



Electoral Justice for All

A Practitioner's Guide to Increasing Women's Access to Electoral Justice

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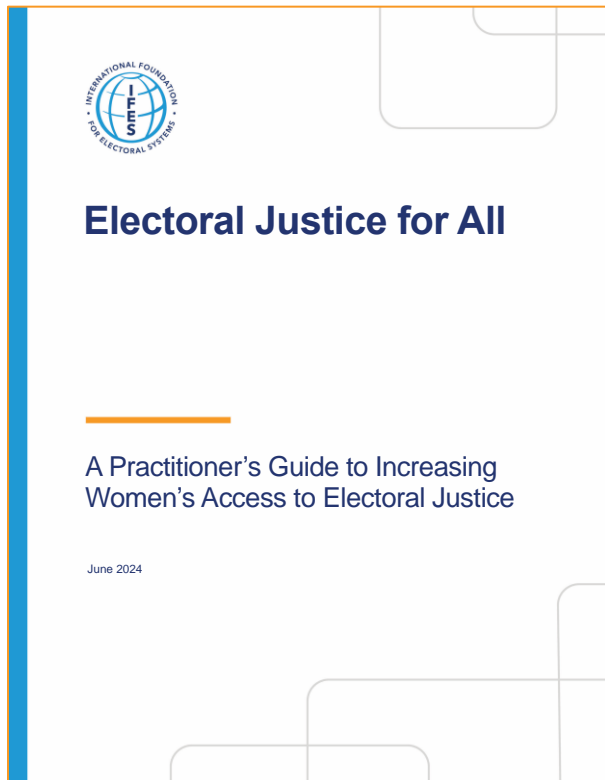
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**International Foundation
for Electoral Systems**



Electoral Justice for All

A prerequisite for global and national peace and justice is the full and equal participation of women in all areas of political and public life. The active engagement of both women and men is also necessary for resilient democracy. IFES supports women to increase their voices in democratic and electoral processes and works with governments, civil society organizations, and independent institutions so they are better prepared to advance women's leadership.

While 2022 marked the first year that women held seats in the national legislatures of

"The achievement of democracy presupposes a genuine partnership between men and women in the conduct of affairs of society...."
- Universal Declaration on Democracy

every country in the world, they constituted only 26.7 percent of parliamentarians, and only one-third of United Nations member states have ever had a woman head of state or head of government. Further, in 2022, only 22 percent of electoral management bodies (EMBs) worldwide were chaired by women.

The different needs of men, women, and people of diverse gender identities are often overlooked in the analysis, planning, implementation, and adjudication of electoral activities. The lack of gender-sensitive elections negatively impacts women's participation as voters, candidates, and election administrators. Closing the gender gap in women's political participation will require efforts by all electoral stakeholders – including to understand how electoral dispute resolution processes can better meet the needs of women. Gender-sensitive electoral justice sends an important message to prospective women leaders and all future political candidates about respect for the rule of law and is essential to increasing women's representation.

In developing this practitioners' guide, IFES analyzed the existing (if limited) research on women's access to electoral justice as well as women's access to justice generally. IFES also conducted original research, in the form of case studies and key informant interviews, to better understand women's experiences with the electoral justice system and to inform a set of recommendations for a variety of electoral stakeholders. A brief summary of these recommendations, organized by stakeholder, is included in the table below and detailed in Section 4 of this guide.



About IFES

IFES advances democracy for a better future. We collaborate with civil society, public institutions and the private sector to build resilient democracies that deliver for everyone. As a global leader in the promotion and protection of democracy, our technical assistance and applied research develops trusted electoral bodies capable of conducting credible elections; effective and accountable governing institutions; civic and political processes in which all people can safely and equally participate; and innovative ways in which technology and data can positively serve elections and democracy. Since 1987, IFES has worked in more than 145 countries, from developing to mature democracies. IFES is a global, nonpartisan organization based in Arlington, Virginia, USA, and registered as a non-profit organization [501(c)(3)] under the United States tax code.

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Introduction

2022 was a watershed year for women's representation in government: For the first time, women held seats in the national legislatures of every country in the world.¹ Despite this progress, women remained woefully underrepresented in politics globally, constituting just 26.7 percent of parliamentarians.² Only six countries – not all of which have multiparty political systems – have reached parity (or beyond) in their national legislatures, and fewer than one-third of United Nations member states have ever had a woman head of state or head of government.³ Further, only 22 percent of electoral management bodies (EMBs) are chaired by women.⁴ Increasing these numbers requires improvements to the legal, social, economic, and electoral environment in each country.

