

Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections

GUARDE

Edited by Chad Vickery



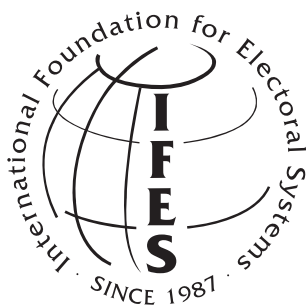
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International Foundation
for Electoral Systems

Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections

(GUARDE)



International Foundation for Electoral Systems

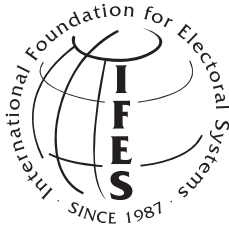
Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections

(GUARDE)

**Edited by Chad Vickery
International Foundation for Electoral Systems**

2011

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(GUARDE)

Edited by Chad Vickery

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Letter from the President/CEO

Since 1987, the International Foundation for Electoral Systems has supported the growth of democratic stability around the world, primarily by focusing on increasing the credibility and effectiveness of Election Day administration. As the global community has become increasingly interconnected, and election events from Florida to Afghanistan and from Minnesota to the Ivory Coast have captured the attention of the general public, there is an increased need to ensure that elections are free, fair, and credibly administered. To accomplish this, the complaints adjudication process must be transparent and reliable, and the final outcome must be accepted by all losing parties, the media and, of course, the voters.

Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections (GUARDE) was conceived and written with that objective in mind. We hope that it will provide election officials and other key stakeholders with information on international standards and best practices in complaints adjudication to ensure that the process is credible and accepted by the public.

GUARDE is the culmination of a two-year long effort at IFES, funded by the United States Agency for International Development (USAID) as a part of technical leadership programming by the Consortium for Election and Political Process Strengthening (CEPPS). As a member of CEPPS, IFES works to employ innovative techniques to support partners as they pursue reform objectives. Key among these objectives is the need for practical tools to ensure that electoral justice is pursued in a fair, effective, and credible manner.

My most sincere thanks go out to the enthusiastic team of writers, editors, and expert reviewers who produced this guidebook. Their dedication to addressing this important and complex issue has ensured that this publication will have an enduring usefulness for election stakeholders around the globe.

Bill Sweeney
IFES President/CEO

Acknowledgements

The publication of this guide is the result of several years of work and the exceptional dedication of a large team of experts, editors, researchers and reviewers. I believe we have met our goal of giving practitioners both the normative justification and practical tools they need to design, justify, and implement effective electoral justice programs.

In Chapter 1, we present seven standards based on international public law obligations that will give practitioners and other stakeholders the normative foundation or signposts needed to design transparent, consistent and effective electoral complaints adjudication systems. Several people contributed to the drafting of this chapter by providing a great deal of research, guidance and debate about the definition of standards and the arguments that undergird each of them. This team included Typhaine Roblot, Jeremy Hunt, Jennifer Mishory, Erica Shein, and Bob Dahl.

Chapter 2 offers those who are either drafting or analyzing electoral complaints adjudication legal frameworks the basic legal components they need to consider. I want to thank Bob Dahl for capturing, on paper, his unique ability to analyze both the macro issues one must consider when undertaking legal review and his respect for the practical implications of reforms that can be proposed in particular circumstances. I also want to thank Mike Clegg for his sage advice, important additions and thorough review of this chapter that helped us to contextualize and enrich the discussion.

Chapter 3 strives to provide tools for designing and implementing effective complaints adjudication training programs. I must thank Steven Gray for providing this framework, buttressed by a solid training methodology. I also want to thank Linda Edgeworth for reviewing and adding to this chapter several elements that will help to focus training programs on the particularities associated with complaint adjudication systems.

Because of the importance and unique nature of training arbiters in the electoral complaints process, the fourth chapter uses case studies and comparative analysis to give practitioners the information they need to

consider when designing and implementing arbiter training programs. I specifically want to thank our writers from the Mexican Tribunal Electoral del Poder Judicial de la Federación (TEPJF) for discussing their unique and extensive international experience in this chapter. I also want to thank Luie Guia and Vincent Yambao for documenting the process in the Philippines. Both examples provide those working in this arena with case studies to inform, compare and contrast with their own experience.

Chapter 5 focuses on civic and voter education, a topic that is largely overlooked by donors, practitioners, tribunals and election management bodies, but is as important as any other element that is typically discussed in relation to effective complaint adjudication systems. I want to thank the authors of this chapter, Catherine Barnes and Grant Kippen, for successfully combining several years of international development experience with a deep understanding of effective civic education programming and firsthand knowledge of the challenges faced by those sitting on electoral complaints adjudication bodies. I also want to thank Catherine for developing the practitioner checklist at the end of this section, which served as a model that we applied to all of our other chapters.

The final chapter, focusing on alternative approaches to electoral complaints adjudication, was in many ways a maiden voyage and we were not sure where it would take us. With that in mind, I owe much gratitude to John Hardin Young for guiding this discussion with his in-depth knowledge of alternative dispute resolution, administrative law and electoral law; David Kovick for contributing his extensive international experience in alternative dispute resolution; and Vincent Tohbi for tying our theoretical approaches to real world examples.

In the last stage of this effort, we assembled a panel of experts to conduct a thorough final review of GUARDE: Barry Weinberg, Linda Edgeworth, and Ms. María del Carmen Alanis Figueroa, Magistrate-President of TEPJF. These three reviewers provided a great deal of insight and advice, based on their extensive experience in this field, which helped us clarify contentious issues. Their reviews also provided an invaluable check on the quality of our work.

I also want to thank Mary Kelly, Michael Svetlik and Bill Sweeney for their steadfast support of this project through very long process and Laura Osio for helping shape a manuscript into a document ready to publish as a text.

Finally, although already mentioned above, I would like to once again express my gratitude to Erica Shein, Jeremy Hunt, and Typhaine Roblot. They have contributed to this process in many ways, by helping me form abstract ideas into a concrete framework, drafting sections, researching obscure points of law, supporting our authors' work, editing numerous draft documents and finalizing our manuscript for publication. I can confidently say that GUARDE would not have been published without the input from their creative and astute minds, their tenacity in pushing this process along and their patience in working with a very busy, and sometimes distracted, editor.

I hope our work - as presented in this guide - will positively contribute to the debate surrounding the standards that apply to electoral complaint adjudication systems and will help practitioners develop and implement effective and sustainable electoral justice programs.

Chad Vickery
IFES Director, Europe & Asia

About the Contributors

Editor

Chad Vickery is a legal and international election administration expert with 17 years of experience in projects that worked to strengthen democracy and governance in transitioning societies. He has extensive experience in designing and managing election complaint adjudication programs, providing comparative legal analysis, and working on elections and rule of law programs throughout South Asia, Southeast Asia, Eurasia and the Middle East. He holds a Master's degree in International Relations from Georgetown University, a Juris Doctorate from the Catholic University of America with a concentration in comparative and international law, and a Bachelor's degree in Political Science from the University of Washington. He is a member of the Washington State Bar.

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Michael Clegg is an expert in legal review and drafting of legislation. He has been involved with the process for more than three decades, having spent much of his career working with the Canadian House of Commons and Senate as both Parliamentary Counsel and as a private attorney. He has worked as an election administrator and monitor since the late 1980s, and has been a consultant for IFES in both Iraq and Afghanistan since 2005.

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Linda Edgeworth has nearly 30 years of experience with all aspects of the electoral process, including planning, executing, and managing technical requirements; developing and implementing procedural changes; and coordinating outreach and training with government agencies and the general public. She has been involved with domestic elections in the United States, as well as in three dozen countries around the world in more than a decade as an IFES election administration specialist.

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Chapter 5

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Grant Kippen has worked in the elections and democratic development field over the past 30 years. Mr. Kippen was first appointed by the United Nations to the Electoral Complaints Commission of Afghanistan in 2005 and subsequently re-appointed in 2009; both times being elected as its chairman by the consensus of its members. He has worked with governments, corporations and NGOs throughout North America, Europe, Asia, and the Middle East. Since 2003 he has been heavily involved with electoral reform and the establishment of civil society in Afghanistan. He has also worked with IFES in Pakistan, Egypt, Moldova, Georgia, Kosovo and Timor-Leste. Mr. Kippen is based in Ottawa, Ontario.

Chapter 6

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John Hardin Young has worked in election law since the 1970s, when he served as Counsel for the Virginia State Board of Elections. He has been actively involved in several prominent recounts, including the 1989 Virginia gubernatorial race between Douglas Wilder and Marshall Coleman and the 2000 Florida presidential recount. Mr. Young sits on the Advisory Committee for the Election Law Program at William & Mary School of law, where he also serves as an adjunct faculty member. He is currently counsel to Sandler, Rieff & Young, P.C. in Washington, D.C.

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Review Panel

Linda Edgeworth has nearly 30 years of experience with all aspects of the electoral process, including planning, executing, and managing technical requirements; developing and implementing procedural changes; and coordinating outreach and training with government agencies and the general public. She has been involved with domestic elections in the United States, as well as in three dozen countries around the world in more than a decade as an IFES election administration specialist.

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About IFES

The International Foundation for Electoral Systems (IFES) is the leading election assistance and democracy promotion non-governmental organization.

IFES promotes democratic stability by providing technical assistance and applying field-based research to the electoral cycle in countries around the world to enhance citizen participation and strengthen civil societies, governance and transparency.

Every IFES project is staffed by national and international personnel while partnering with local election management bodies and civil society organizations. This homegrown approach ensures that the expertise offered by IFES fits the needs of the country or client and the benefit of assistance outlasts the life of the project. Our work is nonpartisan and includes projects that:

- Help citizens participate in their democracies
- Increase politicians' accountability to the electorate
- Strengthen government institutions

Since its founding in 1987, IFES has worked in more than 100 countries — from developing to mature democracies.

IFES is registered in the United States as a 501(c)(3) organization.

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Foreword

"In a democracy, it is not the voting that matters, it is the counting."

Tom Stoppard, Jumpers (1972) (Act I)

Worldwide, the cry for reform and the establishment of democratic governments continued unabated as we passed through the first decade of the 21st Century. As we enter the second decade, these demands have become a full-throated, if not a thunderous, roar. Several reform movements have succeeded in removing long-term, well-established regimes that were unquestionably undemocratic. But an inevitable dilemma faces the people leading these reform movements — what comes next? The reality is that what comes next is often difficult — the establishment of a democratic form of government. An analogy from family life may be helpful in making my point. It is often much easier for family members to agree to tear down their old house than it is for them to agree upon the design for their new house. The challenge facing every successful reform movement is how to design a democratic government that actually works. Oftentimes the debate is as basic as the definition of a democracy. This debate, if not resolved quickly, can result in failure.

Democratic government is: "Government by the people, either directly or through representatives elected by the people." *Black's Law Dictionary*, 497 (9th ed. 2009). In essence, it is a government of, by, and for the people. Certain general principles are essential to a democracy. These principles include that all people are created equal and that all people are endowed with certain unalienable rights or freedoms. One of the most fundamental freedoms is the right to choose those in whom the people vest sovereign power. People want to live in a civil, orderly, democratic society with just laws that are uniformly enforced. To achieve this goal in a democracy, the people are willing to relinquish some individual freedoms. They are willing to cede some individual rights to persons they choose to put in a position of having sovereign power (e.g., public officeholders).

This willingness to grant sovereign power to those who hold public office is a key aspect of all representative democracies. But, as Lord Acton said more than a century ago, “Power tends to corrupt and absolute power corrupts absolutely.”¹ Thus, for a democracy to succeed, it must not only have an institutionalized system to vest sovereign power in public officials, but just as importantly, it must have a means to peacefully revoke that limited grant of power. Such a system will hopefully avoid the corruption that Lord Acton feared.

