. Sandeep Saxena	Deputy election Commissioner	Election Commission of India
10.	Mr. Vijay Kumar Pandey	Director	Election Commission of India
11.	Hon'ble Mr. Amjad Musthafa	Vice-Chairman	Election Commission of the Maldives
12.	Ms. Khadheeja Rashaa	Senior Legal Officer	Election Commission of the Maldives
13.	Mr. Waseem Ahmed	Deputy Director	Election Commission of Pakistan
14.	Mr. Lee Changha	Senior Staff	NEC of Republic of Korea
15.	Mr. Lee Jindal	Head of a Regional Office	NEC of Republic of Korea
16.	Mr. Herath Mudiyansele Thilakasiri Dissanayake Herath	Secretary	Election Commission of Sri Lanka
17.	Mr. Malagammana Gedara Charith Suranga Ranasingha	Assistant Commissioner	Election Commission of Sri Lanka
18.	Mr. Sharada Prasad Trital	Secretary	Election Commission of Nepal
19.	Mr. Bhoj Raj Pokharel	Former Chief Election Commissioner	Nepal
20.	Mr. Neel Kantha Uprety	Former Chief Election Commissioner	Nepal



8.3 Presentations on EDR and EJ by all participating Election Management Bodies

REGIONAL WORKSHOP ON ELECTORAL DISPUTE RESOLUTION &
ELECTORAL JUSTICE


KATHMANDU, NEPAL

Country Paper: Afghanistan

Dr. Jawed Habibi
Deputy Chief Electoral Officer
Independent Election Commission (IEC)
Afghanistan



GENERAL OUTLINE:



- 1) Country Profile**
- 2) Electoral Management Body**
 - Independent Election Commission (IEC)
- 3) Legal Provisions & Institutional Arrangement for EDR and EJ**
 - Independent Electoral Complaints Commission (IECC)
- 4) Methods and Processes for EDR and EJ**
- 5) Challenges of EDR and EJ**
- 6) Q/A**

COUNTRY PROFILE:



Geography:	Land locked and Mountainous, but beautiful
Capital:	Kabul
President:	Ashraf Ghani
Legislature:	Upper & Lower House
Population:	32.53 million
Est. Voters:	15 million
Area:	652,864 sq km
GDP per capita:	670 USD
GDP Growth Rate:	1.9%
HDI:	0.456 (171th)
Life expectancy:	60 years
Official Languages:	Pashto, Dari
Religion:	Islam
Currency:	Afghani



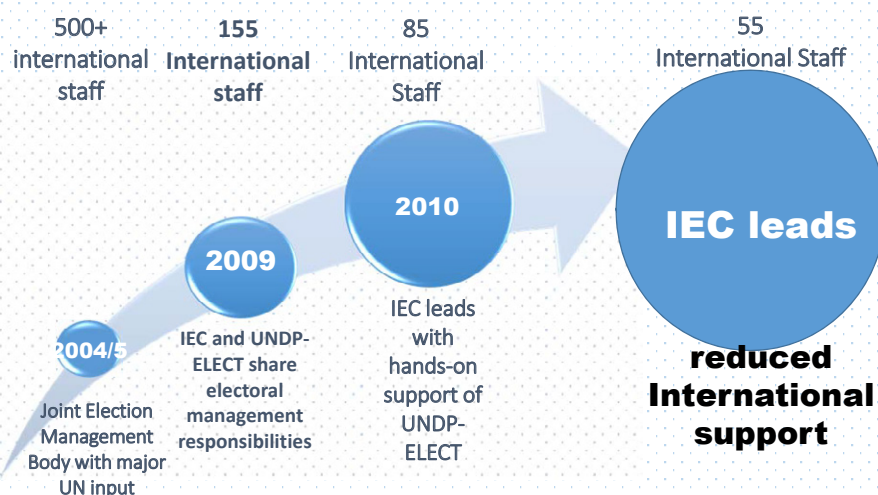
ELECTORAL MANAGEMENT BODY (EMB)



- Independent Election Commission of Afghanistan.
- Constitutional Body (156), all elections and referendum
- Seven types of elections: 1) Presidential, 2) Lower House, 3) Provincial Councils, 4) District Councils, 5) Village Councils, 6) Mayors and 7) Municipal Councils
- Commission (Policy Arm) 9 Commissioners, Appointed by the President
- Secretariat (Executive Arm) CEO, Proposed by the Commission, President



AFGHANIZATION OF ELECTIONS

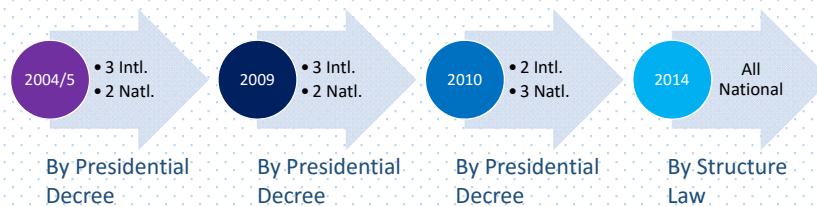


LEGAL PROVISIONS & INSTITUTIONAL ARRANGEMENT FOR EDR AND EJ



- It is **not a constitutional body**, Established according to President decree and Law on Structure, Duties and Authorities,
- To adjudicate all complaints concerning the electoral process
- **Five commissioners**, appointed by the President,
- **Secretariat**, administration
- Temporary Provincial commissions, three commissioner, proposed by the IEC and approved by the President
- Independent in expenditure on budget (drafted in consultation with GoIRA)

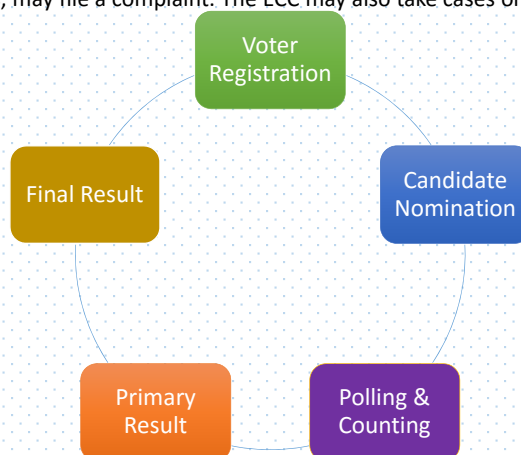
LEGAL PROVISIONS & INSTITUTIONAL ARRANGEMENT FOR EDR AND EJ



4. METHODS & PROCESSES FOR EDR AND EJ



Who can complain? Any registered voter, candidate, observer, or party official, among others, may file a complaint. The ECC may also take cases on its own initiative.

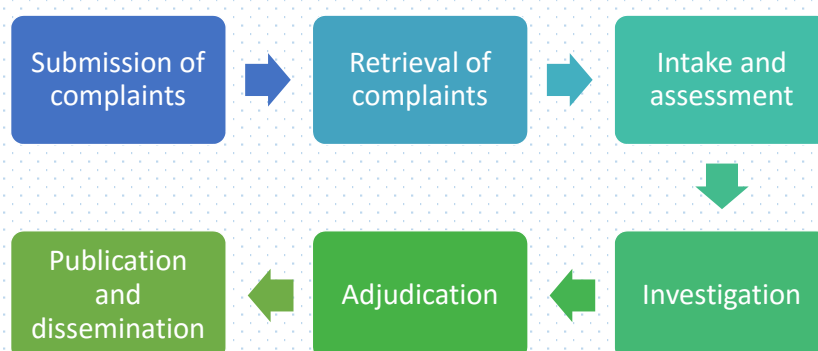


WHAT KIND OF COMPLAINTS DOES THE IECC DEAL WITH?



- The registration of, or refusal to register, specific persons as voters;
- The nomination of candidates and their qualifications and eligibility;
- Financial disclosures by political entities, their candidates, and independent candidates;
- Violations of the Code of Conduct for Political Parties, Candidates and their Agents;
- Errors or dishonesty in polling or the counting of votes;
- Complaints and challenges over primary results;
- Any other matter that affects the right to vote and to participate in the election.

STAGES OF THE PROCESS



WHAT SANCTIONS CAN THE IECC IMPOSE?



- **Issue a warning** to an offending individual or organization to take remedial action;
- **Order** an offending individual or organization to **take remedial action**;
- **Impose a fine** of up to 100,000 Afghanis (18000 USD);
- **Order a audit or recount** of ballots or a repeat of polling;
- **Remove a candidate** from the Candidate List;
- **Prohibit the offending individual** from serving in the IEC or its Secretariat;

CHALLENGES OF EDR & EJ IN AFGHANISTAN?



- Invalidation of ballot papers;
- Establishing of Special Electoral Tribunal
- Closed doors in case of allegation



Questions?



Thank You!



ELECTORAL DISPUTE RESOLUTION

Perspective: Bangladesh, 2016

Election Dispute Resolution

The “ Election Disputes Resolution” refers to the such terminology through which every electoral action or procedure can be legally challenged.

The system of “Election Dispute Resolution” aim is to ensure real protection and effective enforcement of the political rights to elect or to be elected.

To do so, the system ensures to all participants (political parties, citizens and candidates) that the voter's decision will prevail.

The system aids in the protection of certain values that support every electoral action and every electoral procedure as follows:

- Legality
- Certainty
- Objectivity
- Impartiality
- Authenticity
- Clarity
- Justice

Purpose of Election Dispute Resolution

The purpose of election disputes are as follows:

1. to safeguard the political rights of citizens,
2. to legitimate the overall electoral process.

Stages of Election Dispute

Election Disputes are divided in the three following stages:-

1. Pre-poll,
2. During poll,
3. After Poll,

Pre-poll disputes

Pre poll disputes are also divided into two kinds as to subject matters, that are-

- 1.Pre poll Election Dispute related to civil matters**
- 2.Pre poll Election Dispute related to Criminal Offences**

Pre poll Election Dispute related to civil matter :

As Election Tribunals are formed or their jurisdictions arise after poll, any kind of civil dispute requires to resolve before or after poll in the High Court Division according to Art.102 of the Constitution of Bangladesh.

Pre poll Election Dispute related to criminal offence :

Pre poll election dispute related to criminal Offences are defined in Conduct Rules which are designed separately in each kind of election.

During Poll day disputes

During poll disputes are also divided into two kinds as to subject matters, those are-

- a. During Poll day Election Dispute related to civil matter,**
- b. During Poll day Election Dispute related to Criminal Offence,**

a. During Poll day Election Dispute related to civil matter

During poll day, in case of election dispute related to civil matter, such as conspiracy in counting ballot paper, corruption in obtaining result aggrieved party is to present the petition before the tribunal constitute by the Commission time to time.

b. During Poll day Election Dispute related to Criminal Offence

In case of violating conduct rules and committing some criminal offences specified in the concerned election Rules, Executive Magistrates and Judicial Magistrates respectively may impose penalty in the form of fine or imprisonment or both

After-poll disputes

After poll disputes are also divided into two kinds as to subject matters, those are-

a. After poll Election Dispute related to civil matters

If any civil matter arises at poll day or after poll, grievance is to be presented by petition before the specified tribunal and the jurisdiction of such tribunal starts functioning after the publication of election result in official gazette .

A petitioner may claim as relief any of the following declarations:

- (a) that election of returned candidate is void;
- (b) the petitioner or some other person has been duly elected.
- (c) that the election as a whole is void.

b. After poll Election Dispute related to Criminal Offence

The same procedure is to be followed as followed in the poll day by the Executive and Judicial Magistrate.

After-poll disputes

The election tribunal shall try and shall endeavor conclude the trial within six months from the date on which the election petition is to file for trial.