Free, fair, and inclusive elections are essential to advancing women's equal and meaningful participation in political and public life. Yet the different needs of men, women, and people of diverse gender identities are often overlooked in the analysis, planning, implementation, and – the subject of this guide – adjudication of electoral activities. Elections that are not sensitive to the different needs and experiences of people of all gender identities⁵ cannot fully engage women and nonbinary people as voters, candidates, and election administrators. Addressing this significant gap will require efforts by all electoral stakeholders and at all stages of elections, including by making efforts to understand whether electoral dispute resolution (EDR) processes meet the needs of women. Gender-sensitive electoral justice sends an important message to prospective women leaders and all future political candidates about respect for the rule of law. It is essential to increasing women's representation.

“The way that electoral disputes are managed is a key factor in determining whether an election is free and fair. Women and men should have equal access to the dispute resolution process.”

- IFES' Gender Equality & Election Management Bodies: A Best Practices Guide

Electoral justice involves the means and mechanisms available in a specific country or community, or at the regional or international level, for ensuring that each action, procedure, and decision related to the electoral process complies with the legal framework. Electoral justice also encompasses processes to protect or restore electoral rights and the opportunity for people who believe their electoral rights have been violated to file challenges, have their cases heard, and receive rulings.⁶ An effective EDR system can provide a means of redress for violations of electoral rights and a mechanism for remedying flaws in electoral processes. Effective EDR strategies also can help to minimize political instability and election-related violence and support peaceful political transitions. Research on the acceptance of election results suggests that both the rules that are in place to govern an electoral process, and the public's experience with the institutions and individuals administering those rules, are important to overall perceptions of an

¹ Inter-Parliamentary Union. (n.d.). [Women in Parliament in 2022](#).

² [Women in parliament: Global and regional averages](#). (n.d.). New Parline: The IPU's Open Data Platform (Beta).

³ Clancy, L., and Austin, S. (2023, March 28). [Fewer than a third of UN member states have ever had a woman leader](#). Pew Research Center.

⁴ [Few women at the top of electoral management bodies worldwide | International IDEA](#). (n.d.). [www.idea.int](#).

⁵ While people of all gender identities experience challenges in accessing electoral justice, this guidebook focuses on how electoral justice processes can better serve *women*. However, women are not a homogenous group, and women from different backgrounds and identities might have different experiences and needs with respect to electoral justice processes. In particular, women who also belong to other marginalized groups – for example, women with disabilities; women who are members of the lesbian, gay, bisexual, transgender, intersex, and queer community (LGBTQI+); women from rural areas; Indigenous women; women from ethnic and religious minorities; young and older women; and others – might face compounded discrimination when they seek electoral justice, and they often face unique challenges that result from this compounded discrimination.

⁶ International Idea. (n.d.). [Electoral Justice: An Overview of the International IDEA Handbook](#).

electoral process and outcome. Hence, the ways that electoral disputes are handled can be as important as the final outcomes of those disputes.⁷

EMBs, EDR bodies, and other electoral actors have an important role to play in increasing women's access to electoral justice. To achieve electoral justice, an electoral management body or election supervisory body can also use alternative dispute resolution (ADR) processes.⁸ ADR processes are relatively informal, consensus-driven processes that can be used to resolve electoral disputes outside formal judicial and institutional processes. Countries structure their electoral justice processes differently, and rely on different actors, including EMBs, specialized electoral courts and judges, ADR mechanisms, and traditional judicial bodies to resolve election cases. However, every step in the process – from accessing information to filing a complaint and to receiving an effective remedy – must consider and address potential barriers to women's equal access.⁹ To that end, this guide aims to provide EMB and EDR actors (including ADR practitioners), and other stakeholders, including political parties and civil society organizations, with resources to increase women's access to electoral justice.

To gain a better understanding of the current state of the gender and electoral justice literature, including gaps in that research, and to help shape specific recommendations for electoral actors, IFES conducted a desk review of the literature on women's access to electoral justice, participation in elections, and access to justice more broadly. The desk review builds on IFES's decades of experience strengthening electoral processes, including electoral justice mechanisms, as well as significant research on the issue of violence against women in elections – an area where we know women often struggle to access justice and one that has particularly negative impacts for women voters, election officials, political party members, and candidates.¹⁰

IFES also conducted case studies in Kenya and Nepal, two countries that were preparing for major national elections at the time fieldwork was conducted and where IFES has significant history and longstanding relationships with a variety of electoral stakeholders. IFES supplemented the case studies with key informant interviews with electoral stakeholders in Guatemala, Honduras, Indonesia, and Malawi, bringing additional regional diversity to the key informants. The findings and recommendations included in this guidebook are based on this literature review and data collected from these key informants.