The question then becomes how a democratic society establishes a system that allows for a peaceful implementation of change or, in essence, how a society can institutionalize the ability to have periodic, peaceful revolutions. The answer is the establishment of a system of regular, free, and fair elections where the people can vote for those in whom they want to vest sovereign power. The right to vote guarantees the people the right to participate in their government. Honest elections not only guarantee the right of the people to speak, but more importantly, they guarantee the people’s right to be heard. A system of free and fair elections anticipates the need for change. Elections permit adjustments in the allocation of power and provide a method for a society to correct its mistakes. Thus, for a democracy to thrive there must be a valid means to vindicate each citizen’s most important individual right — the right to vote.

It has long been recognized in the United States that “the right to vote freely for the candidate of one’s choice, is the essence of a democratic society and any restriction on that right strikes at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 555, 84 S.Ct. 1362, 12 L.Ed.2d 500 (1964). This right to vote is precious. Palm Beach Circuit Court Judge Jorge Labarga, one of the judges involved in the 2000 Bush v. Gore presidential election dispute, said it well in one of his opinions rendered during the early stages of that election contest. Judge Labarga wrote:

¹ Letter to Bishop Mandell Creighton, 3 April 1887, in Louise Creighton, *Life and Letters of Mandell Creighton* (1904) vol. 1, ch. 13; cf. Pitt 576; 22.

“ . . . the right to vote is as precious as life itself to those who have been victimized by the horrors of war, to those whose not-too-distant relatives were prohibited from exercising the right to vote simply because of their race or gender, and to those who have risked it all . . . in order to one day exercise the right to vote.”

Charles L. Zeldon, *Bush v. Gore: Exposing the Hidden Crisis in American Democracy*, 76 (2010)

Any society that wishes to have a system of regular, free, and fair elections must acknowledge that such elections cannot exist without a commitment to the concept of the rule of law. Democratic governments exist and thrive in many different forms, forms that are frequently adjusted to the specific societal norms, cultural needs, and traditions of the people who compose that society. But, whatever form it takes, a democracy cannot exist unless there is a commitment to the rule of law. A government of, by, and for the people cannot flourish when some people are above the law.

Under a system governed by the rule of law, systems and procedures can be put in place before an election that will guarantee that the intent of the voters is accurately reflected in the outcome of the election. Laws, rules and regulations put in place before an election provide a template for these systems and procedures. The voters can be educated on how to properly cast their votes. Poll workers can be trained on the use of best practices to ensure that votes are properly cast and counted. Proper security measures can be put in place to secure the ballots once they are cast. Accountability by election officials can be enhanced by having systems that promote transparency. Experience has taught me that an essential component for accountability in an election is a written ballot. With a written ballot, the intent of the voter is verifiable. If the voters' intent is independently verifiable, when and if there is a recount or review of election procedures, accountability by election officials is enhanced and the possibility of fraud is decreased.

Despite all the laws, rules, regulations, and procedures put in place to promote regular, free and fair elections, there is no such thing as a perfect election. Things will go wrong. The unexpected will happen. Voting machines will malfunction, power outages will occur, people will make mistakes, and when the election is close, election challenges will be made. But, the fact that an election is not perfect does not mean it cannot be fair. When there is adequate preparation, education, and when clear standards are in place before the election, there can be transparency and accountability. If a culture is established where good people are empowered to do the right thing, most election problems can be resolved in a manner that gives each voter confidence that he or she had the opportunity to speak by casting a vote and that the vote was properly counted.

This leads to my final point about elections in a participating democracy. Not only must a citizen be able to speak (by casting a vote), but that citizen also must be heard (to have the vote properly counted). In a democracy, the right to have one's validly cast vote counted is as important as the act of voting itself. The right of suffrage can just as easily be denied, debased, or diluted by the failure to properly count the votes. As the playwright Tom Stoppard wrote, "In a democracy, it is not the voting that matters; it is the counting."

In essence, guaranteeing that a voter can both speak and be heard is what this book, *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections*, is about. It will help to provide the education, procedures, and skills necessary to enable good people to do the right thing — to ensure that not only will the people be able to speak by casting a valid vote, but they will be heard by having their intent properly recorded when their vote is counted. With this guarantee, a democratic society cannot only survive, it can thrive.

Paul H. Anderson
Associate Justice, Minnesota Supreme Court

When the fairness of elections is called into question, we need an effective process of complaints adjudication to sift the facts and determine whether proper election procedures were followed as prescribed in laws and regulations. If they were, then the election results reflected the will of the people. If not, then appropriate remedies are invoked to assure that the will of the people will be followed.

IFES has provided technical and logistical support in conducting democratic elections to countries worldwide. An important part of this work has been training commission members, lawyers, judges, civil society group members and members of the media in the legal and practical aspects of resolving election disputes under the rule of law.

IFES works one-on-one with representatives of countries' administrative, legislative and judicial branches and presents information by panels consisting of experts on international election law, and leaders of a country's interest and professional groups, to give stakeholders considered evaluations of the interaction between international standards and the country's own legal and administrative complaints adjudication mechanisms. Those presentations, and the discussions that follow them, provide stakeholders with a clear understanding of how to anticipate the issues that are likely to arise in an upcoming election, and how to handle them when they occur.

Beginning in 1965, my work with elections involved enforcing the U.S. Voting Rights Act and other U.S. voting rights laws. Since 1995, I have worked as an international election observer, and I have been a part of presentations and trainings on voting rights, legal procedures and election complaints adjudication in many countries on four continents. Those efforts resulted in the IFES publication of my book, *The Resolution of Election Disputes* in 2006, with a second edition in 2008.

It is with this background that I am so pleased to welcome IFES's new *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections* (GUARDE). The GUARDE manual provides read-

ers with the kind of understanding of election dispute resolution that you can otherwise only get from first-hand experience.

The goals, issues, problems, and techniques of election complaints adjudication are expertly set out and explained. From broad overviews of each topic to cogent illustrations of specific practices and procedures, GUARDE applies international standards to practical matters. In doing so, GUARDE highlights the most relevant topics involved in election complaints adjudication, and provides answers to the questions that election administrators, arbitrators and judges should be asking.

In short, I find that GUARDE provides an excellent compilation of the essential tools for creating systems in which to apply the principles of election complaints adjudication that are at the heart of my book.

Barry H. Weinberg

*Former Acting Chief, Voting Section of the Civil Rights Division,
United States Department of Justice*

INTRODUCTION



Ballot boxes containing ballots cast during the May 2010 elections in the Philippines, now subject of an election protest case, are sealed and retrieved to be brought to Manila for review by the House of Representatives Electoral Tribunal.

Introduction

Building upon 22 years of experience in elections, the International Foundation for Electoral Systems (IFES) gathered resources, experts, and data to compile a guide to election complaints adjudication. This guide seeks to advance United States Agency for International Development (USAID) and the Consortium for Elections and Political Processes Support (CEPPS) technical leadership in this area. It can be used to educate election administrators, the judiciary and the legal community, donors, and election stakeholders regarding effective mechanisms for resolving election disputes and complaints through both formal and alternative resolution mechanisms.

Because there is a great variety of election complaints adjudication processes in place throughout the world, any examination of a specific mechanism must begin with a look at how that country's system is organized, and how it relates to the entire electoral process. An adjudicatory body could be judicial, legislative or administrative in nature, or some hybrid. The body could be a permanent standing entity, or formed in anticipation of or as a response to each election as it takes place. It can be independent of other branches of the government, or it can be a special court or administrative agency within the government. Each of these considerations can color how the adjudicatory body will interact with the election laws and the system as a whole. There is sometimes a need for flexibility and creativity in the electoral complaints adjudication process to address the different types of electoral claims that exist. International standards in the adjudication of electoral complaints are of crucial importance; however, exceptional circumstances sometimes require great flexibility in their implementation as long as they remain within the minimum bounds of international standards.

There are some electoral irregularities in every major election, but they do not necessarily threaten the outcome of the elections. However, if such flaws rise to a level where the credibility and the legitimacy of the election are jeopardized, remedial measures should be taken in a timely and effective manner. Therefore, this guide will also help draw attention to the need to address election adjudication issues to enhance election credibility.

Readers of this guide should bear in mind two distinctions that affect election complaint adjudication: the nature and the seriousness of the complaint. Whether a complaint relates to large-scale concerns such as election outcomes, an allegation of criminal misconduct, widespread fraud or minor irregularities, or to smaller offenses like campaign rules, candidate certification, voter registration, or the placement of posters, the electoral complaints adjudication process will vary. Specifically, considerations about the nature and seriousness of a claim will affect the degree to which balance is maintained between the need for due process and for a speedy resolution. These distinctions can also require an adjudicatory body to accelerate or prioritize the claim, and they can affect the nature of the body which has jurisdiction to handle it.

Not only does an effective complaints adjudication system lend legitimacy and credibility to an election, it also serves as a peaceful alternative to the violent post-election responses all too common in emerging democracies. A strong mechanism proved indispensable in averting political catastrophe in the 2007 elections in Nigeria, as well as in the 2009 elections in Afghanistan.¹ Timor-Leste also provides a salient example of how a transparent and effective election complaints system can be used as a means to avoid electoral violence. One year before the national elections, poorly addressed grievances within the country's national defense forces triggered a crisis that severely shook public confidence in Timor-Leste's young democracy. Given the tense political atmosphere preceding the 2007 presidential and parliamentary elections, there was a crucial need to address legitimate election grievances and to communicate decisions to complainants.² Responding to the absence of a formal complaints process, IFES assisted the National Elections Commission (CNE) to design and implement an effective complaints processing system. This effort to strengthen the performance of the complaints process was an important

¹ Grant Kippen, *Electoral Complaints Adjudication: An Object Lesson from Afghanistan*, Monday Developments, Mar. 2010, at 17. The importance of avoiding violence in emerging democracies is also underscored by the situation in Iraq: "In the West, when your right is robbed, you go to the courts. But in Iraq, it's different — when your right is robbed, (you) resort to violence." Lara Jakes, *Iraq's Sunnis Bracing for Chaos After Election*, Associated Press, Mar. 2, 2010 (quoting Anbar Province First Deputy Governor Hikmat Jasim Zaldan commenting on impending parliamentary elections, scheduled for Mar. 7, 2010), available at http://www.heraldsun.com/printer_friendly/6548536.

² Mary Lou Schramm et al., *IFES, Timor-Leste: Conflict Resolution and Electoral Assistance* 11-13 (2008).

measure to prevent election grievances from becoming a catalyst for violence and disorder.

In contrast, the violence in Kenya following the 2007 presidential elections demonstrated the insufficiency of the electoral complaint mechanism.³ The Kenyan constitution and the electoral law on presidential and parliamentary elections provided for the determination of challenges, but only after the results were announced. Moreover, as in many Commonwealth countries, the Kenyan courts had jurisdiction to adjudicate electoral complaints, but delays in ruling, corruption and an overall lack of competence undermined public trust in the judiciary. Much of the violence would probably have been avoided if principles and procedures to receive and hear the allegations of irregularities and fraud had been in place.⁴

Despite the universal importance of legal structure to deal with election complaints, the origination of these systems varies from country to country. Some countries, such as Ethiopia, respond quickly with ad hoc attempts to maintain electoral integrity after unexpected conflict arises. The 2005 Ethiopian elections were mired in alleged irregularities, and the election authority responded by creating committees to review complaints and investigate potentially meritorious allegations. The near-disaster in the 1994 Dominican Republican elections resulted in the quick implementation of an electoral complaints system that created a more stable election in 1996.⁵ Other democracies, such as Uruguay and Brazil, have taken a longer-term approach, recognizing concerns of electoral corruption in their early history and thus making use of major

³ Independent Review Commission on the General Elections, Kenya National Dialogue and Reconciliation ("Kriegler Commission"), Report of the Independent Review Commission on the General Elections Held in Kenya on 27 December 2007 141 (2008) [hereinafter Kriegler Commission Report] ("[A] material contributor to the tension at KICC, broadcast live to the country, was the absence of an effective electoral dispute resolution mechanism to resolve the mounting challenges to the integrity of the results from Kibaki strongholds."), available at http://www.dialoguekenya.org/docs/FinalReport_consoldated.pdf; see also Christopher Fomunyoh, Center for Humanitarian Dialogue, Mediation des Conflits Electoraux [Mediation of Electoral Conflicts] 13-14 (2009) (discussing 2006 presidential elections in the Democratic Republic of the Congo), available at https://www.ndi.org/files/Mediation_des_Conflits_Electoraux_FRE.pdf.