The election tribunal may upon the conclusion of the trial of an election petition, make order-

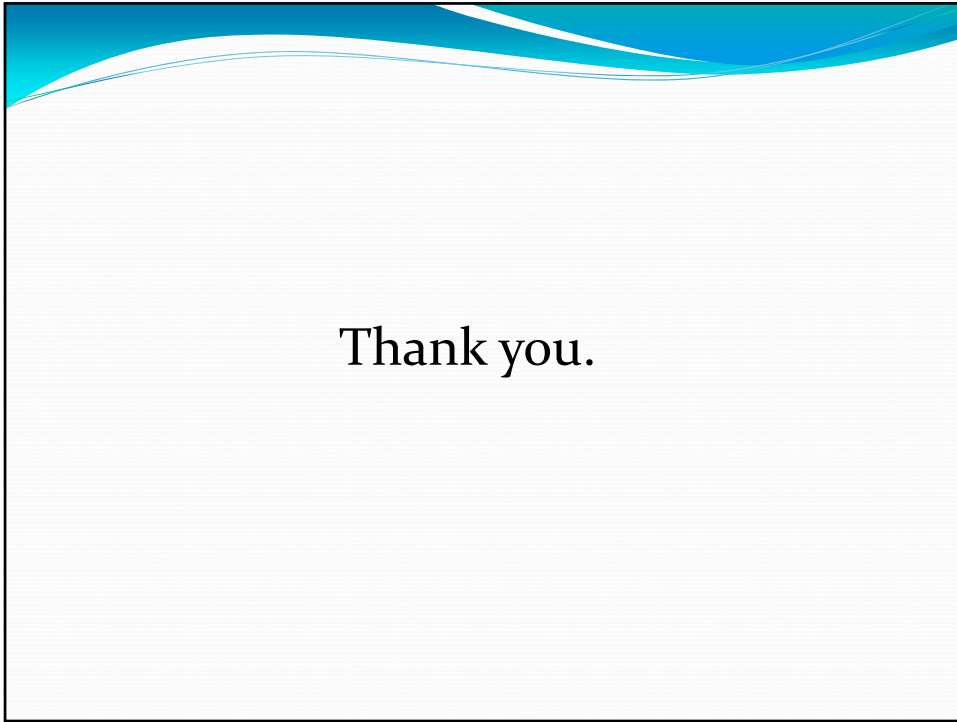
- dismissing the petition.
- declaring the election of the returned candidate to be void.
- the petitioner or any other candidate to have been duly elected.
- declaring the election as a whole to be void

Special feature of Election Dispute: Perspective Bangladesh

- Election dispute means any kind of violation of electoral laws including criminal offence and civil wrong.
- To resolve the election disputes, tribunal and Magistrate's jurisdictions are fixed by the Election Commission in each election by specific gazette notification.
- In case of Parliament Election, the civil disputes are to resolve in the High Court Division of Bangladesh and all other civil disputes are to be resolved in the tribunal constituted by official gazette.

- The disposal rate of civil disputes by the tribunal is at risk of unable to comply the specified time mentioned in certain law as the number of cases are huge in comparison of tribunal.
- As the tendency of complying the conduct rule by the political parties, supporters and activists is very low, the Mobile Court by Executive Magistrate and Summary Trial Court by Judicial Magistrate are to take cognizance of such offences to uphold the law and order situation better.
- A very special feature is to mention that as per Art-125(c) of the Constitution of Bangladesh, no order can be passed without giving notice to the Election Commission after declaring schedule for Parliament Election

- Moreover, Election Commission constitutes an Appeal authority to determine about their candidature whose nomination paper is rejected by Returning Officer.
- To resolve civil disputes arises from Upazilla Election, City Corporation Election, Pourashava Election and Union Parishad Election, Election tribunal is constituted by Assistant Judge and Election Appeal Tribunal is constituted by District Judge. All these tribunals are formed by The Election Commission of Bangladesh with the purpose to resolve election related disputes.
- But in case of Union Parishad Election, Appeal Tribunal is formed with two members of which one is Additional District Judge and other is Joint District Magistrate.



Election Commission of Bhutan (ECB)



Election Dispute Settlement System

Pema
Dzongkhag Electoral Officer

Democracy In Bhutan

- Drafting of Constitution
- Adoption and signing of Constitution
- Establishment of Election Commission
- Conduct of First Parliamentary Election

Brief background on the Election Dispute Settlement System in ECB

- Formed an Election Dispute Settlement Committee in the Commission during the First Parliamentary Elections in 2008
- Lessons learned in the PE 2008
- Commission adopted and promulgated the Election Dispute Settlement Rules and Regulations (**EDSRR**) in 2009 with Election Dispute Settlement Body (**EDSB**) in respective districts (First LG Elections – 2011 & 2nd Parliamentary Elections 2013) and CEDSB in the Commission.
- Review done on the Rules after every elections based on the recommendations provided by the Election Officers and other relevant stakeholders

Legal Basis

- ❖ Establishment of EDSB- (**Article 23 Section 7 of the Constitution**)
- ❖ Jurisdiction of Courts Barred - (**Section 44 of the Election Act**)
- ❖ Powers of Court- (**Section 37 of the Election Act**)
- ❖ Rule Making Power - Commission (**Section 466 of the Election Act**)

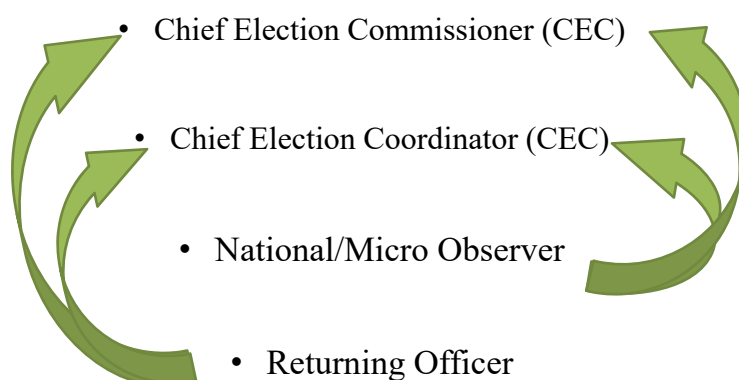
Structure of the Election Dispute System

A three-tier arrangement

- (District Level) Dzongkhag Election Dispute Settlement Body, Chaired by the Chief Election Coordinator
- (National Level) Central Election Dispute Settlement Body, Chaired by one of the Election Commissioner
- (The Highest Appellate Authority during Election Period) Full Election Commission

Procedures:

Election Complaint Receiving



Content of Election Complaint

- Indicate clear case of controversy; breach & grounds
- Contain material facts
- State the name against whom complaint being filed
- Signed by complainant with full details
- Be in writing

Complaint Registration and Due Process

CEC/CEC upon receipt of a complaint:

- Dismiss for want of *prima facie* case
- Conduct Summary Hearing
- Instruct further Case Investigation thereafter registered and processed as per the EDSRR
- Investigation Committee led by a Lawyer and guided by the Investigation Manual.

Consideration of Investigation Report

- ✓ Notify all concerned Parties of hearing with 3 days' advance notice
- ✓ Inform parties about their rights and full opportunity to be heard
- ✓ Maximum of two hearings before a decision is given

Decision

1. Based on findings of Investigation and hearings
2. Decision based on majority opinion of Members as per the Legal provisions
3. Final & binding unless appealed within prescribed appeal period

Penalties

District

- First instance
 - Warning and Fine
 - Forfeiture
 - Restrain
- Second instance
 - Fine and public reprimand
 - Detain

Central

- First instance
 - Warning and Fine
 - Forfeiture
 - Administrative action
 - Detain
- Second instance
 - Restrain/ Detain
 - Cancel nomination of Candidate
 - Nullify the election results
 - Restrain from campaigning
 - Deregister a Political Party

Appeal

District

- Decision final and binding
UNLESS
- Appealed within 5 days
- Appeal to the CEDSB

Central

- Decision final and binding
UNLESS
- Appealed within 2 days
- Appeal to the ECB
 - Proceedings within 2 days
 - Decision within 5 days

Last Day for Decisions

- District
 - 10 days before Poll Day
- Central
 - 7 days before Poll Day

Thereafter, directly lodge complaint to the ECB

Dissolution of EDSB

- CEDSB six days before Poll Day
- DEDSB nine days before Poll Day

Election Petition

- Petition period – 10 days after declaration of results
- Parliamentary Elections- High Court (S-467)
- LG Elections- Concerned District Court (468)
- Election Officials responsible to give testimony to Court ([S-475 of Election Act](#)).

Essential Measures

- Awareness on the EDSS to the general public during the nation wide voter education Programmes
- Adequate training for dispute settlement bodies in districts and members of the central body on court procedures and related laws such as CCPC, Penal Code and Evidence Act
- Learning from Experience Programme (LEP)
- Support of Judiciary for clear and common understandings

Issues and Challenges

1. Difficulty in gathering facts, information and evidence:
Complaints lodged only after the declaration of Election Results – by losing Political Party/Candidates
2. Most complaints lodged are baseless, unsubstantiated and unjustified – wasted effort but each complaint given due attention
3. Training of Public Officials with non legal background – a challenge and an opportunity
4. Media coverage and public information





India, Sovereign Democratic Republic

- India is a federal parliamentary democratic republic, where the President is the head of the country and the Prime Minister of India is the head of the Government.
- India follows the dual polity system, i.e. a double Government which consists of the central authority at the centre and states at the periphery.
- The constitution defines the powers and limitations of both Central and State Governments.

Indian Parliamentary system

- India has Parliamentary form of government with an elected President, and also an elected Vice-President, who hold their offices for a term of five years.
- Indian Parliament consists of the President of India, and two Houses namely - House of the People (Lok Sabha) and the Council of States (Rajya Sabha).

Indian Parliamentary system

- **Bicameral Union legislature** consisting of an Upper House, *i.e.* Rajya Sabha, representing the states and lower house *i.e.* Lok Sabha, representing the people of India.
- Independent Judiciary which is headed by the Supreme Court.
- The House of the People presently consists of 543 members, chosen directly from parliamentary constituencies.
- Elected through the '*first past the post*' system.

State Legislatures

- The Council of States, at present, consists of 233 elected members.
- Two of the seven Union Territories – National Capital Territory of Delhi and Union Territory of Pondicherry – have also been given representation in the Council.
- The members are elected to the Council by the members of Legislative Assemblies of the States and Union Territories in accordance with the '***system of proportional representation by means of the single transferable vote***'
- The President can nominate 12 members to the Council, from among persons having special knowledge or practical experience in literature, science, art or social service.

State Legislatures

- Council of Ministers of the state aids and advice the Governor in discharge of his functions as Chief Executive of the state.
- In **Seven States**, namely, Andhra Pradesh, Bihar, Jammu and Kashmir, Karnataka, Maharashtra, Uttar Pradesh and Telangana **there is a bi-cameral legislature- the State Legislative Council, and the State Legislative Assembly.**
- The remaining 22 States, including the National Capital Territory of Delhi and Union Territory of Pondicherry, **have only Legislative Assemblies.**

ELECTION DISPUTE RESOLUTION AND ELECTORAL JUSTICE IN INDIA

Disputes are inevitable in the democratic process where right to have dissent is the core of democracy.

The disputes can be broadly categorized as

- 1) Pre-election disputes.
- 2) Disputes during the election process.
- 3) Post-election disputes.

PRE- ELECTION DISPUTES AND RESOLUTION

Pre- election dispute can be broadly classified into three categories;

1. Disputes relating to Delimitation of Constituencies
2. Dispute relating to Electoral rolls
3. Issues relating to Symbol disputes

DE- LIMITATION OF CONSTITUENCIES

- The number of seats of the parliamentary and assembly constituencies and the territorial extent of the same are readjusted after every decennial census, on the basis of existing population.
- Delimitation Acts are enacted after every decennial census, which provide for the setting up of a special Delimitation Commission, to undertake the above tasks under article 327 or article 328 and cannot be called in question in any Court.
- However the objections and suggestions from the general public, political parties and civil society organizations are considered before the final order.