⁷ [Electoral justice & dispute resolution](#) (2024, March 13). IFES – The International Foundation for Electoral Systems.

⁸ For more on ADR mechanisms see: [Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections \(GUARDE\)](#). (2024, May 2). IFES – The International Foundation for Electoral Systems. www.ifes.org.

⁹ [Alternative Dispute Resolution in Elections: A Practitioner Brief](#) | IFES – The International Foundation for Electoral Systems. (2024, May 16).

¹⁰ [Violence Against Women in Elections](#) | IFES – The International Foundation for Electoral Systems (n.d.). IFES has also completed country-specific assessments in Papua New Guinea, Fiji, Nepal, Sri Lanka, Pakistan, and the Autonomous Region of Bougainville.

Summary of Recommendations

For Election Management Bodies

- Utilize political party liaison structures as appropriate to support political parties in standardizing, implementing, and enforcing gender-sensitive intraparty dispute resolution processes. Develop model guidelines, codes of conduct, and principles to guide the resolution of intraparty disputes.
- Provide comprehensive, gender-responsive voter education to all citizens regarding their rights and responsibilities as voters. Deliver this education throughout the election cycle and through a variety of methods and media. Voter education should include information on how to report suspected violations of the law, file complaints, and get additional information and resources on electoral justice.
- Partner with civil society organizations (CSOs) to train women from around the country to serve as community voter education ambassadors to take voter information to their communities and conduct door-to-door campaigns sharing voter information.
- Provide standardized candidate training on the country's election law. Include information on any intra- and inter-party dispute resolution mechanisms available as well as the formal electoral dispute resolution (EDR) process and any available alternative dispute resolution (ADR) processes.
- Strive for gender parity among staff at all levels and promote affirmative action measures that result in more women serving in electoral institutions, especially in leadership positions.
- Train and designate women EMB staff members as points of contact for campaign regulation information and to field reports of violations or harassment against women candidates. These positions should be established across the country and publicized.
- Train Election Day staff to help ensure gender issues are integrated into their electoral operations, including for security personnel.
- Train all staff on implicit and unconscious bias, stereotyping, gender equality, healthy masculinities, and other relevant topics to help shift harmful cultural and social gender norms and to create a more enabling environment for women to participate in elections and report electoral violations.
- Establish a gender unit or department responsible for training and gender-mainstreaming programs, processes, and resources.
- Work with the judiciary, civil society, and political parties to explore the development of an ADR mechanism for the resolution of elections complaints, as appropriate. Ensure the equal representation of women as mediators and training on gender-sensitive dispute resolution for all personnel.

For the Judiciary/EDR Mechanisms

- Strive for gender parity at all levels of staff and promote affirmative action measures and mentoring programs that result in more women serving in the justice sector, especially in leadership positions or on more senior courts.
- Provide training on gender-sensitive electoral justice, including on topics such as gender equality; cases or complaints that are more likely to affect women and political violence against women, including violence that occurs as part of the electoral cycle and violence that occurs online; gender quota rules; and any other specific provisions that support women's political participation.
- Establish a gender unit or department responsible for training and gender-mainstreaming programs, processes, and resources.
- Seek to make court services more readily available to all potential litigants, first addressing barriers that particularly impact women, including court fees and the cost of traveling to file complaints.
- Expand the availability of remote filing and remote or virtual court processes, and endeavor to make virtual court stations – with computers and reliable internet connections – more widely available.
- Utilize a case management system (CMS) to track and report gender-disaggregated data on the electoral justice cases brought at every stage of the process, including the nature of the claims brought, the number and gender of complainants who appear pro se, and the outcomes of those EDR processes, at every level. Require political parties to report data on the number of cases in which they