⁴ Kriegler Commission Report, *supra* note 3, at 139.

⁵ National Democratic Institute for International Affairs (NDI) & The Carter Center, The 1996 Presidential Election in the Dominican Republic 45-46 (1998), available at [http://aceproject.org/regions-en/countries-and-territories/DO/reports/Final percent20Report percent20Dominican percent20Republic percent201996.pdf/view](http://aceproject.org/regions-en/countries-and-territories/DO/reports/Final%20Report%20Dominican%20Republic%201996.pdf/view).

constitutional or legislative junctures to codify more long-term electoral complaints mechanisms.⁶

This guide explores seven standards of election complaint adjudication that strengthen the fair handling of grievances, which in turn preserves the public's right to political participation and democratic representation. After establishing these seven standards, the guide moves from a theoretical framework to practical fieldwork, turning to experts in the field of international election complaint adjudication to discuss programmatic issues for implementing these standards. It is hoped that this exploration of principles and practice will serve as an important resource to law makers and election administrators as they consider their own election complaint adjudication processes and design new initiatives to strengthen this critical pillar of the election system.

A Note on Terminology

Throughout this book the authors use several phrases to describe the institutions and procedures employed within democracies to adjudicate election-related disputes, complaints, objections and alleged violations of election laws. The expression *election dispute resolution* (EDR) has gained some favor internationally for describing this topic. However, the word *dispute* suggests disagreements and competing claims that may only require an arbitrator or mediator to settle. Disputes of that nature are only one portion of election-related grievances, although an important part.

Disputes within EDR can also be interpreted as *challenges to election outcomes*, when the official election results are contested. These can be significant challenges for any EDR system. Often, a high court (Supreme

⁶ In Uruguay, for example, electoral law providing for an autonomous electoral body was drafted in 1924 and included in the 1932 Constitution, making it the oldest system in Latin America. Sara Staino, *Uruguay: The Electoral Court — A Fourth Branch of Government?* 1-2 (2006), available at http://aceproject.org/ero-en/regions/americas/UY/Uruguay_percent20The_percent20Electoral_percent20Court_percent20A_percent20Fourth_percent20Branch_percent20of_percent20Government.pdf. In Brazil, the Superior Electoral Court, the highest institution of Electoral Justice, was created on February 24, 1932, but the Constitution of the New State, established by Getúlio Vargas in 1937, extinguished the Electoral Justice. And on May 28, 1945, the Decree Law 7586/1945 reestablished the Superior Electoral Court. History of the Superior Electoral Court, Superior Electoral Court, http://www.tse.gov.br/internet/ingles/institucional/o_tse.html (last visited Jan. 6, 2011) [hereinafter Brazil Superior Electoral Court].

Court, Constitutional Court or special electoral court) is the forum for resolving such claims, although in some countries an administrative body separate from the judiciary is assigned the task. In still other countries, directly challenging an election's outcome might not be permitted, with all election challenges and complaints handled by the regular criminal court system.

Other election disputes are often much less significant, such as determining which political party is permitted to campaign on a certain day or in a particular location according to electoral regulations. These less serious disputes may be decided by election commissions at a subordinate or local level.

The phrase *complaint adjudication* is another term used to describe the process for handling grievances raised by political parties, candidates, voters and other electoral participants. Complaints arising within the initial phases of an election, in the pre-election campaign period, or on polling day are generally objections to an alleged denial of rights (perhaps voter registration or candidate certification) or allegations of improper conduct (breaches of the election law, regulations or procedures) rather than merely disagreements or competing claims. These types of complaints often pose overwhelming problems for the election authorities, courts or other bodies that comprise the EDR system because of the substantial quantity and urgency of complaints arising during the compressed election timeframe. For the most part, "election complaints adjudication" can be seen as largely synonymous with EDR, but covering a wider range of situations and focused on the formal judicial or administrative process for resolving them.

Complaints of serious misconduct that constitute criminal violations of the election law (or related laws) may deserve consideration for *criminal prosecution*. Allegations of criminal misconduct are almost always directed to police, prosecutors and courts for investigation and potential prosecution — outside of an administrative system for EDR — although special electoral complaint bodies or judicial tribunals may be established that include criminal violations of the law within their jurisdiction.

The following chapters frequently refer to Electoral Management Bodies (EMBs), a catch-all term for the government agency or division responsible for organizing, coordinating, and overseeing the election process. The ex-

act nature of an EMB varies from country to country — it can be an independent agency, or part of a larger ministry or department. There may be one EMB overseeing all elections in the country, or every province, state or prefecture might have its own management body. The EMB may be responsible solely for election administration, or also tasked with tallying results and adjudicating complaints. In general, when the authors refer to EMBs, they are speaking of the agency that administers elections, which is generally presumed to be distinct from the election complaints adjudicatory body (due to the different functions that will be explored in this book).

1

INTERNATIONAL STANDARDS



Polling staff in Banda Aceh count votes in the presence of election observers during the 2009 Indonesian legislative elections.

4

CASE STUDIES RELATED TO TRAINING OF ARBITERS IN ELECTION COMPLAINTS

Case 1: The Mexican Experience by Gerardo de Icaza Hernández and Ernesto Ramos Mega

Case 2: The Philippine Experience by Luie Tito F. Guia and Vincent Pepito F. Yambao, Jr.

An electoral official holds ballots showing votes with errors during a partial recount of the 2 July elections in Mexico City, Mexico, on 9 August 2006.



Introduction

At the heart of most election complaints adjudication systems stands a judge or arbiter responsible for overseeing and rendering a competent judgment. There are multiple ways in which an election complaints body can be structured. It can be judicial or quasi-judicial, parliamentary or administrative, full- or part-time, permanent or temporary, and independent or appointed. The role of the arbiter may take different forms as well. The relevant decision-maker could be a single judge from a court of general jurisdiction who is hearing an election complaint, or it could be a dedicated multi-member panel that exists solely to adjudicate such cases. Whatever the nature of the adjudicative body's members, it is vital that they understand their role and power in the adjudication process from the time a complaint is filed to the resolution of the issue.

In that vein, a country's electoral management body must take the training of judges seriously if it is to ensure an effective outcome that encourages the fair, consistent and accurate resolution of election complaints. Procedures and rules for election complaints might differ from other civil, criminal or administrative actions (for more information, see Chapter 1: International Standards). A regimented training program that ensures the competency of each member is necessary to the success of a fair and impartial election complaints adjudication system.

Training programs for judges or arbiters must seek to impute a comprehensive and up-to-date understanding of the country's electoral complaints adjudication process and the current status of legislation and regulations, including all relevant procedures for investigation and adjudication. Ideally, training will aim at both increasing the professionalism and efficiency of the judges or arbiters in election-related cases as well as promoting the understanding of international best practices as the framework for domestic codes. These trainings should also promote the uniform and transparent application of electoral law through the development of informal but authoritative guidelines. In sum, training of judges and arbiters will inform all relevant decision-makers in a common framework, resulting in predictable and sound legal decisions.

This chapter brings together two different examples of training election adjudication bodies. First, the Electoral Court of the Federal Judiciary in Mexico shares its unique experiences, describing both its own history and the approaches it uses when it designs and implements training for electoral complaints adjudication bodies in other countries. The Mexican Court has been invited to develop judicial training programs throughout the world due to its pioneering work in independent electoral tribunals. In the second part of the chapter, Libertás, a prominent association of lawyers in the Philippines, shares its experience coordinating electoral complaints adjudication training for the 2010 Philippine elections.¹ This was Libertás' first experience with judicial training for elections, and the lessons learned in that process provide excellent insights into the importance of a well-designed and implemented training program.

Case 1: The Mexican Experience

Background

A. Evolution of Judicial Structures for the Adjudication of Election Complaints

Over the past 20 years, the approach by which electoral complaints are settled in Mexico has shifted substantially from a predominantly political to a purely judicial system. In 1987, the first Electoral Tribunal (*Tribunal de lo Contencioso Electoral*, TRICOEL) in Mexico was created with the capacity to resolve electoral conflicts derived from federal elections for both chambers of Congress as well as the presidency. Nonetheless, Mexico maintained a mixed electoral justice system, in which the Court's rulings could be amended by decisions made by the Electoral Colleges of both chambers of Congress. These institutions were, at the time, the only ones empowered to declare an election void.

In 1990, the Federal Electoral Court (*Tribunal Federal Electoral*, TRIFE) was created as an autonomous judicial institution, but the mixed nature of the system remained. TRIFE's decisions were subject to revision and

¹ Libertás (Lawyers League for Liberty) is an association of reform and civic-minded individuals committed to law and justice reform, democracy and human rights promotion, and the advocacy for good governance in the Philippines.

could be amended by the vote of two-thirds of Congress convened as an Electoral College.

In 1993, two substantive constitutional amendments were implemented. First, TRIFE became “the highest judicial authority in electoral matters.” At the same time, legislation was passed eliminating the self-evaluation system that allowed the Electoral Colleges of the Congress to review elections. However, the mixed system was still in place for that year’s Presidential Election as the change had not yet been validated by the Chamber of Deputies (the lower house of Congress). In 1996, as a result of a thorough constitutional reform, the Electoral Court of the Federal Judiciary (*Tribunal Electoral del Poder Judicial de la Federación*, TEPJF) was created. Since then, its rulings on Congressional and Presidential election complaints are final and unappealable. The TEPJF is also empowered to solve controversies that may arise from the Presidential Election, to conduct the final vote tally, and to validate the election. Needless to say, the reforms had an enormous impact on Mexico’s electoral system.

TEPJF is divided into a High Chamber and five Regional Chambers. The High Chamber is a permanent body located in Mexico City and is composed of seven Electoral Justices. Since 1996, the Justices have been proposed by the Supreme Court of Mexico and appointed by two-thirds of the Senate. Following the 2007 Constitutional Reform, Electoral Justices are designated for a nine-year period. The Chief Electoral Justice is elected among the members of the High Chamber for a period of four years and can be reelected for an additional term. The Regional Chambers are permanent electoral bodies located in the cities of Guadalajara, Monterrey, Xalapa, Mexico City, and Toluca. These cities represent the five constituencies into which the country is divided for electing members of congress under the proportional representation system. Each Regional Chamber is composed of three Electoral Justices, designated in the same manner as the Justices in the High Chamber.

B. Present System of Electoral Complaints Adjudication

Electoral complaints are managed at multiple levels. The TEPJF High Chamber is empowered to hear claims involving presidential, gubernatorial, and congressional elections (of members of congress elected by proportional

representation). This chamber also resolves parties' challenges to decisions made by the Federal Electoral Institute (IFE). Regional Chambers are empowered to settle complaints related to congressional elections (legislators elected by majority) as well as of city councils and heads of administrative and political institutions of the local governments within their jurisdictions.

The Federal Constitution, the Law of the Federal Judiciary, the Federal Electoral Code and the Law of Electoral Complaint Settlement grant the TEPJF the authority to adjudicate electoral complaints. Through a Non-conformity Proceeding, the Court can resolve complaints in federal legislative and presidential elections. The interested parties may contest the results registered in a specific voting district within a four-day period from the following day after each district finishes the tallying of votes. The entire presidential election must be contested within four days of IFE's announcement of results. TEPJF can resolve appellate challenges to actions and decisions issued by IFE. Most of these decisions have to do with economic sanctions against political parties.

Challenges to rulings and decisions issued by competent state authorities to organize, evaluate or settle complaints in local elections that might entail decisive results for the development of an electoral process or to its final electoral results can be reviewed by the Electoral Constitutional Review. In order to work out challenges against actions and decisions infringing the political rights of citizens to vote, to stand for elections, to organize themselves in political associations, and to become affiliated with a political party, a Proceeding for the Protection of the Political and Electoral Rights of Citizens can be presented to the Electoral Court. The TEPJF is also competent to adjudicate labor complaints between itself and its employees, as well as between the Federal Electoral Institute and its employees. Finally, it is important to mention that the Court has the power to exercise constitutional review and ensures the compliance of the electoral laws with the Federal Constitution.