DISPUTES RELATING TO ELECTORAL ROLLS

- The updated electoral roll for each constituency is prepared or revised by an Electoral Registration Officer.
- Any order passed by the Electoral Registration Officer, on any claim or objection is subjected to appeal to the District Election Officer and to the Chief Electoral Officer.
- The High Courts and the Supreme Court can be approached, by virtue of writ jurisdictions, by the agitating or aggrieved parties, if they are not satisfied with the remedial action taken by the Election Commission.

DISPUTES PERTAINING TO PARTY SYMBOL

- The Commission is empowered to issue election symbols order in the light of power vested under Article 324 and 327 of Indian Constitution.
- Paragraphs 15 and 16 of the Symbol Order, 1968 deal with the power of the Commission in relation to splinter groups of rival Sections of a recognized political party and in cases of amalgamation of two or more political parties.
- The Commission has power to adjudicate any dispute related to newly formed parties and the allocation of symbol.

DISPUTES DURING ELECTION

- All Civil Courts (other than High Courts and Supreme Court) have been prevented expressly by law, from questioning the legality of any action while the election is going on.
- Such disputes can be raised only through an election petition filed before the High Courts within 45 days of the declaration of the results.
- It provides that the omissions and commissions taking place during the election can be challenged only after the election is completed.

DISPUTE PERTAINING TO ELECTION EXPENDITURE

- According to Section 78 of R.P. Act, 1951, every contesting candidate is required to lodge a true copy of the account of his election expenses with the District Election Officer (DEO) within 30 days of the declaration of the result of the election.
- Failure to do the same without good reason or justification may result in disqualification of the candidate concerned by the Election Commission of India under Section 10A of R.P. Act, 1951.
- Any complains regarding election expenditure is decided by the Election Commission.

ELECTION EXPENDITURE MONITORING MECHANISM

- The DEO is required under the law to scrutinize and submit a report to the Commission after the election
- The Expenditure Observers are appointed by the Commission for specified constituencies to observe the election expenses by the candidates.
- Assistant Expenditure Observers (AEO) are appointed for each constituency on date of notification of election by the DEO.

POST- ELECTION DISPUTES

The post election disputes can be classified into the following categories.

1. Disputes relating to Disqualification arising out of Corrupt practices
2. Disqualification due to holding of Office of profit

Disqualification

- Article 191 of Indian Constitution provides the ground of disqualification of a member of the Legislative Assembly or Legislative Council of a State, on the grounds of-
 - Holding office of profit
 - Unsound mind
 - Insolvency
 - Foreign citizenship, or
 - Disqualified by or under any law made by parliament.

- Under Article 192 of Indian Constitution, any question with regard to disqualifications mentioned in Article 191(1) is decided by the Governor, at the opinion of the Election Commission and his decision shall be final.
- Similar provisions are enumerated under article 102 and 103 of Indian Constitution with regard to MPs.

DISQUALIFICATION UNDER RP ACT, 1951

- Section 100 of the Representation of People Act, 1951, also provides ground for disqualification.
If in the opinion High Court, the candidate
 - is not qualified or was disqualified to be chosen to fill the seat
 - has committed any corrupt practice
 - Or any improper acceptance of any nomination or reception, refusal or rejection of any vote
 - On any non-compliance with the provisions of the Constitution or RPA.

CORRUPT PRACTICES

- Section 123 of the Representation of People Act, 1951, deals with corrupt practices, which includes;
 - a) Bribery
 - b) Undue influence
 - c) Use of Force/coercion
 - d) refrain from voting on grounds of religion, race, caste, community or language.
 - e) attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent

- f) Use of national symbols, national emblem, national flag prejudicially affecting the election of any other candidate.
 - g) Publication of any false statement of in relation to the personal character or conduct of any other candidate, or in relation to his/her candidature.
 - h) false statements relating to elections expenditure.
 - i) Abetting or attempting to obtain the service of government servants.
 - j) Booth capturing





Electoral Dispute Resolution (EDR) and Electoral Justice in the Maldives

Presentation by the Elections Commission of the Maldives



Maldives

- A chain of islands in the Indian Ocean
- 1190 islands
- 20 atolls
- 187 inhabited islands
- 106 resorts (every resort is considered as a separate island)
- Population as of 31 may 2013, **345,365**



RIGHT TO VOTE:

- **Section 4 of Act no: 11/2008 (Elections (General) Act):**
- **(a)** To all elections to which this Act applies, excluding the individuals specified in *subsection (b)*, all Maldivian citizens above 18 years have the right to vote in such elections.

ELECTIONS COMMISSION'S MANDATE

- **Section 4 of Act no: 11/2008 (Elections (General) Act):** As mentioned in relevant Acts, Presidential Elections, Parliamentary Elections, Local Council Elections and votes held for public referendum proposed by the President or the Parliament shall be conducted and supervised by the Elections Commission.
- **Section 7 of Act no: 11/2008 (Elections (General) Act):** Voting in an election shall be by secret ballot.

Elections held in Maldives



- **Presidential Election 2013:**
- No. of Eligible Voters: **239109**
- **Parliamentary Election 2014:**
- No. of Eligible Voters: **240652**
- **Local Council Elections 2014:**
- No. of Eligible Voters: **240220**

Complaint Mechanism- Legal Basis



- **Constitution of Maldives section 172. (a):** A person may challenge a decision of the Elections Commission concerning an election or a public referendum, or may challenge the results of an election, or contest the legality of any other matter related to an election, by means of an election petition presented to the High Court.
- **Section 64 of Act no.11/2008; Elections (General) Act:** Where any person does an act in contravention of this Act or regulations made hereunder, or the specific law pertaining to an election or regulations made thereunder, or a person is dissatisfied with a decision of the Elections Commission pursuant to a complaint raised under *section 62* of this Act, or is dissatisfied with the results of the election, the dissatisfied person can file a petition with the High court.

- **Section 53 (d) of Local Council Election Regulation 2013:**



Where a complaint in relation to an act done by any person in breach of Law No: 11/2008 (General Act on Elections) and Law No: 10/2010 (The Local Council Election Act) and Regulations enacted under these laws is being submitted to the Elections Commission, details of the complaint, including evidence, shall be submitted within 05 (Five) days starting from the date on which the election was held. Complaints submitted to the Island elections committees, Atoll/City Complaints Bureau, and National Complaints Bureau shall be regarded as complaints submitted to the Elections Commission. When submitting the complaint, the name, address and Maldivian national identity card number of the person submitting shall be included. Complaint shall be submitted using the form prescribed under Schedule 12 (Twelve) of this Regulation. Where a political party or organisation or institution is submitting a complaint the seal and signature of responsible person shall be included in the form.

- **Section 10 of Elections (General) Act:**



Complaints regarding information in the Register of Electors and rectification of the Register

- (a) All Maldivian citizens above the age of 18 years and political parties have the discretion to, raise complaints regarding information in the register of electors or lack thereof, or amendments needed to ensure accuracy of the Register, or removal or inclusion of information in the Register of Electors published pursuant to *Section 9*.
- (b) If a complaint needs to be raised pursuant to *subsection (a)*, such should be raised in writing within ten (10) days of publication of the Register Electors in the Government Gazette pursuant to *Section 9 (a)*.

- **Section 16 of Local Council Election Regulation**



2013: Submitting complaints in relation to the eligible voters registry: Person(s) wishing to submit complaints in relation to information included or omitted from the eligible voters registry, or in relation to an amendment required to be included or omitted from the registry to validate the registry, may submit complaints to the Focal Points or to the Elections Commission, in accordance with the specification in Section 10 of Law No: 11/2008 (General Act on Elections). The Complaint shall be submitted through the form prescribed under Schedule 3 (Three) of this Regulation. Arrangements

- **Section 10 of Elections (General) Act:** Complaints regarding information in the Register of Electors and rectification of the Register



(c) Within five (5) days starting from the last day of the 10th day specified in *subsection (b)*, the Elections Commission shall investigate complaints received pursuant to *subsection (b)* and give its decision regarding the complaints. The Commission must notify the complainant in writing of the reasons for the decision of the Commission within this period.

(d) Where a person is dissatisfied with a decision of the Commission pursuant to *subsection (c)*, and within five (5) days of receipt of the decision of the Elections Commission, the individual is entitled to make an application to the High Court of the Maldives for a determination on the matter. The High Court of the Maldives shall give a decision regarding a matter raised pursuant to this *subsection* within not more than fifteen (15) days of the application.

- **Section 21 of Elections (General) Act:** Decision made on applications for candidacy



(e) Where an applicant is dissatisfied with the reasons provided by the Elections Commission pursuant to *subsection (d)*, and the reasons go to whether the individual satisfies the criteria specified for candidacy for that election, the applicant has the right to file a petition at the Supreme court or where the refusal is for any other reason(s), the applicant has the right to file a petition at the High Court.

(f) A candidate wishing to petition the Supreme Court or the High Court pursuant to *subsection (e)* should do so within not more than five (5) days after the completion of the forty eight (48) hours specified in *subsection (a)*. The court shall make a decision on the matter within seven (7) days of the petition.

- **Section 29 of Elections (General) Act:** Code of ethics



(b) During a campaign to get support for a particular candidate, no one should do anything to encroach on the election rights of any other candidates. Nor should any one use untruthful information regarding another candidate.

(c) Where someone commits an act that encroaches on the election rights of a candidate contravening *subsection (b)*, the aggrieved candidate has the right to submit a complaint to the Elections Commission requesting the Commission to prohibit that activity. The Elections Commission shall investigate and take action on the matter without delay.

Who has the right to raise complaints?

Section 63 of Elections (General) Act



- (a) Every individual having the right to vote in the election.
- (b) Every candidate contesting in the election.
- (c) Political parties.
- (d) Election observers and election monitors approved under this Act by the Elections Commission.
- (e) Elections officials.

Complaints Bureau



- Establishing Complaint bureaus: **Section 49 of Local Council Election Regulation 2013**

a) On announcement of the commencement of the process for applying for local council candidacy, a National Elections Complaints Bureau consisting of 05 (Five) members shall be established. And an Atoll/ City Elections Complaints Bureau consisting of 03 (Three) members shall be established in every City and Atoll other than in Male, 10(Ten) days prior to the Election day. On establishment of the complaint bureaus, the place of establishment of the bureaus, contact numbers, fax numbers, email addresses, and open hours shall be publicly announced.

Structure



- Island Focal Point
- Atoll Focal Point
- National Complaints Bureau



Procedure

- CHIEF OF BALLOT BOX:
 - The Chief of the Ballot box at every polling station shall be responsible for receiving the complaints arising in polling stations and undertaking the responsibility of the complaints officer.
 - The complaints officer shall be responsible for investigating and resolving the complaints submitted to the Polling Station. Assistance of the Island Focal point or the Election Commission Administration shall be sought where the officer is unable to resolve a complaint.
 - Complaints may be submitted to the Atoll/City Complaints Bureau where the person is dissatisfied by the decision of the Chief of the ballot box or complaints officer in relation to the problems arising at the polling station. Complaints shall be submitted to the National Complaints Bureau if in Male'.



Procedure

- ISLAND FOCAL POINT:
 - Where a complaint relating to the Election is submitted to the Island focal point, necessary steps with regard to the complaint shall be made on a day-to-day basis. Where the Island Focal Point is unable to resolve the issue, the advise of the Atoll/City Elections Complaint Bureau may be obtained, if the Atoll/City Elections Complaint Bureau has been established. Prior to that the advise of the Atoll/City Focal point may be obtained.



- ATOLL FOCAL POINT:

- Where a complaint is submitted to the Atoll/City Focal point prior to the establishment of the Atoll/City Elections Complaints Bureau, the complaint shall be dealt with in the manner directed by the National Elections Complaints Bureau. And on establishment of the Atoll/City Elections Complaints Bureau, in the manner directed by that Bureau.