retain counsel for complainants as well as the number and gender of complainants for which they decline to provide counsel.
For the Legislature
<ul style="list-style-type: none"> • Strengthen the legal framework to increase women's representation in political institutions. Specific actions may include increasing quota thresholds, improving campaign finance laws to better support women candidates, criminalizing political violence against women, and increasing penalties for violations of electoral laws.
For Political Parties
<ul style="list-style-type: none"> • Develop intra- and inter-party codes of conduct, guidelines, and dispute resolution mechanisms to ensure women's equal access to political processes. Once such mechanisms are established, decentralize and localize them to make it easier for women to access the process. • Ensure that women candidates have information on the intra- and inter-party dispute resolution processes and procedures and formal EDR processes, including timelines and evidence to preserve and how to file a complaint, claim, or case in the face of a suspected electoral violation. Include any party-supported legal resources available. • Establish a gender unit or department responsible for training and gender-mainstreaming programs, processes, and resources. • Make significant efforts – through sensitization and allies training for men candidates, staff, and leadership – to improve the environment for women candidates.
For Law Enforcement and Security Personnel
<ul style="list-style-type: none"> • Provide training for personnel on how to support women victims of violence, investigate electoral crimes, and preserve the chain of evidence. • Provide security forces stationed at polling places with information on the electoral law and training on how to help prevent electoral violence that targets women and how to respond to women who have been victims of electoral violence with respect and sensitivity.
For Civil Society
<ul style="list-style-type: none"> • Develop proposals and sample language to strengthen the legal framework; mount legislative advocacy campaigns to improve accountability for violations of women's rights and to support gender equality in political processes. • Partner with the EMB to identify and train women as community voter education ambassadors to take voter information back to their communities and conduct door-to-door campaigns sharing voter information. • Offer training for all women candidates – across political parties – on relevant electoral justice processes and procedures, including information on legal aid services, psychological supports, and financial resources as available to cover the costs of filing a claim. • In the event that cases of harassment, intimidation, and violence against women candidates occur, advocate to the relevant authorities that the perpetrators be dealt with swiftly and in accordance with the law.

What Does the Research Say About Women's Access to Electoral Justice?

The challenges women face in accessing electoral justice institutions have implications for how EMBs, parliaments, courts, and other electoral justice actors design and implement their EDR mechanisms and how they address electoral disputes. International organizations that provide support to those stakeholders and the donors that fund this work would benefit from a more nuanced understanding of how well the processes serve individuals in different ways, especially as they provide technical assistance and support to improve electoral justice. The desk review

completed for this guide (included in Annex A) examined literature on women's access to justice, country-specific assessments of EDR and ADR processes, election observers' reports, and publications that review current electoral justice mechanisms. Key findings from the desk review are summarized below.

Finding 1: There is a lack of research on women's access to electoral justice and a dearth of gender-disaggregated data related to electoral dispute resolution.

Most countries do not collect gender-disaggregated information on electoral dispute issues, including who files cases or complaints. Gender-disaggregated data related to electoral complaints could be used to determine whether women and men file different types of complaints and whether cases filed by women or men complainants are equally likely to be successful, and to better understand women's experiences of electoral justice. In addition, centralized, updated data are lacking on the number of women who are part of electoral justice institutions, particularly at the local and regional levels. As noted above, a 2022 survey found that only 22 percent of EMBs globally are chaired by women, and while the judiciary overall is an area where women are closer to parity – approximately 40 percent of judges globally are women – they remain particularly underrepresented in more senior judicial positions.¹¹ While insufficient to ensure gender-sensitive electoral justice processes, descriptive representation remains important. The electoral justice sector will be more likely to garner the trust of the public if these institutions look like the population they represent.

Finding 2: Many countries have national legal frameworks that prohibit gender discrimination and guarantee women's political participation, but enforcement of these laws remains a challenge.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a legally binding international treaty that guarantees women a set of universal rights, including the right to participate meaningfully and equally in public life (Article 7) and to equality before the law (Article 15). Almost every country has ratified the treaty.¹² The Universal Declaration of Human Rights states that all people are entitled to equal protection under the law and that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”¹³ In addition to commitments in multilateral fora, governments around the world have enshrined many of these rights as parts of their domestic legal frameworks, including their national constitutions. Some countries even have specific laws that focus on gender equality and women's empowerment, and many have national institutions or ministries that are specifically meant to guarantee gender equality. Although these laws, policies, and regulations exist, they often are not implemented in a robust or meaningful way.¹⁴

¹¹ United Nations. (n.d.). [International Day of Women Judges](#). United Nations.

¹² United Nations. (n.d.). Ratification Status for CEDAW - Convention on the Elimination of All Forms of Discrimination against Women. [UN Treaty Body Database](#).

¹³ United Nations. (1948). [Universal Declaration of Human Rights](#).

¹⁴ Orozco-Henríquez, J., Ayoub, A., and Ellis, A. (2010, November 24). [Electoral Justice: The International IDEA Handbook](#). International IDEA. [Idea.int](#).