The preceding brief overview of the history, reforms and evolution of the Federal Electoral Court of Mexico highlights the functioning of the Mexican election complaints adjudication process. However, the Court not only adjudicates electoral complaints, it also provides training both at home and abroad, as discussed in the next section.

Training by the Electoral Court of the Federal Judiciary

Over the years, the Federal Electoral Court of Mexico has developed a strong institutional capacity and has quickly acquired great expertise in training international election professionals. Mexico's unique and successful electoral complaints adjudication mechanism has raised curiosity and interest from other electoral institutions and has led the Court to share its experience, train foreign judges and election officials and advocate for its model abroad. The Court also uses its expertise and resources to strengthen the knowledge and skills of its national judges and the election staff on election complaints adjudication matters.

A. International Training of Electoral Bodies

i. International training in electoral complaints adjudication matters

In 2008, the Federal Electoral Institute of Mexico (IFE), the Electoral Court of the Federal Judiciary (TEPJF) and the United Nations Development Program (UNDP) created a Mexican-based joint initiative for international training activities for foreign electoral commissions. Training began with a pilot program that was coordinated between IFE and the Electoral Court and held in Mexico City. The project was designed for the Central Electoral Commission of Bosnia and Herzegovina. Due to the success of the pilot program, it was formalized in 2009 with the creation of the *International Training and Electoral Research Project*.

Since the pilot program, the Court, IFE and the United Nations Development Program UNDP have trained electoral bodies from a range of countries in a series of electoral subjects, including electoral complaints adjudication. This international training project is part of a plan that considers the electoral cycle approach of the UNDP, which focuses broadly on all phases of the electoral process, not just on Election Day. The program is funded by the UNDP's Global Program for Electoral Cycle Support, TEPJF, and IFE, and takes a "south-south" perspective to cooperation for development. The training takes place in Mexico City and sessions are taught by international experts, as well as high ranking officers of the Court and IFE. The aim of

***Technical Assistance for the Supreme Electoral Court of Guatemala
(March 2009)***

The TEPJF provided technical assistance to the Supreme Electoral Court of Guatemala (*Tribunal Supremo Electoral*, TSE) and developed a training mission on a wide range of topics, including funding and procurement of political parties and campaigns, integration and updating of voter registration lists, regulation of pre-campaigns and electoral campaigns, civic education and training strategies of electoral officials and members of polling stations.

***Technical Assistance for electoral agents from the
Ministry of Information of Lebanon
(March – April 2009)***

The workshop was taught to seven experts that collaborate with the Ministry of Information of Lebanon. Themes included international perspectives on methods of increasing objectivity of live media coverage of electoral processes, mechanisms to ensure fair and equivalent representation of individual candidates in the media as well as the distinctions between propaganda and information and between news and opinion during electoral coverage. These workshops were tailored to the specific interests of the Lebanese electoral institutions.

the project is to strengthen democratic institutions around the world by providing the information and the “know-how” that are required to manage successful electoral bodies.

Following a successful start, the TEPJF regularly receives requests for assistance from a variety of election stakeholders. Sometimes these requests come through the UNDP, the Organization of American States (OAS), or the Association of European Election Officials (ACEEEO). TEPJF has a Memorandum of Understanding with all of the aforementioned organizations. In other cases, TEPJF receives direct requests from electoral tribunals, ministries of the interior or electoral commissions through either its internal Office of International Affairs or Mexico’s Foreign Office. TEPJF works on training programs by request only; it does not choose a country based on geopolitical or economic considerations.

TEPJF has built a network of election administrators, and focuses on a methodology that works to engage relevant institutions as equal partners. It has ongoing relationships with most election management bodies (EMBs) in Latin America, and also benefits from a multilateral network through the OAS, the Inter-American Union of Electoral Organizations (UNIORE) and electoral observation missions. After receiving a request, the TEPJF collaborates with the petitioner, taking into consideration its capacities and needs in order to best design a program that fits the requirements of the country. As a result, training agendas can range from such broad topics as a seminar on electoral justice to narrower subjects like workshops on democratic transitions or electoral results.

***Technical Assistance to the Electoral Commission of Zambia
(April 2009)***

The TEPJF provided technical assistance to the Electoral Commission of Zambia. The workshop included the following subjects: electoral bodies and their mission in democratic governments, voter registration lists, electoral mapping and districting, civic education, voting from abroad, electoral justice, and strategic planning in electoral institutions.

Although a broad range of issues can be covered, training programs tend to focus on a smaller subset of topics: discussions of electoral organization and administration; electoral justice; electoral complaints adjudication; and social communication as a strengthening factor in electoral bodies. These subjects are then divided into more specific areas. The TEPJF always undertakes a preliminary assessment of the electoral process of the country requesting assistance. Moreover, the Court assesses the democratic development of the country in order to apply one of three levels of training: emerging democracies; more consolidated democracies that seek to solidify their electoral institutions; and specific problematic areas in mature democracies.

A typical training project is conducted during a one-week seminar in a roundtable format: one or two experts give short presentations, which are followed by question and answer sessions. The participants in the training are selected by the EMB that has requested assistance. Seminar presentations are given on the Mexican electoral complaints

***Technical Assistance to the Electoral Commission of the Philippines
(COMELEC)
(August 2009)***

Ahead of the May 2010 elections in the Philippines, the TEPJF and the Electoral Commission of the Philippines (COMELEC) agreed to join efforts to further sharpen their electoral skills. Two senior COMELEC officials traveled to Mexico in August 2009 to exchange information and ideas with 24 Mexican electoral authorities and international experts.

IFES also took part in this initiative and acted as a bridge to bring electoral commissions from all over the world to exchange experiences and receive training with Mexican electoral authorities. These exchanges provide foreign electoral commissions the opportunity to learn from Mexico's electoral system, one of the most sophisticated in the world. In turn, the foreign commissions provide IFE the opportunity to continue building on its electoral expertise by becoming familiar with the different systems employed throughout the world.

The TEPJF held a workshop that addressed several subjects such as electoral funding, voter registration lists, electoral justice in Mexico, electoral technology and electronic voting, and programs of civil education and electoral training. Philippine and Mexican delegates realized that they shared similar challenges that emerged from their similar geographical and socio-political backgrounds and the issues presented by the management of modern elections. The Mexican presenters explained to COMELEC delegates the failures of the past, what they did to address them, and in many cases, what they are still doing to correct persistent flaws in the system.

adjudication process, the TEPJF's mandate and powers, and the criteria used to investigate and adjudicate complaints. Although the agenda of the training is based on the specific request from the election body, the TEPJF uses the opportunity presented by these meetings to advocate for the establishment of an administrative institution that organizes and conducts elections, with a separate judicial organ empowered to adjudicate electoral complaints.

Trainers are often international experts or high ranking IFE or TEPJF officers (e.g., trainers from the Training Center). Trainers produce their own materials for the participants, which are then translated in most cases to the appropriate language. The specific partner for a project will vary, though OAS, IFE and UNDP generally partner with the Court for EMB trainings.

Finally, at the end of each training project, the trainees are asked to fill out evaluation sheets with feedback and recommendations on TEPJF's work.

The organization of these training activities in such a range of countries does have practical limitations. The language barrier is the most obvious issue, although the Electoral Court has been successful in working around this challenge. In Eastern Europe, for example, the Court hired two simultaneous interpreters to translate from Macedonian to English and from English to Spanish. But language is just the tip of the iceberg when it comes to disparities in trainings; there is always a need to take into consideration other factors such as the history and the culture of a particular country, as well as legal traditions and customs. However, legal differences actually provide a lesser problem when compared to the gaps, ambiguities or incoherencies that may exist in the legal framework of a particular democracy. Nonetheless, unlike some other areas of law, there seems to be a consensus on international electoral principles being developed.

***International Workshop of Electoral Administration for the Electoral
Commission of the Republic of Macedonia and the Central Election
Commission of Bosnia and Herzegovina
(February 2010)***

TEPJF co-organized an international workshop attended by the Electoral Commission of the Republic of Macedonia and the Central Electoral Commission of Bosnia and Herzegovina. The workshop addressed electoral complaints adjudication and electoral justice, as well as a discussion on a comparative perspective of electoral systems, electoral authorities and democratic governance, voting from abroad, electoral materials during its organization, logistics, and voting mechanisms, civic education, electoral training and civil service in electoral bodies, and modernization and electoral technology.

Though resources are often an issue in electoral reform, financial resources are usually not a constraint for the Electoral Court. The TEPJF is well-resourced to implement these international trainings and also shares costs with the OAS, UNDP and the actors requesting training. Moreover, all training sessions take place in Mexico, where there is an extensive infrastructure for training in electoral matters. Of course, these trainings provide the Electoral Court and the Mexican government with benefits as well. International trainings on electoral justice and electoral

complaints adjudication strengthen the TEPJF's cooperative links while contributing to the development of electoral projects in other countries. They encourage the sharing and exchange of experience and knowledge with counterparts in areas of common interest, and thus the TEPJF benefits both from the development of democracy in the world and the increased harmonization of internal and international law in electoral complaints adjudication decisions. Meanwhile, electoral judges, arbiters or other election officials working to improve and/or update their electoral complaints adjudication system can indeed find great support and guidance in the Mexican experience itself, not just in the Electoral Court's international work.

ii. Other types of training required by electoral tribunals

Although there is no doubt that an electoral tribunal first and foremost requires training in electoral justice and complaints adjudication, a strong institution serving a modern democracy requires knowledge of a variety of different areas. Under this premise, the Electoral Court of Mexico has provided assistance to several electoral institutions in areas of a supportive nature.

The OAS and the TEPJF signed a Memorandum of Understanding in 2009,² and have worked together on five technical assistance missions since then. Three of the missions have been in the field of communications strategies, one was devoted to information technology (IT) and one focused on auditing and challenging voter registration lists.

The first two missions were conducted in February 2009 for the National Electoral Council and the Electoral Tribunal of Ecuador. Both institutions were reorganized and acquired new functions after a constitutional reform in 2008. This created a huge challenge in public recognition and confidence, and the first mission focused on producing a communications strategy to make the institutions more well-known and to increase public confidence. The second mission functioned to implement all of the IT requirements needed by the newly created institutions. The IT and Communications Directors of the Electoral Court of Mexico traveled to Ecuador, funded by

² The MOU was signed between the Electoral Court of the Federal Judiciary and the General Secretariat of the OAS on June 26, 2009.

the OAS, and designed strategies in both of these areas. The Task Team on South-South Cooperation later labeled the experience a “success story.”

The TEPJF held a third technical assistance mission in San José, Costa Rica in January 2010 for the Costa Rican Supreme Electoral Tribunal. This assessment mission also had, as a central theme, the design of a communications strategy. The strategy was completely different in Costa Rica, since the Supreme Electoral Tribunal was a well established institution but had been accused by some observers of being partial to the political party in office.

The next mission’s objective was the normative design and implementation of an audit process of the voter registration system for the High Court of Electoral Justice of Paraguay. This mission consisted of sending a law clerk specialized in voter registration complaints to help Paraguayan legislators design a system that would allow political parties and individuals to challenge the voting lists.

Lastly, the OAS received a request for assistance in producing a communications strategy for the National Jury of Elections in Peru. Within the framework of the institutional collaboration agreement between that electoral body and the TEPJF, advice was provided by high ranking officials of the Court. The mission took place in April 2010.

The technical assistance provided by the TEPJF to different electoral bodies, at the request of the OAS, is an effective way to strengthen democracy in the region. As professionalism, knowledge and efficiency grow in these institutions, so does the public’s confidence in their democracy’s competency. The fact that support is provided not only in the field of electoral justice, but in supporting functions too, is indicative of how modern day electoral institutions must be well trained in diverse areas.