- NATIONAL ELECTIONS COMPLAINTS BUREAU:

- Election related complaints in the Male' City shall be submitted directly to the National Elections Complaints Bureau. Complaints submitted prior to the establishment of the Elections Complaints Bureau, shall be submitted to the Administration of the Elections Commission.

Statistics (As per the Parliamentary Elections 2014 Complaints Bureau Report)



Total No. of Complaints reported	87
Complaints related to Voter's registry	16
Complaints related to the election in general	71

Complaints related to Voter's Registry	16
Change of constituency in the voter's registry	3
Could not vote due ID problems	2
unknowingly	5
No name published in the voter's registry	3
Name on a constituency other than the constituency applied to register	3



Complaints related to the election in general	71
Anti Campaign	6
Unlawfully gaining support	6
Bribes	6
Related to Elections Officials	9
Campaigning during the prohibited hours	8
Vote counting errors- to recount vote	13
Ballot Paper Misplacement	2
Not given the chance to vote	17

Practical Implications- how the complaints bureau dealt with the complains reported




- Complaints regarding the Voter's Registry:
 - All complaints were accepted through a specific form designed to report complaints.
 - All complaints were based on the information given by the Voter's registration section of the Elections Commission


Practical Implications- how the complaints bureau dealt with the complains reported



- Complaint regarding the elections in general
 - All complaints were dealt cooperatively with the appointed island focal points and atoll complaints bureaus.
 - If any administrative information were needed, assistance from the Elections Commission was provided.
 - In complaints where it was necessary, witnesses, the defender or chief of ballot box were presented to the bureau and their words were taken into consideration as well
 - All information regarding the complaint were fairly discussed with all the members of the bureau and a copy of a report signed by all five members were sent to the Elections Commission
 - The Claimant was also being informed in writing about the decision of the bureau.







निर्वाचन आयोग, नेपाल
ELECTION COMMISSION, NEPAL

Electoral Dispute Resolution in Nepal

Ila Sharma
Election Commissioner
ECN



निर्वाचन आयोग, नेपाल
ELECTION COMMISSION, NEPAL

Outline of the presentation

- What is EDR?
- EDR mechanism in Nepal
 - Policy level
 - Structural
- EDR in Nepalese context
 - CAE, 2008
 - CAE, 2013
- Issues and challenges
- Way forward
- Conclusion

3



निर्वाचन आयोग, नेपाल
ELECTION COMMISSION, NEPAL

Introduction

- Independent, sovereign, secular, inclusive, democratic, socialism-oriented, federal democratic republican state
- Area 147,181 square km.
- Federal, Provincial and Local level, Seven provinces
- Population 28 million, Total voters 12,147,865

4



निर्वाचन आयोग, नेपाल
ELECTION COMMISSION, NEPAL



5



निर्वाचन आयोग, नेपाल
ELECTION COMMISSION, NEPAL

Election Commission, Nepal

- Established in 1966 as a constitutional body,
- At present – Chief Election Commissioner and four Election Commissioners
- Commissioners appointed by the President upon the recommendation of Constitutional Council.
- At present, 5 divisions, 12 sections at Centre and 5 Regional and 70 District Election Offices.

6



Contd.

- Commission has managed various elections including local bodies, parliament and CA election,
- Mixed parallel (FPTP and PR) system used in CAEs,
- At present, bicameral federal parliament consisting of 275 (165 from FPTP and 110 from PR) member House of Representative and 59 member National Assembly.

7



Electoral Dispute Resolution

- Intrinsic to electoral process for credibility
- Creates equal level playing field
- Not a weakness, but resilience
- Guiding principles(not exhaustive)
 - The independence of the EDR Body,
 - The independence and impartiality of EDR Body members,
 - A regime for the accountability and liability of the EDR Body and its members,
 - The integrity and professionalism of the members of the EDR Body,
 - The financial independence and sustainability of the EDR Body.

8



EDR mechanism in Nepal

- Policy level mechanism
 - Constitution
 - Constitutional bench
 - Qualification of the candidate
 - Election Commission Act, 2007
 - Election Offences and Punishment Act, 2007
 - Election Code of Conduct, 2015

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Contd.

- Structural mechanism
 - Constitutional Bench
 - Electoral Dispute Resolution Committees
 - Election Monitoring Team (Macro & Micro)
 - Returning Officers
 - Regional/District Election Officers
 - Polling Officers

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ELECTION COMMISSION, NEPAL

EDR in Nepalese context

- Constituent Assembly Election, 2008
 - Complaint Settlement Committee in the Commission
 - Code of Conduct Coordination Committee in each constituency
- Some cases

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निर्वाचन आयोग, नेपाल
ELECTION COMMISSION, NEPAL

Contd.

- Constituent Assembly Election, 2013
 - Electoral Dispute Resolution Committee in the Commission
 - Election Code of Conduct Implementation and Monitoring Committee in each constituency
 - Election Dispute Resolution Directive and Dispute Resolution Procedure
 - Code of Conduct Implementation and Complaints Management unit

12



Contd.

- CAE, 2013
 - Media monitoring
 - Intervening of national TV channel
 - a total number of 22 cases were filed in the Constitutional Court, among them 19 were about FPTP system and 3 were about PR system.

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Issues and Challenges

- Increasing number of political party,
- Trend of fraction in political parties,
- Effective implementation of code of conduct,
- Regulation of the election campaign expenditure of political parties and the candidates,
- Absence of regular and effective EDR mechanism throughout the country,
- Creating awareness about the legal provisions to the political parties and the candidates,

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निर्वाचन आयोग, नेपाल
ELECTION COMMISSION, NEPAL

Way Forward

- Consolidation of the Acts relating to elections to avoid duplication and ambiguities is first and foremost as drawing from the Acts we draft Rules, regulations, directives and guidelines
- Provision of threshold to be part of our reforms
- Institutional and regulatory reforms
- Regular interaction, orientation and trainings,
- Better electoral education for all stakeholders,

15



निर्वाचन आयोग, नेपाल
ELECTION COMMISSION, NEPAL

Contd.

- striving for perfection in dispute resolution mechanism,
- Reforms in political party laws and regulation and enforcement of campaign finance regulation,
- Sharing international good practices in the field of electoral dispute resolution

16



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ELECTION COMMISSION, NEPAL

Thank you for your patience



Queries and recommendations.

17



ELECTORAL DISPUTES RESOLUTION & ELECTORAL JUSTICE

Waseem Ahmed

Page • 1

Election Commission

Chief Election Commissioner

MEC

MEC

MEC

MEC

Secretary

Provincial Election Commissioner

Regional Election Commissioner

District Election Commissioner

Page • 2

2



Technically Election can be defined as

“decision making process in which population chooses individual to hold a public office”.

Page • 3



An election process has two main pillars:-

- (i) Electoral system.**
- (ii) Judiciary for the disposal of election disputes.**

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4



Electoral System

Electoral system is governed by election laws that covers the whole process of election or it can be defined as :

“It is a detailed constitutional arrangement that converts vote into a political system”.

Page ▪ 5



For the accountability of any electoral system, judiciary clearly plays an important role in electoral disputes resolution.

Page ▪ 6



Electoral Dispute Resolution In Pakistan

The EDR in Pakistan can be divided into three phases:-

- (i) Pre-Election.**
- (ii) During Election.**
- (iii) Post Election.**

Page ▪ 7



Pre Election

The pre election activities comprises upon several steps that do need proper designated authorities for the redressal of complaints. These activities are:

Page ▪ 8



▪ Delimitation

To define extent of constituencies:

It is the initial step in which extent of constituencies is defined. If the process is not transparent, no doubt it will result into a number of complaints that will leave a question mark on electoral process.

‘The process of delimitation in Pakistan has been laid down in Articles 4, 5 and 6 of the Conduct of General Election Order, 2002 and sub-section 3 of Section 10 of delimitation of Constituencies Act, 1974.



• Preparation of draft by Delimitation Authority:

Initially the Delimitation Authority prepares a draft of delimitation according to the proposals of general public keeping in view the geographical aspects of the area.

- **Display of draft for 15-days inviting objections.**
- **Disposal of objections by the Election Commission.**

The Commission have powers to make amendments, alterations and modifications in the final list of constituencies at any time of its motion. (Section 10A of Delimitation of Constituencies).



2. PREPARATION OF ELECTORAL ROLLS

- Electoral Rolls plays an important role in an electoral process. The error free preparation of Electoral Rolls will result in a smooth and transparent election.
- The process regarding preparation of Electoral Rolls and registration of votes has been laid down in Electoral Rolls Act, 1976 and Electoral Rolls Rule, 1974.

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Appointment of staff

For preparation of electoral rolls afresh, appointments of staff from government departments.

Any person having objection regarding appointment of staff may approach Registration Officer of his district, Provincial Election Commissioner or Secretary, Election Commission.

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- **Publication of draft Electoral Rolls**

After door to door verification, draft electoral rolls are published and these are kept for publication receiving claims, objections and applications for correction.

- **Display period**

Draft electoral rolls remain on display for a period of 21-days (Section 8 of Electoral Act, 1976).



- **Appointment of Revising Authorities for deciding objections**

In case of any complaint, regarding registration of vote in particular or as a whole, the complainant may approach Revising Authority for filing an objection.



▪ **Objection on a single vote registration**

Registration of a single vote can be made at any time by a person who is registered as voter in the said constituency. If the constituency has not been called upon to elect any representative.

▪ **Authority deciding objections**

In case of any complaint, the person can approach Regional Election Commissioner (officer appointed at divisional level) or Provincial Election Commissioner or Secretary, Election Commission for redressal of his complaint



Appointment of DROs, ROs and AROs

Any objection regarding impartiality of the functionaries appointed for conduct of an election viz. DRO, RO and ARO can be filed to the Provincial Election Commissioner and Secretary, Election Commission.



Complaint against establishment of polling station

A large number of objections may file during elections regarding establishment of polling stations. For the said purpose, the Electoral Act, 1976 provides under Section-8 that polling scheme shall be published prior to 15-days of poll.



During Election

During election process, two types of complaints are received that requires prompt redressal. These complaints either can be filed from a single person or from a political party.

These are:

- (i) violation of election laws and code of conduct
- (ii) law and order.



▪ Appeals against decision of Returning Officer

The responsibility of Returning Officer to decide the fate of nomination paper that it is either accepted or rejected. A person aggrieved with the decision of Returning Officer may approach Appellate Tribunal. (Sub Section 5 of Section 14 of Representation of People Act-1976).

However, being aggrieved to the decision of Appellate Tribunal, a person may also file a constitutional petition in High Court or Supreme Court subsequently.



Complaint regarding process of election

Objections may arise during election regarding process carried out by the Returning Officer. The proper authority for the said purpose is District Returning Officer/ PEC & Secretary, ECP and complaints can be filed before him for the redressal.



Genuineness of votes

During the process of poll, objection may arise against the genuineness of a voter, hence Presiding Officer being incharge of the polling station is the proper authority to take up the complaint.

- Such complaint can also be filed before Returning Officer or DRO for the remedy.

Preparation of results

Number of objections arise during process of counting of votes. The aggrieved can file application before Presiding Officer for the transparency of the process.

Application can also be filed before RO for record.



▪ Announcement of election results

Application against the announcement of results are filed before the Returning Officer and DROs.

Besides, under Section 103AA, such applications are taken up by Election Commission of Pakistan. After the conduct of General Elections, 2013, number of these petitions:-

- Filed 277
- Accepted 6
- Disposed off 271



POST ELECTION

Appointment of Election Tribunals

For the trial and disposal of Election Petitions, the Election Commission appoints Election Tribunals as may be necessary. A tribunal shall consist of a judge of High Court. (Section 57 of Electoral Act, 1976).