One specific group of laws meant to ensure women's political participation is gender quota laws, which are in use in more than half the world's countries to increase the number or proportion of women candidates or elected representatives.¹⁵ Despite this intention, gender quotas are not always effective because of lax implementation and insufficient enforcement. Because a key component of electoral justice is ensuring that each election-related action complies with the law, failure to implement gender quotas demonstrates women's gender-specific experiences in accessing electoral justice. For example, some countries' legal and regulatory frameworks do not impose penalties when political parties choose not to comply with a gender quota. Even where there are sanctions for non-compliance, political parties have proved creative in finding loopholes to avoid fielding women candidates. Campaign and political finance laws can also be used to promote gender equality but, as with quotas, implementation is often lacking. In some countries, election laws stipulate that parties must use a certain proportion of their public funding to promote women's access to and inclusion in elections. But in many cases, parties do not use this funding to promote women's political participation meaningfully, instead finding ways to spend it on events and items that only superficially support women in politics. Lax monitoring of campaign and political finance laws results in parties not being held accountable.

Finding 3: Women often lack the resources required to pursue electoral complaints.

Women are more likely to be poor, have less control over finances, and have more domestic and care responsibilities than men. All these elements impact their ability to participate in political and electoral processes in general and to bring forward electoral disputes in particular.¹⁶ With these greater limitations on time and money, it can be especially challenging for women to travel to courts and more difficult for them to pay costs associated with bringing forward electoral complaints.¹⁷ Twenty-five percent of countries require a fee or deposit to be paid when lodging electoral complaints contesting the results of an election, and 13 percent of countries charge a fee or require a deposit to file a complaint related to candidate nomination processes.¹⁸ The cost of legal representation can be another significant cost associated with bringing an election case, and women are less likely than men to have the resources to hire private counsel.

Finding 4: Electoral justice institutions may not appropriately address women's cases and complaints.

Institutions that are responsible for hearing and adjudicating electoral complaints – including EMBs, courts, prosecutors, and police – are often led primarily by men. Global comparative data on women's representation in the justice sector writ large are not available but, as noted above, the available data show women are underrepresented in the judiciary, especially in leadership roles. Representation is even weaker for women who belong to other

¹⁵ Institute for Democracy and Electoral Assistance (IDEA), Inter-Parliamentary Union & Stockholm University. [Gender Quotas Database](#). (2021).

¹⁶ Gordon, E. (2019). [Justice and Gender](#). Organization for Security and Co-operation in Europe.

¹⁷ Organization for Security and Co-operation in Europe. (2019b). [Handbook for the Observation of Election Dispute Resolution](#). P. 68. "While the law might provide equal conditions, in practice procedures could disproportionately burden women. For example, procedures for filing complaints or appeals that require travel or the payment of filing fees may pose a greater barrier for women in societies where there is inequality of pay for equal work."

¹⁸ Solijonov, A. (2016). [Electoral Justice Regulations Around the World: Key findings from International IDEA's global research on electoral dispute-resolution systems](#). International IDEA.

“[The fate of these victims should not be left to the off-chance that the individual Judges hearing their cases will be attuned to the sensitivities. There should be a formalization and standardization of these norms so that it is incumbent on the Courts to pay particular attention to the treatment of victims in these cases.]”

- Justice Mandisa Maya, Deputy Chief Justice of the Republic of South Africa

marginalized groups, such as ethnic or religious minorities, and at more senior levels of judicial administration.¹⁹ Because gender inequality is a widespread global phenomenon, and because many men and women around the world still hold regressive, harmful beliefs and attitudes about how women should think and act, these negative perceptions can influence how the people who dominate these institutions – the majority of them men – handle women’s cases and complaints around the electoral

process.²⁰ In particular, judicial institutions do not always handle cases of gender-based violence and gender-related hate speech and harassment in safe, effective ways.²¹ Violence against women in elections and politics is a persistent, serious barrier to women’s equal and meaningful access to the electoral and political process, not to mention a human rights violation and a crime that causes lasting physical and mental harm.²² In every part of the world, violence against women in elections suppresses their participation as voters, candidates, election officials, and community leaders. And, at the same time, commissioners, judges, lawyers, and police officers are not always trained in how to handle cases that have particular gender dimensions, reducing the likelihood that women complainants have equal access to just proceedings.²³

Finding 5: Political parties often act as barriers for women accessing electoral justice.