Aside from international trainings and the exchange of professional experience with other electoral institutions, the Court is also committed to familiarizing the electoral judges, electoral officials and general public of Mexico with their nation’s own electoral complaints adjudication process.

B. National training

Domestically, the TEPJF provides training through the Electoral Judicial Training Center (*Centro de Capacitación Judicial Electoral, CCJE*), whose mission is to contribute to the continuous improvement of the administration of electoral justice. The training functions of the CCJE are separated into four divisions: external training (aimed at other electoral bodies and political parties); internal training (focused on the judicial personnel of the Electoral Court itself); management training (focused on developing technical and administrative expertise for the administrative staff of the TEPJF); and distance learning (through the use of educational technologies, addressed at officials and the general public). Each of these requires different levels of involvement by the CCJE, with internal and external trainings requiring the most in terms of resources and planning.

The following sections focus on how the CCJE fulfills its duties in internal and external training and how it develops trainings that optimize the performance of election officials internally and externally to the TEPJF. The projects discussed herein have been designed and executed since the restructuring of the CCJE in 2009. To provide contrast and facilitate an understanding of the developments in the field, the results of these most recent projects are presented in comparison with those in the years prior to the 2009 restructuring.

i. External training for local authorities

External training requires the most resources in terms of personnel and expertise. The CCJE provides specialized training in electoral matters to the courts and electoral institutes of the 32 local entities in charge of organizing elections in each state and in Mexico City, as well as to the Federal Electoral Institute (IFE), political parties, political groups, academic institutions and the general public. Due to the importance of the task, the diversity of the audience, and the high demand for knowledge, in 2009 the new administration of the CCJE began designing an innovative approach to external training that would improve results. This new approach required work in three areas: administration of courses; thematic organization; and training materials.

Administration of courses

Given the complex nature of training disparate external groups, effective course programming is of the utmost importance. The CCJE designed a database program to record each course offering from the time an institution requests it³ until the diplomas for participation are delivered. The program tracks the availability of teachers, the profile of the public that will be trained and previous exchanges with each institution. Systematization of the process makes it possible to obtain prompt statistical reports for identifying students' present levels of knowledge, areas of training that require particular attention and other practical training information such as potential scheduling conflicts. Streamlining course programming also allows for more advanced notice of training dates, resulting in efficiencies such as lower transportation and material costs.

The method for evaluating instructors is also a key subject. Recently, evaluation forms were redesigned to include questions that better reflect the performance of trainers and the quality of course materials via a 0 to 5 scale, where 5 represents the best grade possible and 0 the worst. These forms are now incorporated into the database system in the file of each trainer, thus allowing the CCJE to assess trainer performance over time. For example, monthly and quarterly performance reports are generated and analyzed by the officials in charge of programming courses. These assessments can be used to select the best trainers for particular topics, suggest areas of improvement for individual trainers, and provide support for improvement by referring less proficient trainers to those who are successful.

Thematic organization

Improvement of the CCJE's programs also required the thematic organization of courses. Before 2009, courses were taught based on the demands of each institution without offering a consistent systematic progression. Therefore, since 2009, and based on the competence and duties of the Electoral Court, the CCJE has designed a catalog of 26 subjects divided into three levels: general; advanced; and specialized.

³ The CCJE accepts applications for training courses through their website, http://www.te.gob.mx/ccje/capacitacion_externa/Intro.html.

General subjects are designed for the broader public that is simply interested in electoral issues, or those participants who have a basic knowledge of electoral law. Courses at this level address topics such as democratic regimes, electoral reform in Mexico, and democratic culture and the culture of electoral justice.⁴ These subjects are meant to construct a strong base for future comprehension of more complex concepts in electoral law, and are taught by CCJE trainers.

Advanced subjects are designed for participants with strong knowledge of electoral issues, as well as electoral officers and party members. Students taking these courses learn about electoral complaints adjudication, electoral jurisprudence, and procedural electoral law. These courses are crucial to developing a full understanding of the electoral complaints adjudication process, and are also taught by CCJE trainers.⁵

The last thematic category is specialized subjects. These courses are directed at mid- and high-level electoral officials with the purpose of updating them in areas closely related to their duties. To take these courses, participants must demonstrate proficiency in general and advanced subjects. Specialized subjects are primarily taught through case studies so as to address both the theory and practice of the subject matter. These courses provide the necessary knowledge that an electoral judge or arbiter should possess. The curriculum includes electoral appeal, constitutional review in electoral matters, annulment of electoral results, analysis of grievances and legal/judicial writing in electoral law.⁶ Due to the complexities of this thematic category, the courses are taught both by CCJE trainers and by law clerks.

⁴ General subjects: democratic regimes; Mexican electoral law; historic development of electoral institutions in Mexico; electoral reform in Mexico; electoral systems and party systems; political parties; electoral institutions in Mexico; democratic culture and the culture of electoral justice.

⁵ Advanced subjects: electoral complaints adjudication; electoral jurisprudence; procedural electoral law; the electoral constitutional and legal reform 2007-2008; federal electoral process; indigenous rights in Mexican electoral law.

⁶ Specialized subjects: electoral revision; electoral appeal; suits of non-conformity; electoral reconsideration; proceedings for the protection of citizen's political and electoral rights; constitutional review in electoral matters; labor complaint proceedings in federal electoral institutions; system of annulment of electoral results; sanctions in administrative electoral law; legal interpretation and argumentation in electoral matters; evidence in electoral law; analysis of grievances; and legal/judicial writing in electoral law.

The new thematic course progression was well received by the target population, and resulted in increased demand for courses by the courts and electoral institutions of the federal entities of Mexico.

Training materials

Improvements have been made in designing training materials as well. Before 2009, trainers faced few limitations since they decided for themselves how to present courses, both in terms of what aspects of a subject were taught and how much emphasis each aspect received. Materials were developed based on the trainer's knowledge of the subject, their particular training style and the material resources at their disposal. The result was a significant variation in the quality of support materials, both in form and content. The same course taught by different trainers could use completely different materials.

In response to these issues, the CCJE created consistent training materials. For each of the 26 subjects, the CCJE has developed three products: a syllabus, a PowerPoint presentation and a training manual for the participant. The syllabus contains a description of every topic discussed in each course and emphasizes which of those will be given greater importance. In addition, the syllabus includes the objectives to be achieved by the end of the course and a brief justification of why the topic in question is important. For subjects that can be offered as either a course or a workshop, the syllabus also lists the stages of the case study that will be developed during each class.

For PowerPoint presentations, a template was designed with a corporate image and minimum guidelines were established. In no more than 40 slides (anticipating that the classes will last an average of four hours), the presentations should illustrate the main ideas to be developed in each subject, thus affording the teacher the opportunity to explain and discuss topics with the participants of the course. Furthermore, the content should focus strictly on meeting the learning objectives outlined in the syllabus of the course. The CCJE also chose to encourage the use of charts, graphs, diagrams and bullets rather than long paragraphs and images, which tend to distract rather than enlighten the audience.

The final products in development for improving training materials are training manuals. These are designed to help participants gain insight into each topic beyond that which is necessarily covered in the classroom. The manuals develop in-depth ideas raised during presentation, and include relevant theses and case law relating to the subject. Although still in development, training materials are available on the Electoral Court website to be consulted by both those attending courses and the general public interested in electoral matters.⁷

ii. Internal Training of the Federal Court

Internal trainings, aimed at increasing the knowledge and skills of clerks and other court officials responsible for drafting judges' opinions, are also quite demanding. Internal training supports both the High Chamber and the five Regional Chambers of the Electoral Court. Efforts to improve these trainings since 2009 have focused on expanding the number of training topics, promoting open dialogue among election officials and leading academics and systematizing these activities so internal staff and the general public can easily access them.

Reflective of the Court's structure, all training activities are performed through sessions taking place at TEPJF and are transmitted to the regional chambers in real time. While the High Chamber staff interacts with a live presenter, the staff of the regional chambers can simultaneously exchange ideas via videoconference or by email; this way, all staff attending the course, both in person and remotely, can communicate with the training specialist in real time. Staff members who are unable to attend a particular event can consult the recording of the course and related materials on the website of the CCJE.⁸

The subjects of internal training are presented in a variety of formats and are not necessarily related to Electoral Law. The goal is to provide the staff of the Electoral Court with training that broadens their perspectives on both the administration of justice in a democratic regime and the defense

⁷ Training materials are available at: http://www.te.gob.mx/ccje/unidad_capacitacion/materiales_capacitacion.html.

⁸ Staff members can consult recordings and other course related materials through the following internet links: http://www.te.gob.mx/ccje/material_audiovisual/derechos_poli.html and http://www.te.gob.mx/ccje/capacitacion_interna/Intro.html.

of political rights. Internal trainings have included diplomas in political and strategic analysis, courses on judging with a gender perspective, seminars on addressing electoral theses and case law of the European Court of Human Rights, John Rawls' theory of justice and democracy and workshops on the new role of judges in Latin America.

In-house training projects also include postgraduate programs designed to train professionals in Electoral Law. In 2009, the CCJE offered Specialization in Electoral Law and Masters in Law programs jointly with the National Autonomous University of Mexico. The CCJE also provided a Specialty in Electoral Justice program through an in-house modality until 2009. From 2010 onwards it has been taught as a distance learning module to meet the demands of electoral officials throughout the country.

Much like in external training, all specialists involved in internal training as well as the courses themselves are evaluated by participants with standardized forms. The information obtained helps in deciding how to program future courses. CCJE also changed the format of delivery for most courses offered internally. Instead of podium lectures to an audience, most of the training activities for officials of the Electoral Court are given at conference tables so that both the speaker and the participants are at the same level, and can therefore keep an ongoing dialogue that encourages the interchange of knowledge.

Conclusion

Adequate training ensures that judges and arbiters possess the knowledge and skills required to efficiently adjudicate electoral challenges and complaints. Throughout its work as a trainer on electoral complaints adjudication, the TEPJF has acquired considerable experience in organizing seminars for both Mexican and foreign judges and arbiters. While developing and implementing these programs, the Electoral Court has learned both from its successes and its failures. Democracy has reached different levels of consolidation in every country; therefore training seminars must take a several factors into consideration.

One of the crucial elements that must be kept in mind in the creation of

all partnerships is that international training can only be carried out voluntarily. Neither a training center nor independent trainers should pressure an election commission or a tribunal to accept the assistance. Both sides should act as equal partners and must participate together in the design of the training program. The subjects taught in the training sessions should respond to the needs of each electoral institution, which is more a more useful approach than a general syllabus or handbook about election complaints adjudication processes. Some countries focus, for example, on voter registration and safeguarding Election Day, while other countries are facing problems with complaints adjudication, political campaign financing, and media law. These differing interests and issues give rise to the potential for narrowly targeted training programs that will ultimately prove to be more successful.

Training of tribunals should not only focus on electoral law, justice or complaints adjudication, but should widen the scope of the agenda and include, for example, the organization of a communications strategy in order to promote transparency and build further social confidence in the electoral processes. Institutions must be well-trained in other areas that support the core activity of the tribunal.

The new approach adopted by the CCJE's work, following its restructuring, led to substantive changes in the performance of their training functions. First, it significantly changed the work philosophy in terms of the final objective on the implementation of functions. Effort is now clearly focused on the transmission of knowledge. This change implies a major effort and commitment on the quality of and methodology by which academic tasks are executed.

The main improvement in the performance of the tasks of external and internal training of the Electoral Court is due to the attention given to three main elements: (1) clear definition of institutional objectives; (2) strategic planning; and (3) systematization of information and procedures. These elements are contained in each of the projects set out in the annual academic program of the CCJE, which can be accessed online.⁹

⁹ Centro de Capacitación Judicial Electoral, Programa Académico 2010 (2010), *available at* http://www.te.gob.mx/ccje/Archivos/programa_academico_anual.pdf

The CCJE's external training methodology now includes a catalog of items ordered by their level of specialization and from which it is possible to design courses for different participants. Thus, it also encourages the effective transfer of knowledge on issues directly related to the purposes and competence of the Federal Court.