Transfer of election petition on an objection

The Commission either of his own motion or on an application made in this context, by any of the parties at any stage may transfer an election petition from one tribunal to another.



Redressal Authorities

An appeal can be filed against the decision of Election Tribunal in High Court. However, if the complainant is not satisfied with the decision of High Court, he may approach Supreme Court for the redressal of his grievance within 30 days after announcement of judgment.



Revolutionary Steps of Election Commission for complaint resolution

Electoral Rolls

Prior to General Elections held in 2008, Electoral Rolls were based upon National Identity Card Numbers.

A large number of complaints in this context were received that electoral rolls bears voters that actually did not exist in original or they have been registered twice or thrice.



By adopting the said CNIC, fake or duplicate voters were removed from the electoral rolls and the number of voters in two provinces of country decreased 1.5 Million.

- Balochistan 4.3 Million to 3.3 Million
- Sindh 19.5 Million to 18.9 Million



Monitoring Cell for election

Election Commission has started the process of monitoring the election in which officers of Election Commission from a district are deputed to monitor the process of election in any constituency.



Adoption of Pictorial Electoral Rolls

There was a general concept that votes on polling stations in some areas have been cast by a person who is not actually registered as a voter in that electoral area.

Specially, such complaints were received from female polling stations that fake voters try to cast their votes, hence a large number of votes were challenged. Because there was no method for the identification of a female voter. The NIC only bear thumb impression of female voters.

The issue has much been resolved with the Pictorial Electoral Rolls.



Appointment of Retired judges as Election Tribunal

From the experience of past elections, Election Commission appointed retired District and Session Judges as Election Tribunal to dispose off Election Petitions after General Elections, 2013.

Prior to that, judges from High Court were appointed as Election Tribunals and some of the election petitions took three to four years for disposal.



- No. of election petitions filed during General Elections, 2013 (387)
- No. of election petitions disposed off so far by tribunals (376)
- (11-Petitions are still pending)



Registration as voter at the time of attaining the age of 18-years

As per provision of Section 6 of Electoral Rolls Act, 1976, a person is qualified to be registered as voter if he is 18-years old.

The NADRA authorities issues CNIC on the basis of age at the time of issuance of CNIC, the person has to fill in a form showing area where he intends to register his vote.

Provided that he should satisfy the Registration Officer regarding his place of residence.

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Establishment of Permanent Polling Stations

In view of the routine of complaints filed during elections regarding location of polling stations, the Election Commission is carrying out a process for establishment of permanent polling stations.

For the said purpose, a pilot project was launched in Islamabad and location of polling stations was successfully connected with Google provided with the picture of polling station and address thereof.

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GIS FACILITATION

The Election Commission is also taking advantage of GIS facility and coordinates of all polling stations is being collected with the help of teams comprising upon staff of Election Commission.



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SMS service for information of public

For information of public, the Election Commission has started an information service through SMS wherein a person can get information regarding registration of his vote and location of his polling station.



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REVISING SCALE FOR THE PRINTING OF BALLOT PAPERS

After General Elections, 2013 complaint was in heat that Election Commission has printed extra Ballot Papers that have been used in rigging.

The complaint was based on a misconception.

For an example, In a particular CBC there are 164 voters so Ballot Papers for this CBC will be printed 200 (two books containing 100 leaves each).

On a Polling station where 5 CBC are allotted there might be 548 voters but due to above formula 800 ballot papers were printed.

Now the figure for the polling station is rounded of to the next hundred instead of CBC.

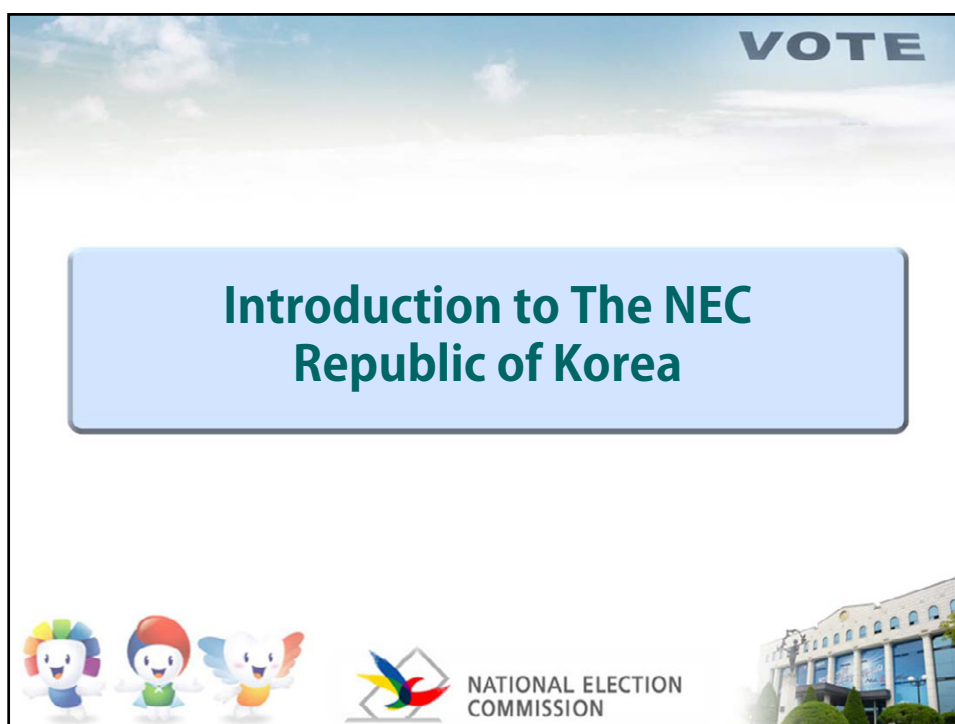
THANK YOU



VOTE

Introduction of the presenter

Nationality	Republic of Korea (ROK)
Full Name	Jin-Dal LEE (English name : Jack)
Job title	Director of Secretariat
Career	24 years







VOTE

NEC Of Korea – Duties

- Public Official Elections
- Political party affairs
- Political funds Affairs
- Civic Education on Democracy
- Research on Electoral & Political System
- International Exchanges and Cooperation






NATIONAL ELECTION
COMMISSION




VOTE

Electoral Dispute Resolution

NATIONAL ELECTION
COMMISSION



VOTE

Electoral Dispute Resolution

- Precautionary Measures Part 1

- 

Independent Constitutional Agency
- 

Participation of Interested Parties in Election Procedures
- 

Insuring the Status of Candidates




NATIONAL ELECTION
COMMISSION



VOTE

Electoral Dispute Resolution

- Precautionary Measures Part 2

- 

Ensuring Fair Competition In Election Campaign
- 

Neutrality of Media and Public Officials
- 

Restriction on Election expenses

※ Publically funded Elections




NATIONAL ELECTION
COMMISSION



VOTE

Electoral Dispute Resolution

- Election investigation and Enforcement

-  Investigation
-  Watchdog group
-  Rewards
-  Fines

※ Protect Those who reported Election Crimes




**NATIONAL ELECTION
COMMISSION**



VOTE

Electoral Dispute Resolution

- Types of Election Dispute Resolution

-  Administrative measures
-  Electoral Petition
-  Electoral Litigation




**NATIONAL ELECTION
COMMISSION**



VOTE

Electoral Dispute Resolution

- Administrative measures

Meaning

Characteristics





NATIONAL ELECTION
COMMISSION



VOTE

Electoral Dispute Resolution

- Electoral Petition

Meaning

Characteristics





NATIONAL ELECTION
COMMISSION



VOTE

Electoral Dispute Resolution

- Electoral Litigation



Meaning



Characteristics



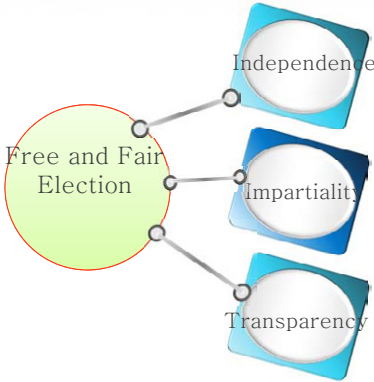


**NATIONAL ELECTION
COMMISSION**



VOTE

Conclusion



Free and Fair
Election

Independence


- Institutional guarantee
- Independent policy –making


Impartiality

- Electoral Process
- Election Results


Transparency

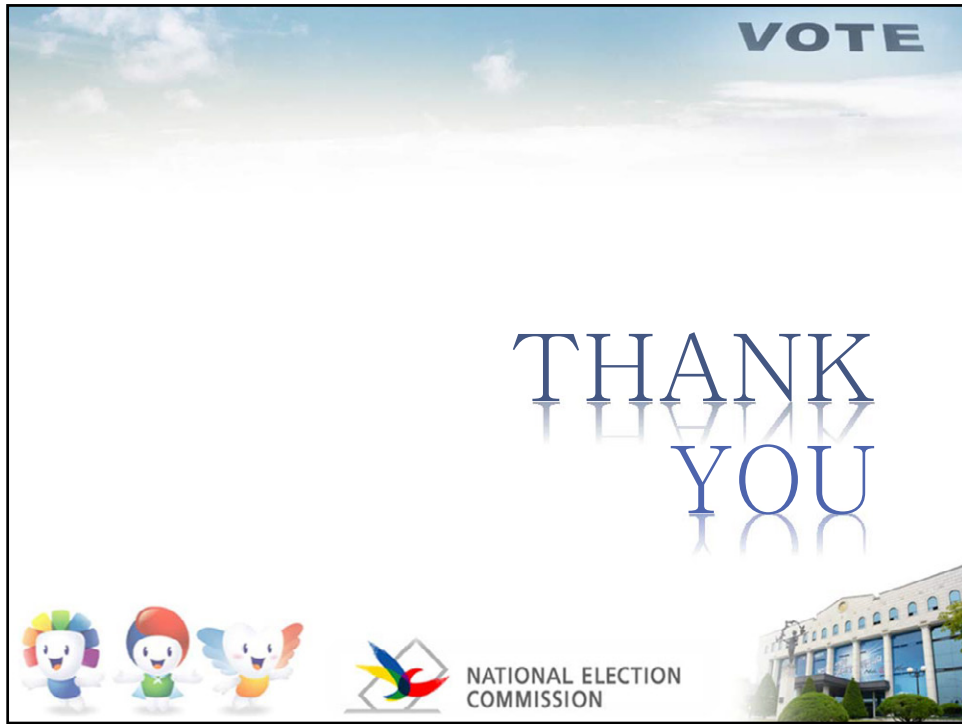
- Participation of stakeholders
- Public relations





**NATIONAL ELECTION
COMMISSION**





1. Background

1.1. Sri Lanka

Sri Lanka, officially the Democratic Socialist Republic of Sri Lanka and known from the beginning of British colonial rule until 1972 as Ceylon, is an island nation in South Asia near the south-east India.

Sri Lanka has maritime borders with India to the northwest and the Maldives to the southwest. Its documented history spans over 3,000 years, with evidence of pre-historic human settlements dating back to at least 125,000 years. Sri Lanka is the 57th most populated nation in the world, with a population of 20,277,597 people, and an annual population growth rate of 0.73%. According to the last enumeration there are 15.4 million eligible voters in Sri Lanka for 2015 and it is 74% of the total population.

A diverse and multicultural country, Sri Lanka is home to many religions, ethnic groups, and languages. In addition to the majority Sinhalese, it is home to large groups of Sri Lankan and Indian Tamils, Moors and Burghers.

Sri Lanka is a republic and a unitary state governed by a Semi-presidential system, with a mixture of a presidential system and a parliamentary system. The legislative capital, Sri Jayawardenepura Kotte, is a suburb of the commercial capital and the largest city, Colombo. For administrative purposes, Sri Lanka is divided into nine provinces and twenty-five districts.