Political parties play critical roles in connecting people to the state via elections and, in doing so, should serve as the main bulwarks of vertical accountability. Parties play important roles in promoting women’s participation in elections, but they can also create additional barriers for women in the electoral process. Political parties often do not take women’s cases and complaints seriously, particularly with respect to electoral law or party regulation violations that occur during the candidate nomination process. In many systems, party leadership – which tends to be dominated by men – make candidate nomination decisions in non-transparent, closed-door sessions where women are often not invited or permitted.²⁴ If potential women candidates have issues with how certain candidates were selected, the options for recourse are either non-existent, or processes exist but are conducted in a way that is unfair and biased toward the preferences of male party leadership.²⁵

¹⁹ Gordon, 2019.

²⁰ “[J]udges come to the bench with their built-in and often strongly-held set of values and therefore have a duty to ensure that possible prejudices and harmful gender stereotypes do not influence proceedings or undermine gender-based violence victims’ credibility.” United Nations Office on Drugs and Crime. See: United Nations Office on Drugs and Crime. (2019). [Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-based Violence against Women and Girls](#).

²¹ Ibid.

²² Huber, J., and Kammerud, L. (2016, September). [Violence Against Women in Elections: A Framework for Assessment, Monitoring, and Response](#). IFES – The International Foundation for Electoral Systems.

²³ Gordon, 2019; United Nations Office on Drugs and Crime. (n.d.). “Many countries have reformed their criminal laws by introducing offences, revising criminal procedures and evidentiary rules to reflect the realities faced by women and girl victims of gender-based violence and to reduce secondary victimization by criminal justice institutions and processes. Despite these positive efforts, the criminal justice sector’s response to [gender-based violence against women and girls] is often deficient and does not function at the level required to address the severity, nature and extent of the problem.”

²⁴ Hubbard, C. and Grieg, A. (2020). [MEN, POWER AND POLITICS PROGRAM GUIDANCE](#). National Democratic Institute. [Www.ndi.org](#).

²⁵ Brechenmacher, S., and Hubbard, C. (2020). [Breaking the Cycle of Gender Exclusion in Political Party Development](#). The Carnegie Endowment for International Peace. Brechenmacher and Hubbard note that men’s dominance in political party leadership and opaque nomination processes remain significant barriers to women’s involvement in political party processes. See:

Finding 6: Women do not have equal access to information about how to pursue electoral complaints and about what is needed to bring forward a successful case.

Women around the world often have different needs related to accessing civic education and voter information. A lack of targeted voter information often disproportionately affects women compared to other marginalized groups, such as older women, women from rural areas, or women with low or no literacy. Information on EDR is no exception to this problem; women often do not know how to file and pursue electoral complaints, and they may not know what evidence or resources are needed to bring forward a successful case. For example, women interviewed for an IFES assessment in Papua New Guinea were unclear as to where they should report electoral crimes: “[T]his lack of clarity on the process to report electoral violations ... represents a large gap in protection for women in the electoral process.”²⁶

Finding 7: Societal stigma and harmful cultural attitudes keep women from reporting certain electoral justice violations.

In many countries, when women report crimes or when they face gender-based violence in the context of stepping outside of their traditionally prescribed gender roles (as is often the case when they run for office), they face social stigma due to harmful cultural attitudes and restrictive gender roles.²⁷ Because of the way judicial actors and electoral institutions handle gender-based violence cases, women can be re-traumatized by how these institutions handle their claims. In Zimbabwe, a survivor of violence “was told by a local chief council that she deserved what happened to her because she did not behave according to social norms for women.”²⁸ Cultural attitudes in Papua New Guinea mean that election-related violence that occurs in the home is often not reported “as it is seen as a family affair, and if it does get reported, it is typically handled within the community rather than through the formal legal system.”²⁹ In Iraq, women candidates were hesitant to report violations related to gender-based violence and hate speech online because of “lack of social progress toward women’s issues, lack of accountability mechanisms, and also citing a fear of retaliation if they reported attacks to Iraqi authorities.”³⁰ The CEDAW Committee found in Haiti that “lack of awareness and reticence to file complaints because of fear of social stigma and prejudice” held women back from reporting gender-based violence crimes.³¹ Judicial institutions play key roles in ending impunity for electoral crimes experienced by women. However, without widespread institutional and cultural changes that more broadly shift harmful societal gender norms and, more specifically, normalize women’s equal and meaningful participation in politics, the legal system can only do so much to prevent and mitigate these crimes.