The statistics from the courses taught over the last several years are illuminating. In 2008, the CCJE taught 43 courses to local electoral courts, 31 to local electoral institutes, and 15 to political groups and parties. By 2009, the number of courses increased to 65 for courts, 56 for electoral institutes, and 63 for political groups and parties. During 2009 the CCJE trained over 30,000 people through the provision of external training.

It is necessary to clarify that the innovation process is still incomplete. On the one hand, the CCJE continues to improve and adapt the syllabi, presentations and manuals to fit the needs of attendees. At the same time, the CCJE continues the development of other projects to improve external training. Improvements continue in the ongoing preparation of the Electoral Judicial Training Center's academic staff, the design of special evaluations to measure learning gaps and the transformation of some manuals into textbooks. The latter improvement is to assist in teaching electoral matters while simultaneously extending the possibilities of study and specialized knowledge of electoral officials, political party activists and citizens concerned with electoral issues.

Case 2: The Philippines Experience

Background

It is said that no one loses in an election in the Philippines; either one wins or one is cheated. Hence, complaints relating to the conduct of elections are anticipated, and are generally accepted as part and parcel of the Philippine electoral process.

For more than a century,¹⁰ the Philippines endured a cumbersome and crude election process that was widely perceived to be vulnerable to fraud and cheating. The manual voting, counting, and vote consolidation procedures used in the Philippines have bred a suspicious citizenry critical of election results. For candidates and parties with enough funds to support drawn-out and expensive litigation, suspicious incidents of fraud can become full-blown legal battles through an action called “election protest.”¹¹

As an election complaint adjudication mechanism, election protest provides a post-election remedy in the Philippines to those who question the results of elections. It seeks to determine the true will of the people¹² by re-examining the ballots, election returns, and the other documents and materials used in the election. It may affirm or reverse the results of the election, and thus, it can either confirm or cast doubt on the credibility of the whole electoral process.

The Philippines ventured into its first ever nationwide automated election on 10 May 2010 purportedly to rectify the flaws and vulnerabilities of the manual voting and counting election process. Automation of elections was

¹⁰ The Philippines held its first ever elections in Baliuag, Bulacan under the supervision of American military governor general Arthur MacArthur on May 6, 1899.

¹¹ An election protest is a contest between the defeated and the winning candidates on the ground of frauds and irregularities in the casting and counting of the ballots, or in the preparation of the returns. It raises the questions of who actually obtained the plurality of the legal votes and therefore is entitled to hold the office. See *Samad v. COMELEC*, 224 S.C.R.A. 631 (July 16, 1993) (Phil.).

¹² The purpose of an election protest is to ascertain whether the candidate proclaimed elected by the board of canvassers is really the lawful choice of the electorate. See *De Castro v. Ginete*, 27 S.C.R.A. 623 (March 28, 1969) (Phil.).

expected to produce more credible and acceptable results, and thus, lessen, if not eliminate completely, the need for election protests.¹³

The automated system chosen by the Commission on Elections (COMELEC) involved the use of Precinct Count Optical Scanning (PCOS) machines, which scanned and recorded votes that were marked by voters in the appropriate spaces on the ballots. The results in each precinct were then electronically transmitted to a canvassing center where they were consolidated with other precinct results. The final election tallies were generated during canvass proceedings by an electronic canvassing and consolidation system (CCS).

This automated process was an abrupt departure from the usual system. Prior elections used a “write-in” system of voting whereby voters wrote the names of their chosen candidates on the ballots. After the voting period,¹⁴ the votes on the ballots were then read aloud at each polling place, and manually tallied on election returns. The election returns from the different election precincts were, in turn, read and tallied on another paper document called the statement of votes (SOV) by precinct during municipal or city canvass. The votes reflected on the SOV were added up manually to determine the winning candidates.

How election adjudicators conduct recounts or re-appreciation of ballots during protest proceedings in either the automated or manual system is evident from the procedures briefly outlined above. As stated, the manual election process has always bred suspicion as to the integrity of the vote count. However, the automated election also generated valid questions that ripened into election protests. For one, the vice-presidential candidate who lost in the recent election initiated a high profile election protest against the proclaimed winner.¹⁵

¹³ It is interesting to note that initial reports from the Commission on Elections and the House of Representatives Electoral Tribunal show that there were more election protests initiated under the automated election than there were under the manual system. There was also a substantial number of election contests filed before the regular trial courts, although the data has yet to be completed.

¹⁴ In most cases, the voting period on Election Day is between 7:00 am to 3:00 pm.

¹⁵ Vice-Presidential candidate Manuel Roxas, the running mate of President Benigno Aquino III, filed an election protest against the proclaimed winner, Jejomar Binay, alleging essentially that the vote tallies were questionable owing to what Roxas observed as an unusually large number of “null” votes (votes that were not credited to any candidate) in areas where Binay won.

Nevertheless, with COMELEC relying on the touted benefits of automated elections, insufficient preparation was made for a complaints adjudication system that would have provided adequate, transparent, credible, and timely remedies for those who questioned the results of the election. In the belief that the introduction of an automated election system would eliminate election cheating, the adoption of new rules of procedure on election contests suited to the newly introduced system was not prioritized. Thus, the amendments to the rules of procedures incorporating the requirements for an automated election system were released barely a month before the elections. There was, therefore, insufficient time to train adjudicators on handling and resolving election complaints under the new election procedure. However, as will be discussed later in this section, seminars for judges were conducted to at least familiarize them with the basic features of the automated election system.

In order to sufficiently understand the preparation done in the Philippines to equip judges with the necessary competence to handle election complaint adjudication, it is essential to first appreciate the Philippine election environment.

A. Elections in the Philippines

Elective positions in the Philippines include: president; vice president; 24 senators (for the upper house of the bicameral legislature); one representative for each of the 222 legislative districts in the country; one party for the party-list system of representation in the Philippine Congress;¹⁶ provincial governor; vice governor; board members; city and municipal mayors; vice mayors and councilors; and *Barangay* (Village) chair and council members.

With the exception of the village posts, all of these positions are elected at the same time in “synchronized elections.” Elections are held every three years, although the president, vice president and senators are elected for six-year terms. Twelve of the senators complete their six-year term every three years alternately with the other 12. Because of synchronized elections, up to 33 positions are up for election on a single ballot.

¹⁶ Also known as the House of Representatives.

Consolidation of election results for national positions passes through a multi-stage canvassing process. Polling station or precinct results are first consolidated at the municipal and city vote canvass. The municipal and city results are in turn consolidated at the provincial level. The national canvass, finally, is the result of the consolidation of provincial tallies.¹⁷ This multi-stage canvassing is mandatory even under the automated election system.

Election winners must obtain a plurality; a majority vote is not necessary. Thus, a single vote can theoretically result in an election victory in any of the elective positions.

B. The Philippine Commission on Elections (COMELEC)

COMELEC serves as the election management body (EMB) in the Philippines. A creation of the Philippine Constitution, COMELEC is vested with the power to enforce and administer all laws and regulations relative to the conduct of elections and other allied electoral exercises.¹⁸ It has the mandate to decide all questions affecting elections, including registration of political parties, but not questions involving the right to vote.¹⁹ It has the authority to choose an appropriate automated election system in every election.²⁰

Aside from its administrative power to run elections, COMELEC is also endowed with judicial power to hear and decide all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and to take appellate jurisdiction over all contests involving elective municipal and village officials.²¹

COMELEC is composed of a chairman and six commissioners who are appointed by the President for a term of seven years without reappointment.²² When adjudicating election complaints, it may sit *en banc*, or in two divisions of three members each.²³ The Constitution allows at most

¹⁷ Results from cities considered as highly urbanized are transmitted directly to the national canvassers and do not pass through any provincial canvass.

¹⁸ Const., Art. IX-C, sec. 2(1) (Phil.).

¹⁹ Const., Art. IX-C, sec. 2(3) (Phil.).

²⁰ An Act Amending the Election Modernization Act, Rep. Act 9369 (2007) (Phil.).

²¹ Const., Art. IX-C, sec. 2(2) (Phil.).

²² Const., Art. IX-C sec. 1 (Phil.).

²³ Const., Art. IX-C, sec. 3 (Phil.).

three members of COMELEC to be non-lawyers, but in practice only lawyers are appointed. All of the present member of COMELEC are lawyers, three of whom are retired jurists.

COMELEC operates from its central office in Manila, but it has offices in all municipalities, cities and provinces. Notwithstanding its nationwide presence, COMELEC decides election matters centrally at its Manila office.

C. Types of Election Complaints in the Philippines

Election protests are not the only election complaints that occur in the Philippines. Election complaints in the Philippines may be classified into: (1) those relating to the right to vote and voter registration; (2) those relating to the qualification of candidates and of political parties; (3) those relating to the conduct of an election; (4) those involving criminal violations of election laws; and (5) those relating to the integrity of election results.

Complaints related to the right to vote are considered judicial issues and hence taken cognizance of, and resolved, by judicial authorities. Under the Philippine Voter Registration Law,²⁴ the first level courts hear petitions for inclusion or exclusion of voters in the registry list of voters. A citizen's application for registration as a voter is actually heard at the first instance by a body in each municipality called the Election Registration Board (ERB).²⁵ As it is the action of the ERB which can be questioned before the courts,²⁶ the cause of action for inclusion or exclusion of voter arises only after an applicant for registration is either wrongly included or wrongly excluded in the voters' registry list.

COMELEC, on the other hand, has jurisdiction over issues concerning candidate qualification and political party registration, as well as those related to the conduct of elections.²⁷ COMELEC's jurisdiction under these types of complaints includes deciding whether a candidate should be disqualified for violation of conduct required of a candidate.²⁸

²⁴ Voter Registration Act, Rep. Act 8189 (1996).

²⁵ *Id.*, §§ 32-35.

²⁶ *Id.*, § 17.

²⁷ Const., Art. IX-C, sec. 2(3) (Phil.).

²⁸ For instance, the acts enumerated in Section 68 of the Batas Pambansa Blg. 881 (Omnibus Election Code) can lead to the administrative disqualification of a candidate from continuing his or her candidacy, without prejudice to possible criminal prosecution.

COMELEC is also endowed with the authority to take cognizance of “pre-proclamation controversies.” The substance of the vote count is not in issue in pre-proclamation controversies; the issues are limited to the validity of the canvass procedure and the genuineness of election documents presented for canvass.²⁹ Thus, as long as the canvass proceedings are done in accordance with the prescribed procedures, and documents presented for canvass appear ostensibly genuine and authentic, certification of the results or proclamation of the winning candidate will follow as a matter of course. The remedy for those who would allege fraud in the vote count would only be a post-proclamation election protest.

Criminal violation of election laws is investigated and prosecuted by COMELEC and by the prosecutorial arm of the government.³⁰ However, when probable cause is established that a respondent committed an election offense after an investigation either by COMELEC or by government prosecutors, the respondent is tried before second level courts (Regional Trial Courts) just like in the criminal prosecution system.³¹

Candidate qualification complaints, political party registration issues, and pre-proclamation controversies are within the administrative jurisdiction of COMELEC to resolve.

D. Election Protests

As discussed in the introductory section, an election protest is a contest between the defeated and the winning candidates on the grounds of fraud and irregularities in the casting and counting of the ballots, or in the preparation of the returns.³² It raises the question of who actually obtained the plurality of the legal votes and therefore is entitled to hold the office.³³ In election protest, the proceedings are essentially judicial in character, as distinguished from the administrative nature of the other proceedings before COMELEC. Moreover, a proclaimed winner, notwithstanding the pendency of the protest proceedings, is allowed to discharge the powers

²⁹ Omnibus Election Code, B.P.Blg. 881, § 68 (1985) (Phil.).

³⁰ An Act Amending the Election Modernization Act, Rep. Act 9369 § 42 (2007) (Phil.).

³¹ B.P.Blg. 881, § 268 (1985) (Phil.).