The 13th Amendment to the 1978 Constitution established provincial councils after several decades of increasing demand for a decentralization of the Government of Sri Lanka. Prior to 1987, all administrative tasks of the provinces were handled by a district-based administration arm and Districts and local authorities. Sri Lanka is also divided into 25 districts. Each district is administered under a District Secretary. The districts are further subdivided into 332 divisional secretary's divisions, and these, in turn, to approximately 15,000 Grama Niladhari divisions.

There are three other types of local authorities: Municipal Councils (18), Urban councils (13) and Pradeshiya Sabha (256).

1.2 Election Commission of Sri Lanka

Under the 19th Amendment to the Constitution of Sri Lanka, the election commission was established on 17 November 2015, together with another 9 independent commissions. The Commission has three members including the Chairman of the Commission.

Taking necessary step to secure the universal franchise of citizens of the Democratic Socialist Republic of Sri Lanka by conduction free and fair elections and referendums and preparing the electoral register for the purpose are the key functions of the Commission. It is vested with a distinctive and unique independency and power derived from the Article 103 and 104 of the Constitution.

Prior to the establishment of the Elections Commission, the Department of Elections was in existence which was established on 01st October 1955, amalgamating the Department of Parliamentary Elections and Department of Local Government were in existence until the mid of the decade of 1950s. Six (6) Commissioners of Elections have led the Department from 1955 to 2015.

1.3 Elections in Sri Lanka

The Donoughmore Commission recommended the universal franchise to every person over 21 of years of age, irrespective of their gender. Thus the universal franchise was introduced to Sri Lanka in 1931. It is noteworthy that universal franchise was enjoyed even in the Britain in the same year, and Sri Lanka became the first country to enjoy universal franchise in the Asian and Australian region except for New Zealand. Although, the universal franchise was introduced in 1931, there was no any institution dedicated to conduct the elections until 1947.

General elections were held in Ceylon (now Sri Lanka) from August 23 to September 20, 1947. This is considered the first national election held in Sri Lanka (then known as Ceylon). Although it took place before independence was actually granted, it was the first election under the Soulbury Constitution. Sri Lanka elects on national level a head of state - the president - and a legislature. The president is elected for a five-year term by the people. The Parliament has 225 members, elected for a five-year term, 196 members elected in multi-seat constituencies through proportional representation system where each party is allocated a number of seats from the quota for each district according to the proportion of the total vote that party obtains in the district. The other 29 which is called the national list are appointed by each party secretary according to the island wide proportional vote the party obtains.

The elections and Election Ordinances and Acts under which elections are conducted in Sri Lanka are as follows. There are five different elections:

1. Presidential Election - (Presidential Elections Act No. 15 of 1981)
2. Parliamentary Election - (Parliamentary Elections Act No. 1 of 1981)
3. Provincial Council Elections - (Provincial Councils Elections Act No. 2 of 1988)
4. Local Authorities Election - (Local Authorities Elections Ordinance (Chapter 262)
5. Referendum - (Referendum Act, No. 7 of 1981)

The Election Commission appoints each Government Agent/District Secretary of 22 Electoral Districts as Returning Officers of the respective Electoral Districts to handle 12,314 polling stations. Several other officers are also appointed as Assistant Returning Officers to assist the Returning Officer in the performance of his duties. Additional/Deputy/Assistant Commissioners of Elections of each Administrative District, functions as an Assistant Returning District Officer and he is in overall charge of organizing the elections in the District representing the Commissioner of Elections.

The poll is taken at the Polling Stations established for the purpose of conducting

elections. The chief of the Polling Station is the Senior Presiding Officer (SPO). He/She is a staff officer or an officer similar in status to the staff grade of the government service.

Since the first ever Presidential election held in 1982, 7 presidential elections have been held in Sri Lanka. Further, 15 parliamentary elections held from 1947 and last was in 2015. And also the Department conducted many elections for Provincial Councils and Local Authorities as well. However, there is only one Referendum held so far, in 1982.

2. EDR & EJ in Sri Lanka

It has to be pointed out at the outset that disputes are inherent to elections. Those who lose always challenge the winners not necessarily on fair grounds. Those who won also challenge the process to establish the point that they have won the way they wished to win.

Generally, disputes occurs in all three phases of the election (pre, post and during the poll day), including party registration, voter registration and verification, location of polling stations, campaign financing, freedom of movement, counting of votes, result declaration and etc. However, the validity of the result, administrative action of election officials to correct a problem and criminal prosecution against those who have violated or attempted to violate the election process may consider as main disputes.

Sri Lankan election disputes can be categorized in the thefollowing manner;

1. Violence
 - a. Intimidation
 - b. Assaults
 - c. Loss of Lives
 - d. Damage to Property
 - e. Firing
 - f. Damage to Decorations
2. Violation of Law
 - a. Abuse of public property
 - b. Abuse of public building
 - c. Involvement of public officers
 - d. Misuse of media
 - e. Distribution of goods
 - f. Illegal propaganda materials (banners, posters and etc.)
 - g. Illegal meetings, rallies
 - h. Illegal appointments and promotions
 - i. Security
 - j. Obstruction to propaganda
 - k. Complaints related to postal voting

Following are the reported violence to the National Investigation and Complaint Management Center at the last general election 2015.

No of violence = 42
No of violation of law = 1,663
Total no of complaints = 1,705

Above electoral violence can be broken into three main categories as physical electoral violence (rough handling, beating or flogging, inflicting other types of injuries and even election-related assassination); psychological electoral violence (threat of the use of violence, especially threat of attacking polling stations and other voting venues); and structural electoral violence (institutional or legal frameworks to keep people disfranchise or keep them away from political relevance).

2.1 Practices

2.1.1. National Investigation and Complaint Management Center:

National Investigation and Complaint Management Center is established at the Election Secretariat for every election. The Center is a joint mission of senior civil officials and police officials. They operate it from the head office and has regional powered representatives at the regional level. Direct intervention to violence through police, complaint management, dispute resolution, complaint recording and making recommendations to the election management bodies are the key function of this center.

2.1.2. Complaints, Petitions and Appeals:

Every election related legal framework provides for the protection of rights to contest election, the credibility of results and for the aggrieved parties to seek redress in a court of law.

2.1.3. Upholding the Fundamental Human Rights:

During elections, fundamental human rights such as freedom of speech, freedom of opinion and ideas, information, assembly, movement and association must not be infringed in terms of the provisions of the Election Law.

2.1.4. Offences, Penalties and Maintenance of Order:

While it is important to maintain peace and order at polling venues, efforts should be made to balance the potential intimidating effects of security officials and other agents deployed to ensure the maintenance of peace and order. The task of maintaining order at polling stations should be assigned to police officers trained for the specific purpose. Each of the appointed election official may be provided with an extensive set of guidelines, rules and regulations to be in line with the election law and expected duties.

2.1.5. Media Access and Regulation:

Sri Lankan election law provides legal provision to control over the public media. However in order to cover the private media a set of Media Guidelines has been issued with the approval of the Parliament. Media regulations and guidelines provide safeguards against illegal political censorship, unfair advantage enjoyed by incumbents and ruling party candidates and unequal access during campaign period.

2.1.6. Public Information and Voter Enlightenment Programme:

Public enlightenment and voter education is carried out by the election commission and it is well accepted by the civil society. The information as to where, when, and how to vote, as well as on why voting is important is disseminated among public. They must be confident in the integrity of the process and in their right to participation in it. Furthermore, the non-violence political participation at the election process is always promoted.

2.1.7. Observation and Verification:

Representatives of political parties and candidates should be allowed to make observations and verifications of election preparations, voting and counting. This process is also reinforced by the presence of non-partisan election observers from national and international non-governmental and international organizations. Public confidence in the electoral process is retained through such strategies of transparency.

2.1.8. Legal Authority and Structure:

Each election is facilitated and supported by the Parliament Acts and many of other regulations made by the Election Commission as and when necessary. In addition, all above Acts and regulations are based on the Constitution of the country which enshrines the political rights, freedom of expression, sovereignty, democracy and etc.

2.1.9. Guiding Principles for election officials:

All election officials are government officials. As public servants, electoral officials have certain obligations towards the public and these should be reflected in their day to day conduct. Apart from the fact that the electoral officials are committed to the principles which are the foundation stones of electoral good practice and they are ever willing to provide high quality electoral service to all stakeholders. Their conduct, especially during election season, are guided by the following principles (Integrity, Impartiality, Independence, Transparency, Efficiency, Service-mindedness and Professionalism).

2.1.10. Code of Conduct:

Code of conduct for political parties and candidates is issued by the Election Commission at every election.

2.2. Future steps

2.2.1. To establish Sri Lanka Election Disputes Resolution Committee;

The Committee comprises of a Rtd. High Court Judge (Chairman), Director General of Elections, Rtd. Secretary of a Ministry, Rtd. Senior Deputy Inspector General of Police (elections), Rtd Add. Commissioner of Election, Secretary of the Election Commission, Add. Commissioner of Election (Legal), Director Legal of the Election Commission, an Ass. Commissioner as Coordinator and the Chairman and Members of the Commission in advisory capacity.

- 2.2.2. To get required legal provisions adopted for the committee to work on election conflict prevention and dispute resolution;
- 2.2.3. To study and research similar practices and develop a Standards Operational Procedures (SOPs) for dispute management.
- 2.2.4. To improve dispute management from single-track diplomacy to multi-track diplomacy;
- 2.2.5. To improve gender activism and use of technology in election process as a tool of election dispute resolution;
- 2.2.6. To identify conflict sensitivity indicators and introduce an early warning systems in conflict management; and
- 2.2.7. To develop knowledge management setup (KM) for lessons learnt review on election disputes.

Electoral Dispute Resolution (EDR) and Electoral Justice System (EJS)

Regional Workshop on Electoral Dispute Resolution and Electoral Justice

Bhojraj Pokharel

July 21, 2016

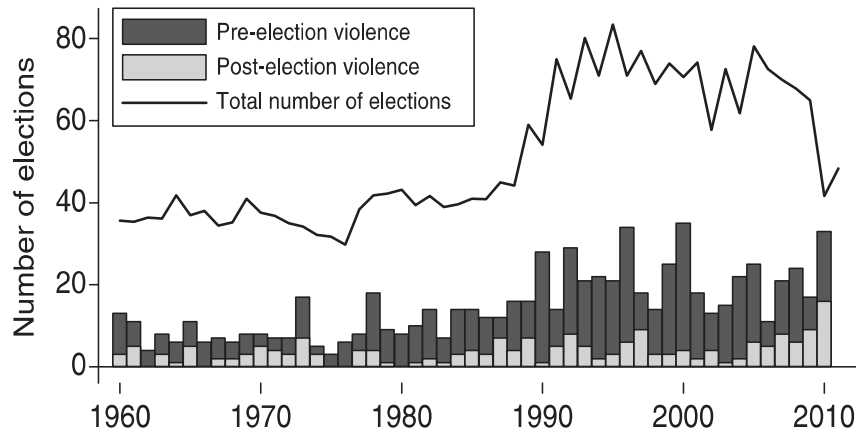
Kathmandu



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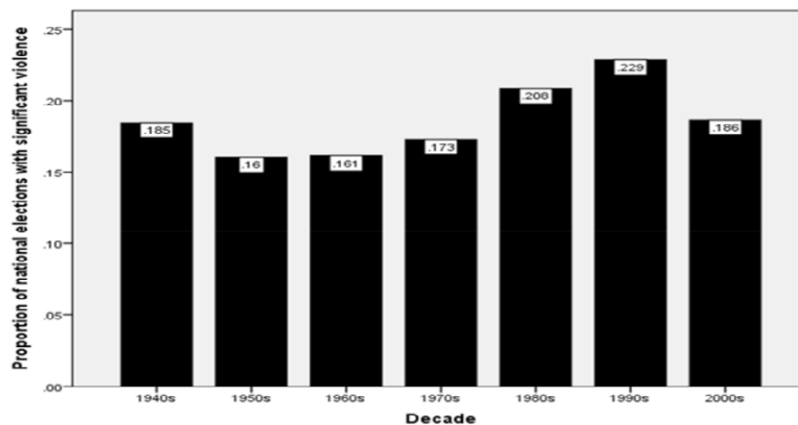
- Concepts/principles,
- International standards and practices,
- A few examples,
- The Nepalese case, and
- The way forward