²⁶ Dyer, A., Bardall, G., and Rogers, T. A. (2019b). [Violence Against Women in Elections in Papua New Guinea: An IFES Assessment](#). IFES – The International Foundation for Electoral Systems.

²⁷ For example, in Pakistan, “Society perceives women who seek to fight for their rights as being of ‘lesser moral character.’” See: Centre for Peace and Development Initiatives. (2022). [Violence Against Women in Elections in Pakistan](#).

²⁸ Bardall, G., Muroombo, G., Hussain, T., and Greg-Obi, O. (2018, July 24). [New Assessment of Violence Against Women in Elections in Zimbabwe](#). IFES - The International Foundation for Electoral Systems.

²⁹ Dyer, A., Bardall, G., and Rogers, T. A. (2019).

³⁰ Iraq Foundation. (2022, January). [ELECTION WATCH: ASSISTING WOMEN CANDIDATES TO COUNTER GENDER-BASED VIOLENCE AND HATE SPEECH DURING THE ELECTION CAMPAIGN](#). United Nations Assistance Mission to Iraq (UNAMI).

³¹ United Nations Office of the High Commissioner for Human Rights. (2016, March 9). [CEDAW/C/HTI/CO/8-9: Concluding observations on the combined eighth and ninth periodic reports of Haiti](#).

Finding 8: ADR processes could be opportunities for women's electoral justice complaints to be heard, but they may also be vulnerable to the same institutional and cultural biases as formal electoral judicial processes.

As noted above, ADR processes can be used to resolve electoral disputes outside formal judicial and institutional processes. They can also “enhance the participation of women or traditionally disadvantaged or marginalized groups, both as petitioners and as adjudicators/mediators,” as ADR processes can be “more welcoming and user-friendly for individuals who are unfamiliar with formal judicial proceedings or have limited physical or financial access to the judiciary.”³² Some ADR processes such as those facilitated by non-state justice providers, can be “more accessible, affordable, trusted and transparent, and can provide a swifter and fairer response,” but they can also be “discriminatory or exclusionary” and “often replicate and reinforce dominant power structures and gender bias.”³³ A related concern is that ADR mechanisms – because they are meant to be alternative ways to solve disputes in order to avoid the formal justice system – may lead to increased pressure on women to abandon their claims in the interest of preserving community cohesion or promoting conflict resolution over justice and accountability. In instances when the responsible institution for ADR is *also* the subject of a complaint, this conflict of interest could be harmful for the justice process.

Findings from the field

Having identified the gaps in the existing research and literature and arrived at the findings noted above, IFES set out to conduct original research in this space through case studies in Kenya and Nepal and interviews with key electoral stakeholders in Malawi, Indonesia, and Central America. The findings from this field research are summarized below, and the full case study reports from Kenya and Nepal are included in annexes B and C, respectively.

The case studies and key informant interviews aimed to answer the following research questions:

- What are the practical challenges women face in accessing electoral justice?
- What legal or institutional reforms are needed to ensure women's equal access to not just EDR mechanisms but to true electoral justice?
- What can EMBs and EDR bodies do to increase women's access to electoral justice and the effective adjudication of women's disputes?
- What role can civil society play in promoting women's access to electoral justice?

³² Roblot, T., Cox, R., and Anyanwu, U. (2024, May 16). [Alternative Dispute Resolution in Elections: A Practitioner Brief](#). IFES – The International Foundation for Electoral Systems.

³³ Gordon. (2019). P. 6.

Many of the answers to these questions underscore the findings from the desk review and highlight ongoing needs and opportunities that women face in accessing electoral justice. The findings also point to recommendations for electoral actors and advocates to address these gaps and challenges, which are further detailed in Section 4. While gender-disaggregated data on electoral disputes are generally not available at the national level, let alone globally, one consistent theme emerged across the interviews conducted for this research: *Women are underrepresented as litigants on electoral matters, even relative to their general underrepresentation in the candidate pool.* Stakeholders identified a number of reasons why women are less likely to bring claims (even in hyper-litigious electoral environments like Kenya) regardless of the merits of their cases. Interviewees noted that men are much more likely to bring cases because they feel they have been wronged, regardless of the merit of their claims, and to come to court to “demand justice” or a recount of a vote. Women are more likely to be in court because they have been the victims of electoral violence or obvious crimes. This reluctance to come forward and bring electoral complaints is grounded in both practical concerns and societal and structural barriers.

“For most women, cases are violence-related cases. Maybe they’ve been beaten up or called bad names. For men, it’s usually contesting the results of an election.”

– Key informant interview participant

What are the practical challenges women face in accessing electoral justice?

Resource constraints. The primary constraint women face in filing electoral disputes is one of resources: time, information, and funds. In Kenya and Malawi, while political parties may provide attorneys to candidates to pursue electoral justice, women candidates were seen to receive less support from their parties, particularly in the case of intraparty disputes. In both countries, having an attorney to bring a complaint successfully was seen as both necessary and often prohibitively expensive. Further, interviewees noted that women candidates were often less aware of the process they needed to follow in filing court cases and, importantly, in preserving and capturing evidence contemporaneous to a particular incident – another area where political party support was seen to be more available to men. Interviewees in Nepal and Malawi also noted that many voters in general, and women in particular, are not aware of their legal rights around the electoral process, making it difficult to know whether they have been victims of electoral violations. Nor are they aware of the process for filing electoral complaints. This latter issue extends to women candidates and prominent women on party committees.

Lack of information on the electoral law presented different challenges in other contexts. Interviewees in Guatemala and Indonesia noted that one of the most prevalent issues with respect to women and electoral justice is that many women candidates and voters are not provided information on what actions are illegal in political campaigns. In Indonesia, for example, where money in politics is a particular concern, a number of women candidates – more likely than men to be running for office for the first time – have been found guilty of electoral offenses because they were not aware that customary practices such as gifting food or money were not allowed during campaigning. Often, this information should have been provided by their political parties but wasn’t – a phenomenon that some interviewees attributed to parties’ overall lack of support for women candidates. When the Electoral Commission of Nepal (ECN) communicates with political parties, election officials most regularly work with party leaders – predominantly men – and will sometimes provide information to party leaders for them to share with candidates rather than delivering the information to candidates or applicants directly. This information imbalance has led to party leaders withholding

information about key deadlines and rules, thus undermining women candidates' eligibility and their ability to challenge those decisions.

Gatekeeping role of political parties. Beyond failing to provide women candidates with relevant information, political parties were often seen as significant barriers to women's political participation and to their access to electoral justice specifically. In Kenya, interviewees noted that political parties play an important role as gatekeepers choosing to

"The attitude is that women are in politics as a favor not a right."

– Key informant interview participant

field women candidates in party strongholds (where people are more likely to elect the party's representatives regardless of gender) or prioritizing men candidates in those races. One interviewee stated, "the primary process is the often the hardest part; 60 percent of women lose at the primary level – it's a negotiated democracy." Therefore, while women might make up the requisite one-third of candidates on a party slate, they are more likely to be nominated in districts where they have less chance of winning. In addition, intraparty dispute resolution mechanisms, which are often the first stop for many candidates attempting to resolve disputes at the primary stage, are not always seen as safe or effective spaces for women candidates to seek redress, given that parties can feel like an "old boys' club." When political parties violate laws or policies – or when those policies are so opaque or informal as to be inscrutable – in an effort to exclude women from nominations and the political process generally, women complainants in many countries have nowhere to go to file disputes on intraparty issues.

In Nepal, which does not have an intraparty dispute resolution mechanism, male-dominated party leadership decides on candidate nominations in closed-door meetings. A similar phenomenon was described in Malawi, where political parties are headed by men; one interviewee described the nomination process as being carried out "in a clandestine midnight meeting." Similarly in Honduras, which also does not have formal mechanisms within parties to challenge candidate nomination processes, interviewees reported that, when women candidates were nominated in unwinnable positions and filed a complaint with the national executive committee, no action was taken, and they were called "crazy women."

Stigma associated with bringing complaints. Women who are survivors of electoral violence, especially sexual violence, are often reluctant to bring cases even when they have legal and financial support. In some cases, interviewees attributed this reticence to a lack of faith in receiving justice or being taken seriously by the police. Cases of sexual or gender-based violence are particularly difficult for a woman candidate to bring forward when the perpetrator is a member of her own political party. In Kenya, women's rights representatives noted that, in some cases of political violence, women candidates don't expect justice from the criminal justice system or to revisit the results of the election, but they do want some acknowledgment of what happened to them. Therefore, in lieu of filing formal court cases, they were willing to have their cases resolved through the ADR process so they could at least receive an apology from the perpetrator. Interviewees in Honduras echoed this sense of resignation, noting that women did not want to put forward cases because "nothing happens" and that if women fight back against their parties in particular, they will be marginalized and excluded.

"If you are a woman interested in politics, you are already ... a social misfit."

– