

# REINFORCING CREDIBILITY AND ACCEPTANCE OF ELECTORAL PROCESSES

## ELECTORAL DISPUTE RESOLUTION:

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Electoral justice and the role of electoral dispute resolution mechanisms on the overall acceptance of the elections

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## Introduction

- Why?
- What?
- How?



CREDIBILITY

## Introduction

- Why EDR?
- What rules apply?
- How to set up EDR?
- Lessons from practice: challenges?
- Conclusion
- Questions?

# Why EDR?

- Integral part of the electoral process
- Possibility for stakeholders to preserve their fundamental human rights: free, fair and credible elections
- Prevents stakeholders from trying other ways of 'seeking justice'

## Ethiopia 2005



# What Rules Apply?

## Universal Declaration of Human Rights

Article 21: (...) freely chosen representatives (...) the will of the people  
(...) periodic and genuine elections (...) free voting procedures

## The 1994 Inter-Parliamentary Union Declaration on Criteria For Free and Fair Elections

Article 3 (6): Every individual and every political party has the right to the protection of the law and to a remedy for violation of political and electoral rights

# What Rules Apply?

### OSCE Vienna Meeting 1989

#### Article 13:

- effective remedies
- right to a fair and public hearing...
- within a reasonable time...
- before an independent and impartial tribunal
- right to be informed in writing of a decision including the ground on which it is based and mentioning further available remedies



# What Rules Apply?

### OSCE Copenhagen Meeting 1990

#### Article 5:

- All equal before the law and entitled to equal protection of the law
- Effective means of redress against administrative decisions
- Administrative decisions justifiable and indicate available remedies
- Independence and impartiality of the courts
- Right to a fair and public hearing





**Specific EDR Rules?**

Not really...

## What Rules Apply?

### General Principles:

- Equal access for all
- Independence and impartiality of the courts
- Due Process (fair hearing)
- Transparency
- Effective remedies

# How?

- Good legal basis for every step of electoral process
- Good legal basis for EDR and funding 'EDR-courts'
- Professional judges with necessary expertise
- Good information to stakeholders
- Reasonable timeline / prompt decisionmaking
- XS4all to the system

# How?

## I. Electoral administration

- Advantage:
  - > Knowledge of the electoral process
  - > Easy access
  - > Efficient way to correct mistakes (voter list)
- Disadvantage:
  - > Not independent vis-a-vis its own decisions
  - > Often not professional judges

# How?

## II. Courts

- Advantage:
  - > Independent from electoral administration
  - > Professionalism
- Disadvantage:
  - > Sometimes more difficult access

## How?

### II. Courts

- Ad hoc:
  - Timing issue
  - Funding issue
  - Professionalism?
- Existing structure
  - Flexibility issue
  - Incumbency issue

# How?

### Recommendation:

- First instance, where appropriate: electoral administration
- Second (last) instance: independent Court
- The court deciding must be at the right level (presidential elections: supreme court?)



## Lessons from practice: challenges?

- Time constraints vs. due process
- Political context / pressure
- Evidentiary issues
- Equal access in practice
- ...
- ...

## Conclusion

Electoral **D**ispute **R**esolution: **EDR**

**E** = Equality

**D** = Due process

**R** = Remedies

**Thank you...**

**Questions?**