Election violence over time (Slide Credit-Prof. Richards, EIP)



Source: Hafner-Burton, Hyde, and Jablonski (2014)

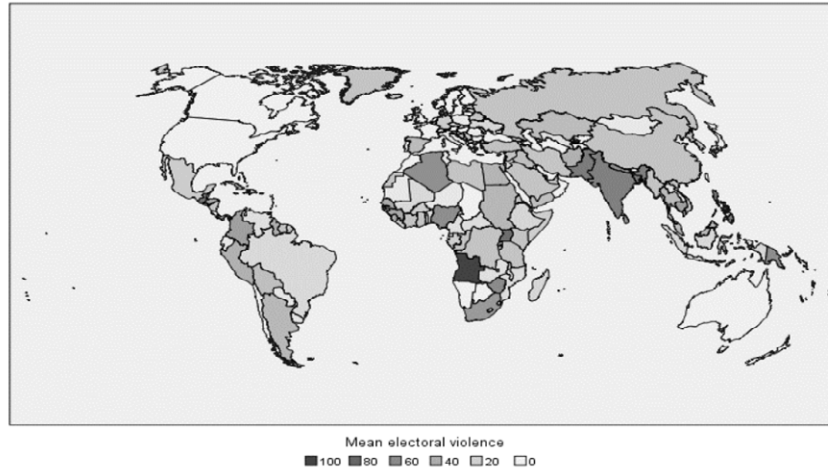
Election violence by decade (Slide Credit-Prof. Richards, EIP)



Source: Norris (2014)

Election violence around the world

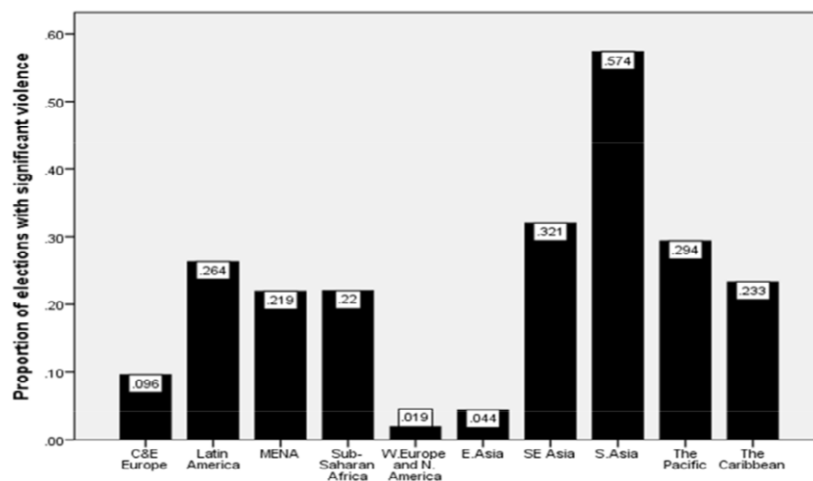
(Slide Credit-Prof. Richards, EIP)



Source: Norris (2014)

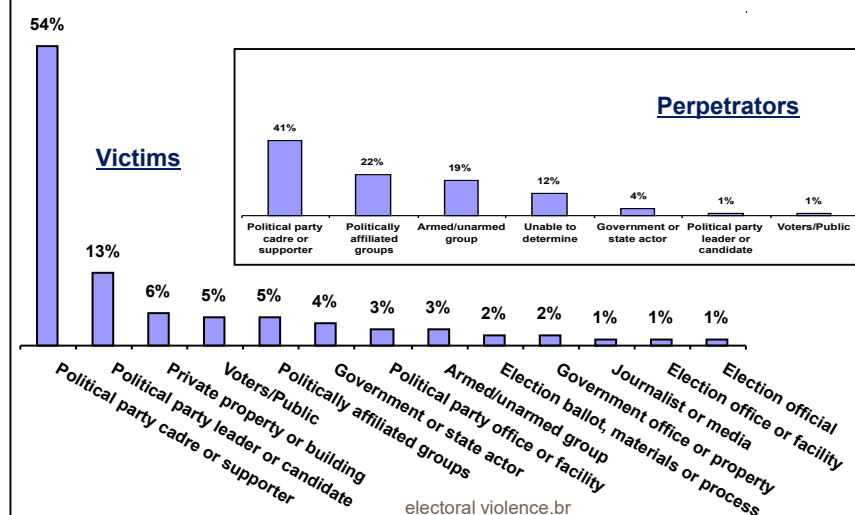
Regional distribution of violence

(Slide Credit-Prof. Richards, EIP)



Source: Norris (2014)

Perpetrators & Victims of Pre-election Electoral Violence (Nepal-2008)



“Injustice anywhere is a threat to justice everywhere.” — Martin Luther King Jr.

Lead towards Disputes



Way towards peaceful settlement



Electoral Rights

Fundamental Electoral Rights are enshrined through

- Various International instruments
 - ▣ United Nations Charter
 - ▣ Universal Declaration of Human Rights
 - ▣ International Covenant on Civil and Political Rights
 - ▣ General Comment 25 of the UN Human Rights Committee on the International Covenant on Civil and Political Rights
 - ▣ UN Security Council Resolution 1325 (2000) and UN Security Council Resolution 1820 (2008) on Women, Peace and Security
 - ▣ GA Resolution 66/130 on Women and Political Participation (2012)
- Regional Protocols, and
- National laws and constitution

“Where there is a right, there must be a remedy”

(slide theme: Katherine Ellena, IFES)

Electoral Justice processes exist to ensure every step is in line with the law and protect fundamental/electoral rights:

- ❖ to vote
- ❖ to stand as a candidate
- ❖ to be elected
- ❖ to assemble
- ❖ to form and join associations (political parties)

Why EDR and Electoral Justice Systems are Important

- ❖ Electoral dispute resolution (EDR) is a critical issue which impacts on the extent to which elections are considered as free and fair, and whether the results are accepted.
- ❖ Since disputes and complaints are inherent in elections all over the world, EDR mechanisms need to be effective to deal with any challenge that arises during any stage of the electoral process
- ❖ Failure to create and implement effective mechanisms to resolve electoral appeals can seriously undermine the legitimacy of an entire electoral process.

Sources of Disputes and Complaints

- ❖ Non-compliance with laws and rules
- ❖ Decisions / conduct of the election management bodies and staff
- ❖ Inaction of the authorities
- ❖ Lack of a judicious level playing field
- ❖ Behavior of other electoral actors (candidates, political parties and their agents; observers, election officials, security and other state parties)

Potential consequences of irregularities and allegations

- ❖ No elections are perfect but the perception of how an election is conducted is key
- ❖ Irregularities can threat legitimacy of any elections
- ❖ Allegations of fraud and malpractice can erode public trust
- ❖ Triggered constitutional crises or preclude the successful transfer of power.

-
- A word cloud where the word 'CRISIS' is the largest and most central element, rendered in a bold, red, sans-serif font. It is surrounded by numerous other words in various sizes and orientations, including 'TROUBLE', 'BANKRUPTCY', 'CONFLICT', 'STAGNATION', 'RECESSION', 'INFLATION', 'DEBT', 'UNEMPLOYMENT', 'CREDIT', 'PANIC', 'DANGER', 'LAW', 'STORM', 'HURRICANE', 'TERRORISM', 'WAR', 'PEACE', 'HAPPINESS', 'LOVE', 'HATE', 'WAR', 'PEACE', 'HAPPINESS', 'LOVE', 'HATE'. The words are scattered across the page, with some appearing multiple times. The overall composition suggests a complex and multifaceted concept.

An effective electoral justice system

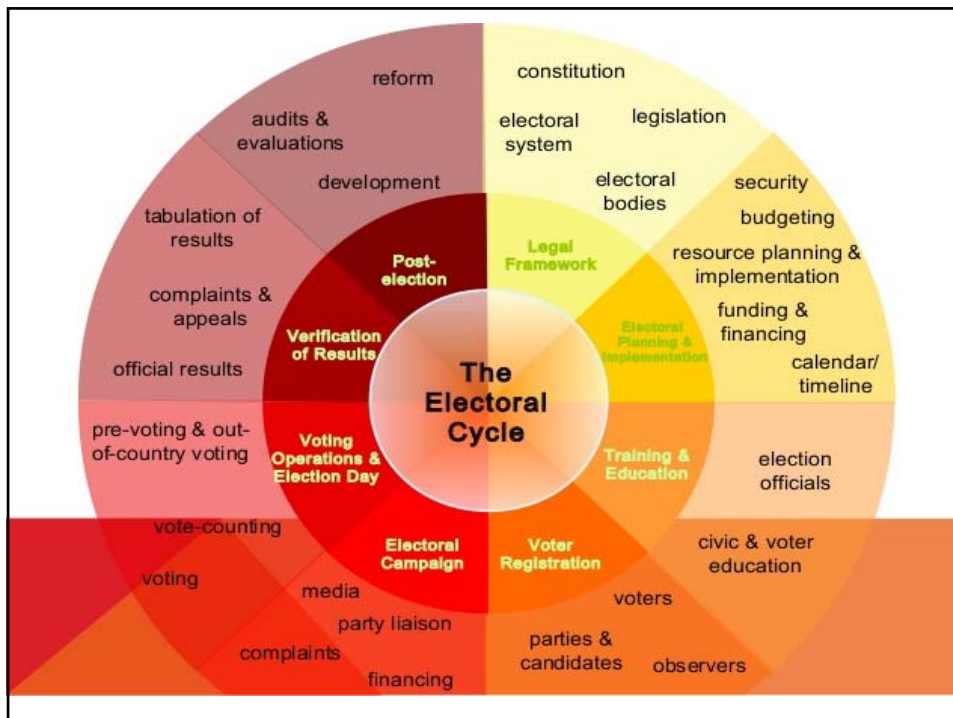
- ❖ Means for preventing and resolving electoral disputes
- ❖ Reinforces the credibility of an electoral process
- ❖ Supports the legitimacy of the winner
- ❖ Assists with a peaceful transition of government
- ❖ Provides an alternative to post-election unrest

- Justice

Disputes, complaints or challenges arise during the entire electoral cycle

- ❖ During policy and legislation design phase
- ❖ During delimitation of constituencies
- ❖ During voter registration
- ❖ During candidate nomination
- ❖ During the campaign period
- ❖ On Election Day
- ❖ During counting and tabulation
- ❖ After the results are announced
- ❖ At other times outside the election calendar

These disputes, complaints and challenges should all be considered part of the EDR/EJS process – not just post-election disputes over the outcome of elections – as they can all impact the credibility and legitimacy of the process



Categories or types of complaints or disputes may be:

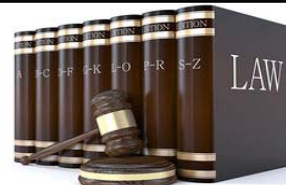
(slide credit: Katherine Ellena, IFES)

- ❖ Administrative in nature;
- ❖ An electoral offence and/or alleged crime;
- ❖ Those that may impact results; or
- ❖ A mix of the above.



Legal Tools used

- ❖ Code of conduct
- ❖ Electoral legislation
- ❖ EMBs legislation and Rules
- ❖ Electoral Offences and Criminal Act
- ❖ Civil Code
- ❖ Criminal Code
- ❖ Security laws
- ❖ Constitution, etc.