³² *Samad v. COMELEC*, 224 S.C.R.A. 631 (July 16, 1993) (Phil.).

³³ *Id.*

and functions of his office as presumptive winner, and may be removed should the protest determine that someone else obtained the highest number of votes.

Protests are handled by different adjudicative bodies depending on the positions contested. Those involving the positions of president and vice president are within the exclusive jurisdiction of the Philippine Supreme Court sitting as the Presidential Electoral Tribunal (PET).³⁴ Protests involving senators (from the upper house of Congress) and representatives (from the lower house of Congress) are cognizable by the Senate Electoral Tribunal (SET) and the House of Representatives Electoral Tribunal (HRET), respectively.³⁵ COMELEC exercises exclusive original jurisdiction over election protests involving regional, provincial and city positions,³⁶ and appellate jurisdiction over contests involving municipal elective officials and village elective officials which are decided, at the first instance, by the second level courts (Regional Trial Courts), and first level courts (Municipal or Metropolitan Trial Courts), respectively.³⁷

The decisions of COMELEC (for both original and appealed cases) and of the electoral tribunals are final and are not appealable. However, the Supreme Court can take cognizance of petitions questioning the decision of COMELEC or the tribunals on a petition alleging error of jurisdiction or grave abuse of discretion.

Under the “manual” process of elections, an election protest usually involves recount of the votes of the protestant (the party who initiated the protest petition) and the protestee (the party proclaimed as winner or who obtained a greater number of votes than the protestant), and a re-appreciation of the votes as written on the ballots. With the synchronized election and the “write-in” voting process, adjudicators are required not only to count the votes at each precinct, but to decipher handwriting on the contested ballots. Because of this tedious process, most protests are decided, if at all, near the end of the term of office for the position contested.

³⁴ Const., Art. VII, sec. 4., par. 7 (Phil.).

³⁵ Const., Art. VI, sec. 17 (Phil.).

³⁶ Const., Art. IX-C, sec. 2 (2) (Phil.).

³⁷ *Id.*

The “automated election system,” as implemented in the recent election, poses new challenges for adjudicators. Unlike in the manual system, ballots under the new system already contain printed names of candidates. The voter only needs to shade the oval opposite the name of his or her preferred candidate. Thus, voter intent complaints requiring interpretation of handwriting on the ballot would no longer occur. Instead, new sets of voter intent determination rules govern.

Furthermore, unlike in the manual election process where ballots are accepted as presumptively genuine documents, the PCOS machines may reject ballots, even though they are genuine and filled by legitimate voters, under a host of circumstances. These may include the existence of moisture, improper handling of the ballot, and accidental perforation or tears in the ballot, among other issues. These types of rejected ballots are among the grounds raised in questioning some of the results in the 2010 election.

The greatest challenge under the new system stems from the relative lack of transparency in the counting and vote consolidation processes. Under the manual election process, parties may be able to observe the reading and counting of the votes cast at the precinct level. Vote consolidation at the various canvassing levels is likewise observable. With the PCOS machines doing vote “appreciation” and counting of the votes and the CCS performing the consolidation of election results, candidates and observers used to the relatively transparent manual process understandably cannot easily accept election results generated by machines.

Therefore, a paradigm shift, both on the part of the litigants and of the adjudicators, is inevitable. For one, the procedural and substantive issues that may be raised in the context of an automated election may radically depart from the issues that may be raised in a manual election. The evidence needed to support allegations of fraud or even of an innocent miscounting would necessarily vary, and familiarity with the rules on electronic evidence would be an imperative. To be sure, the re-appreciation of votes, if warranted, would take on a different complexion.

Past and Current Practice in Training Election Adjudicators

As noted above, different tribunals handle election protests in the Philippines depending on the contested positions. However, there really are no specific training programs in COMELEC, the PET, the SET, and the HRET that are intended to prepare adjudicators to handle election complaints. In COMELEC, Commissioners are presumed to be experts on the laws and procedures of election. The same is true for the PET, the SET, and the HRET.³⁸ Thus it is believed that no training is necessary. The heads of the secretariat of both SET and HRET, however, have shared that they nevertheless conduct short briefings for the new members of their respective bodies to familiarize them with protest rules and procedures.

Only the regular courts undergo standardized training. Organizationally, the courts are under the supervision of the Philippine Supreme Court. Their procedures are dictated by rules promulgated by the Supreme Court, and the bulk of their caseload consists of ordinary civil and criminal suits. They are not expected to be experienced in the specialized subject of election law, and therefore are thought to require the most specific training on advances in election laws and procedures.

Judges in the Philippines are prepared and trained by a government agency created for that purpose, the Philippine Judicial Academy or PHILJA.³⁹ It is mandated by its charter to provide initial training for aspirants to judicial positions. To prepare judges to handle election litigation PHILJA has a special training module on election law, but it has not been consistently used in all pre-judicature trainings.⁴⁰

Starting in early 2007 and in preparation for the then-upcoming general election on 14 May of that year, the Supreme Court, under the leader-

³⁸ The PET is actually the Supreme Court. The SET and the HRET are each composed of three Supreme Court Justices and six Senators, or six Representatives, respectively.

³⁹ The Academy was originally created by the Supreme Court (Administrative Order No. 35-96 on March 12, 1996), and finally mandated by R.A. 8557 on February 26, 1998. This law institutionalized PHILJA as a "training school for justices, judges, court personnel, lawyers and aspirants to judicial posts."

⁴⁰ Pre-judicature trainings are the trainings of judges before they assume office and discharge the functions of a judge.

ship of Chief Justice Reynato S. Puno, began a series of reforms for an “expeditious, inexpensive, and just determination of election cases before the courts.” First, it promulgated Administrative Matter No. 07-4-15-SC, otherwise known as the Rules on Procedure Involving Elective Municipal and Barangay Officials.⁴¹ In addition, the High Court passed Administrative Order No. 54-2007⁴² designating 111 special election courts among Regional Trial Courts (RTC) nationwide to hear, try, and decide contests involving elective municipal officials in the May elections. The High Court thereafter issued Administrative Order No. 129-2007⁴³ designating 76 first level courts to hear, try, and decide election contests involving elective village officials relative to the 29 October 2007 barangay elections. Previously, there were no such special election courts. According to Chief Justice Puno, the Rules proposed “radical change[s]” that “addressed two main problems — first, the problem of eliminating cases that lack merit, and second, the problem of streamlining the system so that the resolution of these kinds of cases would be fast-tracked.”⁴⁴

Complementing these initiatives, the Supreme Court tasked PHILJA to conduct special training for trial court judges on these rules. PHILJA⁴⁵ conducted a series of one-day training sessions for special election court judges. The second level trial courts were divided into five groups and a full day seminar was conducted.⁴⁶ Meanwhile, for first level court judges and clerks of court, a seminar was held on a single day, 8 January 2008, in Manila.⁴⁷

In these seminars, the judges were given an overview of the laws and jurisprudence of election contests, including a discussion on: (1) the 2007 Rules of Procedure in Election Contests before the Courts involving Municipal and Barangay Officials; (2) the COMELEC Rules of Procedure; (3)

⁴¹ The new rules took effect on May 15, 2007.

⁴² Promulgated by the Supreme Court on May 11, 2007.

⁴³ Promulgated by the Supreme Court on August 15, 2007.

⁴⁴ Jay B. Rempillo, SC to Create Special Election Courts, <http://sc.judiciary.gov.ph/news/court-news/percent20flash/2007/04/04200701.php>, (last visited January 3, 2011).

⁴⁵ With the support from the International Foundation on Electoral Systems (IFES) and the United States Agency for International Development (USAID)

⁴⁶ April 30, 2007 (Baguio City); May 2, 2007 (Manila); May 3, 2007 (Cebu); May 4, 2007 (Davao); August 2, 2007 (Manila). The election was held in May 2007.

⁴⁷ The village election was held in October 2007.

COMELEC Issuances; (4) Supreme Court Jurisprudence; and (5) jurisdiction of RTC and First Level Courts. They were also instructed on rules concerning the review and appreciation of ballots. Workshops were also held to equip the participants with the skills to identify: (1) marked ballots; (2) fake or spurious ballots; (3) stray votes; (4) pairs or groups of ballots written on by one person or individual ballots written on by two or more persons; and (5) ballots wrongly not credited to a candidate.

Considering that the training sessions were concentrated on the 111 designated second level and 76 first level election courts, many of the courts that were actually assigned election cases after the May 2007 national and local election and the October 2007 village election were not able to participate in the PHILJA trainings.⁴⁸ Data gathered from the Office of the Court Administrator of the Supreme Court revealed that of the 135 second level courts that handled election protests relative to the May 2007 elections,⁴⁹ only around 59 (or 44 percent) were special election courts.⁵⁰ Insofar as the 312 first level courts that handled election protests related to the 29 October 2007 village elections are concerned,⁵¹ only 36 (or 12 percent) were designated election courts.⁵² The fact that non-election courts were assigned election cases may be attributed to a lack of foresight concerning the location of election complaints. However, this is a subject beyond the scope of this paper.

An Effective Complaints Adjudication Mechanism for Automated Elections

As stated above, the adoption of the new automated election system posed new challenges for election complaints adjudication in the Philippines. The method for determining voter intent has changed, since the write-in system of voting was replaced by the use of ballots with pre-printed names of all candidates, with the voters registering their votes by

⁴⁸ *Libertas* Adjudication of Election Contests Before the Trial Courts: A Second Look at A.M. No. 07-4-15-SC and the Designation of Election Courts 30 (2008).

⁴⁹ There were a total of 263 cases filed before the second level courts relative to the May 2007 election.

⁵⁰ *Libertas*, *supra* note 48, at 26.

⁵¹ 811 contests were filed before the first level courts relative to the October 2007 village election.

⁵² *Libertas*, *supra* note 48, at 26.

marking the appropriate spaces. Pre-proclamation controversies have also taken a new form, as the remedy has been substantially eliminated by the new rules adopted by COMELEC.

Moreover, the new election system required the enactment of new rules of procedure to govern pre-proclamation controversies and election protests. Considering, however, that each of the different election tribunals possesses the power to promulgate its own rules of procedure governing election contests before it, and considering further that the revised election law failed to provide guideposts on how election protests under the new system should be resolved, the adjudicative bodies could potentially adopt rules vastly different from each other. There can be as many rules, or even voter intent principles, as there are tribunals.

Mindful of the need to prepare an adjudicatory framework that would be responsive to the automated election system as conceived by COMELEC, and to prepare election adjudicators to handle election complaints under the new system using uniform standards, Libertás took the initiative in advocating for COMELEC and other election tribunals to prepare for election complaints. With support from IFES and the American Bar Association - Rule of Law Initiative (ABA-ROLI),⁵³ Libertás partnered with PHILJA⁵⁴ to conceptualize a training program for trial court judges to equip them with the necessary knowledge and skill in handling election complaints.

Taking note of earlier observations regarding the viability of such training, Libertás proposed a training program for second level courts for the 10 May 2010 elections and committed to help design the training curriculum and develop training modules for each of the sessions. All second level trial courts underwent the training, with no more than about 30 to 40 participants per training group to allow for more interactive sessions and to better ensure retention. The idea was that the training would not only introduce the new election system to the judges but also enhance their complaints adjudication skills.

⁵³ The United States Agency for International Development (USAID) provided the funding support

⁵⁴ PHILJA is an agency under the Philippine Supreme Court, composed of eminent retired jurists and law professors, mandated to train and provide continuing education to trial court judges.

Libertás also emphasized the early adoption of new rules of procedure suited for an automated election so that adequate and effective remedies for complaints were available and accessible. About a year before the May 2010 elections, round table discussions were organized by Libertás, bringing together representatives from COMELEC, the court system, the SET, the HRET and election lawyers to discuss issues like determining voter intent, weighing evidence — including the differences between electronic evidence and paper documentary evidence — and pre-proclamation controversies under the automated system. The discussions were also intended to gather input from election stakeholders that might prove useful in the process of drafting appropriate rules. In October 2009, six months before the elections, Libertás submitted to COMELEC a working draft of Rules of Procedure for pre-proclamation controversies and election protests under a PCOS automated election system so that COMELEC could have a starting point to work on a final set of Rules that would actually be promulgated and implemented.

It was expected that the other tribunals would take the cue from COMELEC regarding the need for their own revised rules. However, it was only on 22 March 2010, approximately one month before the Election Day, that COMELEC adopted Resolution No. 8804 (Rules of Procedure on Complaints in an Automated Election System in Connection with the 10 May 2010 Elections).⁵⁵ Adopting the basic features of COMELEC Resolution No. 8804, the Supreme Court⁵⁶ issued A.M. No. 10-4-1-SC (2010 Rules of Procedure in Election Contests before the Trial Courts Involving Elective Municipal Officials) on 27 April 2010. The PET, for its part, came out with its amended Rules, A.M. No. 10-4-29-SC, on 4 May 2010. To date, however, both the HRET and SET have yet to amend their old rules of procedures, which are still based on a manual election process.

The delay in the adoption of new rules to govern election complaints in an automated election also delayed the planned trainings for the judges. In

⁵⁵ It needs to be emphasized that the implementing guidelines for the conduct of the automated election came out rather late, thereby, delaying also the conceptualization and adoption of the appropriate rules for election complaint.

⁵⁶ Under the Philippine Constitution, the Supreme Court supervises the entire court system in the country and it is empowered to promulgate rules that will govern court proceedings. See Const., Art. VIII, sec. 5 (5) (Phil.).

the Libertás-initiated PHILJA training program, the judges' trainings were initially targeted to be implemented in January 2010, but the actual training was pushed back to the second week of April 2010.

Training for Automated Elections

Prior to the actual training, Libertás conducted a Training Needs Analysis (TNA) by distributing a survey questionnaire to approximately 100 second level court judges. The TNA questionnaire sought to determine: (1) the experiences of the judges in handling election cases and the types of complaints they have handled; (2) the judges' general awareness and familiarity with the PCOS automated election system (AES); (3) the seminars/training that the judges have attended on the AES; (4) judges' familiarity with particular subject matters related to the AES; and (5) the judges' need for training on specific matters that would help them efficiently and credibly resolve complaints under the AES.

The results of the survey showed that 74 percent of the judges surveyed had previously handled election cases either as judges, as election practitioners, or in another capacity. Most of the cases handled by these judges pertained to election protests.

While 72 percent of the judges had heard of the PCOS AES, only 10 percent had previously attended a training or seminar on the automated election system. Thus, on a scale of 1 to 5 (1 being the lowest and 5 the highest), the judges rated their understanding of the new election system at 1.78.

Using the same scale, the judges rated their understanding of particular subject matters relating to the AES, as follows:

| Subject Matter | Rating |
|---|--------|
| Legal Framework of the PCOS AES | 1.58 |
| How the PCOS AES Works | 1.52 |
| Documents under the PCOS AES | 1.50 |
| Handling Election Protests under the PCOS AES | 1.45 |
| Rules on Electronic Evidence | 2.39 |

The judges strongly expressed the need to be trained on those subject matters, and 94 percent stated that they prefer that their Clerks of Court attend the training as well. From the data culled from the TNA, Libertás drafted a proposed training design and prepared the modules for each session, as follows:

- Session 1: Election Automation Legal Framework
- Session 2: Precinct Count Optical Scan (PCOS),
Automated Election System (AES) and
Simulation of Voting Day
- Session 3: Handling of Election Contests Under the PCOS AES
- Session 4: Rules on Electronic Evidence
- Session 5: Election Offenses

On 15 April 2010, Libertás presented the proposed training design and curriculum modules to a group of PHILJA lecturers and election law experts. The activity also served as the orientation for the prospective trainers. In addition to a COMELEC overview and demonstration of the PCOS system, the training included a mock election. In the end, the experts substantially adopted the training modules developed by Libertás as the PHILJA module for election law. Ultimately, for scheduling reasons, the judges were clustered into five groups, with each group comprising between 130 to 200 participants, and five batches of seminars were held, covering around 900 regional trial courts judges from all the judicial regions in the country.⁵⁷

Assessment and Evaluation of the Training

While the trainings conducted have given the trial courts basic knowledge on the new AES, it was not enough to adequately prepare them to handle the issues and challenges posed by the new system. In part this was because the Supreme Court had not yet promulgated its rules, instead relying on a draft document.

⁵⁷ Training were held as follows: on April 19, 2010 in Cebu City covering judges from Regions 6, 7 and 8; on April 23, 2010 in Baguio City covering judges from Regions 1, 2 and 3; on April 27, 2010 in Davao City covering judges from Regions 9, 10, 11 and 12; on May 3, 2010 in Pasay City covering judges from Regions 4 and 5; and on May 4, 2010 in Pasay City covering judges from the National Capital Region.

There were still many unsettled issues when the trainings were conducted. These included the methods of authenticating contested ballots to be re-examined. Recount procedure questions and voter intent issues were raised, but no definitive policies had yet been adopted. At the time of this writing there are even election protest proceedings that are suspended because certain procedural issues, particularly regarding ballot authentication, have not yet been resolved.

Libertás is presently in the process of evaluating the efficacy of the newly adopted rules and of the trainings conducted for the judges. It has organized post-election round table discussions among judges and election practitioners to elicit their opinions. With the blessings of the Supreme Court, survey questionnaires were distributed to the judges handling election complaints to obtain their own thoughts on the effectiveness of the new rules and of the trainings they attended in relation to the cases they have handled or are still handling. The result of the evaluation will be included in the report to be finalized by Libertás and submitted to IFES, ABA, and PHILJA, as well as to the policy makers, COMELEC, the Supreme Court and the electoral tribunals, in the first quarter of 2011.

Initial feedback gathered from the round table discussions revealed that the judges would have preferred to learn about practical solutions to problems through case studies, rather than lectures. Nevertheless, they appreciated the opportunity to have learned about the basics of the PCOS election process, which they would certainly not have had the opportunity of learning had there been no such PHILJA training (for more information on basic principles of training, see Chapter 3: Complaints Adjudication Training for Election Management Bodies and Political Parties).

The circumstances of the training, along with the fact that the AES was a novelty in the country in 2010, substantially limited the capacity of the training program to anticipate all of the election complaint problems that arose. As mentioned above, policy makers, including COMELEC, did not expect a substantial number of election protests to arise, and therefore did not adequately prepare for them, as they considered the AES to be a panacea for all election problems.

Contrary to this expectation, there were more election protests at COMELEC and HRET under the automated election system than there were in recent elections using the manual election process. At COMELEC, there were 95 election protests filed relative to the 2010 elections, compared with 72 in 2007, 65 in 2004, 65 in 2001, and 101 in 1998. In HRET, there were 40 election protests filed in 2010, compared with 28 in 2007, 16 in 2004, 33 in 2001, 27 in 1998, 27 in 1995, 22 in 1992, and 40 in 1987.

The available data from the Supreme Court's Administrator's Office indicates that policy makers made faulty assumptions about the ease of implementation of the new system. These faulty assumptions, in turn, led policy-makers to de-prioritize preparations for a sound complaints adjudication system.

Conclusion

A. Lessons Learned

The effectiveness of the trainings conducted in the Philippines to prepare judges to handle election protests in an automated election system was substantially limited by the lack of preparation and foresight on the part of the policy makers. It is evident that the problems are more fundamental than just mere issues of training methodology and procedures. Therefore, to improve the system, it is necessary to review these basic problems and address them accordingly.

B. Policy and Practical Considerations

As stated at the outset, understanding the Philippine experience requires knowledge of the unique elections context. However, there are some general principles that can be culled from the Philippine experience that may be useful in other jurisdictions.

- The legal framework that defines the type of election system should likewise consider how complaints can be resolved. It should, at a minimum, contain clear standards on: (1) jurisdiction issues; (2) recount procedures; (3) ballot authentication procedures; (4) voter intent determination issues; (5) the appeals process and availability of judicial review; and (6) the nec-

essary competencies of election complaint adjudicators and arbiters. These standards should incorporate the internationally acknowledged standards for a sound and effective election complaint adjudication system. Moreover, the legal framework should also consider allowing resort to alternative dispute resolution (ADR) methods (for more information on electoral ADR, see Chapter 6: Alternative Dispute Resolution Mechanisms).

- EMBs (or the body that promulgates election regulations) must decide on the kind of system early enough to enable all stakeholders — including voters, candidates, political parties, and adjudicators — sufficient opportunity to become familiar with the system.
- Electoral tribunals should adopt their rules of procedures and the amendments thereto well in advance of elections.
- Training of adjudicators should be a regular activity and should involve interactive and practical exercises. Furthermore, trainers should also be trained to conduct their training beyond mere lectures and must have the capacity and skills to manage their training using other training methodologies. Training needs analyses as well as post-training evaluations should always be required to effect better training preparation.

Finally, regardless of what may be said about the outcome of the training program utilized in the last election in the Philippines, what cannot be denied was the important and vital role played by civil society in the effort. The relevant government institutions, particularly COMELEC and the Supreme Court, adopted a *laissez-faire* approach towards preparations for a complaint adjudication system suited to the newly introduced automated election system. It was the Libertás initiative that provided the impetus to policy makers for them to fast track actions on the matter. It was a demonstration of how far a government-citizen partnership and cooperation can go in implementing successful projects. If only for this, the whole project can be considered a success and serve as a basis and an example for future collaborations.

Recommendation Checklist

Below are important recommendations for practitioners to consider when designing judicial training programs. It is important to note that training projects should always be designed considering the ultimate goal of imparting knowledge to a targeted audience. The aforementioned subjects should be applied uniformly to any strategy or design chosen for the training. As the reader will note, many of the principles included in this checklist are applicable to adult-training programs in general, and are similar to the issues raised in Chapter 3.

Organization and Development

- ✓ **Advance preparation:** Training programs should be developed well in advance of Election Day. Ideally, the programs will be created in tandem with the drafting of new or revised electoral statutes, in order to ensure training is up to date and available promptly after the law is enacted. Poorly thought-out or ad hoc training programs run the risk of failing to provide the judges and arbiters the necessary level of expertise.
- ✓ **Integration:** The training program for judges can be seen as a subset of the training programs for parties and the public discussed in Chapter 3. While “general” and “advanced” training are adequate to familiarize parties and the public with the complaint adjudication process, the expertise required of judges and arbiters demands “specialized” training in addition to that available to other segments of society.
- ✓ **Systematization and efficient use of resources:** In order to maximize potentially limited or restricted resources, it is important to systematize procedures and properly plan activities. A properly organized and repeatable training program or series of programs is ultimately a more efficient use of time and money than poorly planned individual sessions.

✓ **Goals:** To avoid the pitfall of setting unattainable objectives, concrete learning objectives should be designed in order to give certainty to participants about the specific themes and subjects they will learn.

✓ **Cultural and legal traditions:** In addition to being customized to the specific legal system in question, training should also keep a local focus and take into consideration the country's history, culture, legal traditions and customs. The procedures and goals should also consider whether the training is taking place in an emerging democracy, is part of an ongoing refinement in a consolidated democracy, or is designed to handle "fine tuning" problems in a mature democracy.

✓ **Inclusion of partners:** Whether the training is organized internally or externally, including input from partner organizations can assist in covering relevant topics that might otherwise be omitted by an isolated judicial training program. The training examples included in this chapter from TEPJF demonstrate how transnational organizations and representatives from foreign governments can cooperate to create effective programs, while Libertás' experience demonstrates how domestic public-private partnerships can drive the judicial training process.

✓ **Understanding the audience:** Training is often restricted to electoral issues only. Highly specialized electoral officials do not necessarily need training on topics directly related to electoral or judicial subjects. Instead, broader issues can offer them a deeper perspective when analyzing specific cases (courses in strategic policy analysis, communication strategies, common law, rational choice and game theory, among others).

Content and Evaluation

✓ **Participation:** In order to ensure a proper internalization of the material discussed during the training session, reliance on a series