© Can Stock Photo

Responsibility for Resolution of Disputes

- ❖ Election management bodies
- ❖ Law enforcement authorities
- ❖ Tribunals (legal)
- ❖ Political Parties Dispute Resolution Tribunals
- ❖ Courts (Local/district/appeal/Supreme/constitutional)
- ❖ Elected bodies
- ❖ Alternative mechanisms

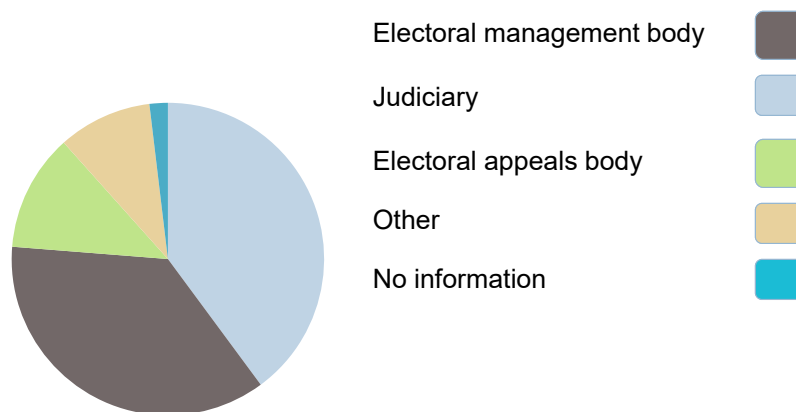
Informal or AEDR Mechanisms

- ❖ Mediation/Eminent Personalities
- ❖ Peace/ Conciliation Committees
- ❖ Community based traditional institutions
- ❖ All-party mechanisms
- ❖ International / Diplomatic efforts (Often Formal also)

Bodies Involved in Electoral Disputes Worldwide

More information: Electoral Justice Handbook, IIDEA.

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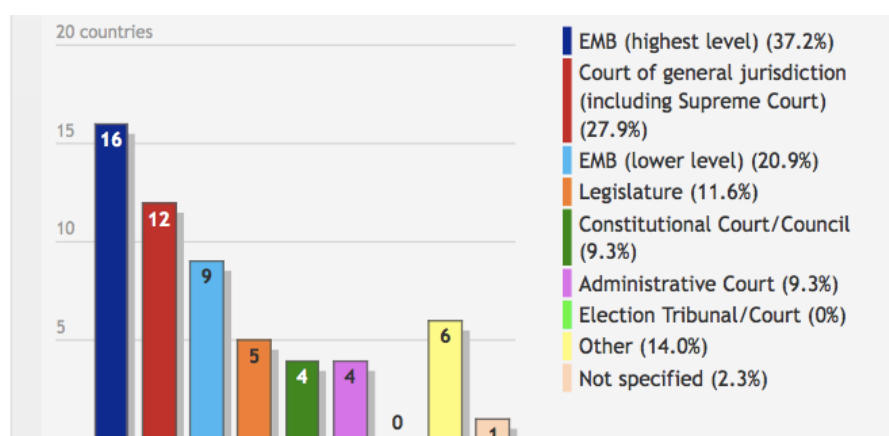


Jurisdiction for Election Disputes: Europe Examples

More information: Electoral Justice Database, IIDEA.

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Bodies dealing with 'first instance' election disputes

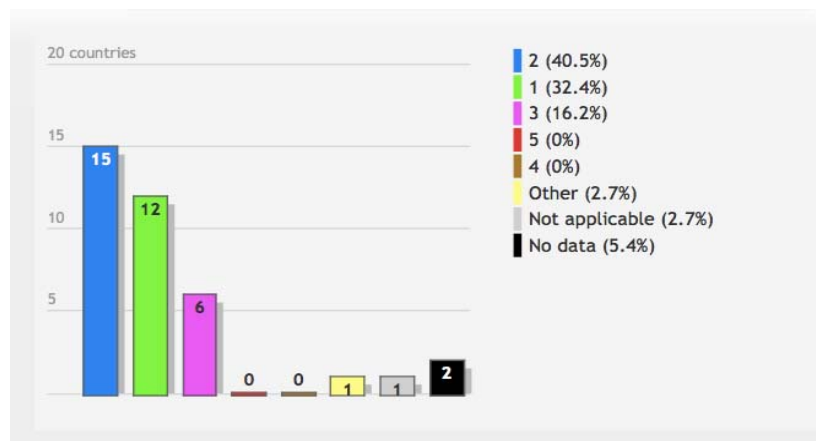


Appeals: Asia Examples

More information: Electoral Justice Database, International IDEA.

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Levels of adjudication for disputes related to political party or candidate registration for legislative elections



Kenya: A Glaring Example



2007 Absence of an effective electoral dispute resolution mechanism to resolve the mounting challenges to the integrity of the results..(Krieg Commission)

2013: Petition Challenging the election of President was Peacefully Settled by the Supreme Court's verdict



Indonesia 2014 Presidential Elections

Both candidates claimed victory,
one claimed massive fraud

Open hearing in Constitutional
Court ruling upheld EMB results



Generally vulnerability can be high in new democracies

In established democracies, when your right is robbed, you may go to the courts, but in new democracies – when your right is robbed – you may resort to violence.

- ❖ Incomplete legislation or institutions
- ❖ Weak rule of law
- ❖ Low credibility of public institutions (independence, impartiality, transparency related)
- ❖ Low enforcement capacities
- ❖ Mistrust over the actors (Integrity, professionalisms) and the mechanisms

Challenges in established democracies

- In many more established democracies often the EDR system evolves slower- or is not given as much attention- as other parts of electoral process.
- An increased sophistication among political actors in learning how to manipulate electoral rules.

The Case of Nepal



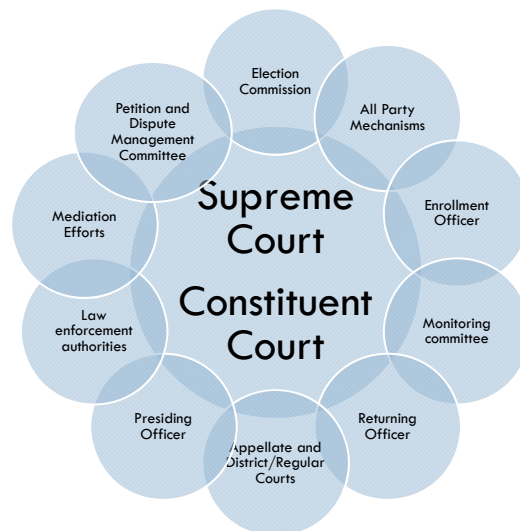
Mandate

The Constitution of Nepal provides two stages of election disputes: (1) disputes arising during the nominations and before the declaration of results; and (2) disputes subsequent to the declaration of election results and election petitions. The first can be settled by the ECN or the courts, while the second can only be settled by the courts.

The legislative framework for EDR and EJS in Nepal...

- ❖ Constitution
- ❖ Political Parties Act and Rules
- ❖ Election Act
- ❖ Election Commission Act and Rules
- ❖ Election (Offences and Punishment) Act
- ❖ Parliament (National/Provincial) Member Election Act and Rules
- ❖ Local Government Election Act and Rules
- ❖ Procedures Relating to Nomination of Candidates and Selection Process in Proportional Election
- ❖ Manual on Settlement of Petitions and Proceedings Relating to the Election
- ❖ Criminal law (General Code)
- ❖ Code of Conduct

Agencies for electoral justice: Duplication and confusions



Sanctions and Punishments

- ❖ Warnings
- ❖ Corrective measures
- ❖ Cancellation of political parties registration
- ❖ Prohibiting to participate in future elections
- ❖ Cancellation of polling
- ❖ Fines
- ❖ Cancellations of candidacy
- ❖ Losing elected seats
- ❖ Jail term



7 international standards for EDR and EJS

(credit: Chad VickerY, IFES 'GUARDE' publication)

These standards are drawn from international instruments such as the UDHR and ICCPR, and are key to ensuring an effective EDR/EJS process that protects the rights of citizens:

1. A transparent right to redress
2. Clearly defined election standards and procedures
3. An impartial and informed arbiter
4. A system that judicially expedites decisions
5. Established burdens of proof and standards of evidence
6. The availability of meaningful and effective remedies
7. Effective education of stakeholders

Resolving election disputes

Key elements for consideration:

- What is the allegation?
- Which body has jurisdiction?
- Who can file? (i.e. who has legal standing?)
- Where, how and when must a complaint be filed?
- Who has to prove the allegation, and what standard of evidence is applicable?
- Who investigates and what is the investigation process?
- What is the adjudication and decision-making process (and timeframe)?
- What type of remedies or sanctions can be applied?
- Is there a right to appeal?

Principles for Remedies and Sanctions

Remedies will differ based on the adjudicator.

There are usually a range of remedies available, for example:

Election Commission:

voiding of ballots; removal or inclusion in voter list; rejection of candidate nomination and/or revocation of accreditation of agent or media; disciplinary actions against election officials (dismiss or suspend election staff); correction of results; removal of campaign materials

Courts:

disqualification of candidate; imprisonment; fines; declaring an election void

Principles for Remedies and Sanctions

(slide credit: Katherine Ellena, IFES)

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An effective remedy:

- (1) ensures that the letter and spirit of the law is realized in practice;
- (2) is provided in a timely manner;
- (3) is proportional to the violation or irregularity in question;
- (4) is enforceable;
- (5) leads to deterrence or a change in behavior in question (particularly important during campaigning);
- (6) Reinforces the perception of fairness and credibility of the process.

Key considerations for complaints adjudication

- **Legitimate complaint v. unsubstantiated claim:** complaints should be officially filed in writing to avoid rumour-based allegations that can undermine the election
- **Distinction between crimes and election violations:** There can be overlapping jurisdiction; clarity and cooperation between institutions is important
- **Distinction between malpractice (negligence) and fraud (intentional):** both are legitimate complaints that should be addressed

Key considerations for complaints adjudication

- **Consideration for deadlines:** filing and decision deadlines help with a timely remedy: quick resolution of complaints avoids uncertainty and instability relating to the results
- **Consistency in investigation** across institutions helps to avoid the perception of arbitrary decisions and builds trust in the process
- **Transparency:** holding public hearings when needed, and publishing written decisions, builds trust in the institution, in the process as a whole, and in the results

The Way Forward

- ❖ Legal and Institutional/Regulatory Reform
- ❖ Focusing more on outreach
- ❖ Capacity development
- ❖ Sharing best practices
- ❖ Collecting information (including through case management)
- ❖ Use of ITC and social media

Some Major Election Rulings (Source IIDEA Handbook)

Country and Year	Ruling By	Outcome of ruling
USA -2000	Supreme Court	Suspension of recount in Florida
Spain- 2003	Constitutional Court (CC)	Some political parties declared illegal due to possible ties with terrorism
Ukraine-2004	Supreme Court	Annulled Presidential election
UK- 2005	European Court of Human Rights	Voting rights of persons serving prison sentences
Nicaragua- 2005	Inter-American Court of HRs	Limiting to candidacy by law a violation of the American convention on HR
Costa-Rica- 2006	Supreme Election Court	Total recount of votes for presidential election
Mexico-2006	Electoral Court	Recount of votes in presidential election
Turkey 2007	CC	Annulment of presidential election results
Thailand 2007	CC	Dissolution of Thai Rak Thai Party
Colombia 2009	Council of States	Annulment of 2006 Senate results and ordered recount
Moldova 2009	CC	Recount of votes for parliamentary elections

Resources and References

- http://www.cartercenter.org/resources/pdfs/news/peace_publications/conflict_resolution/election-dispute-guide.pdf
- <http://aceproject.org/ace-en/topics/lf/lfb/lfb12/default>
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- <http://www.osce.org/odihr/elections/144251>
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8.4 Pictures of the Workshop













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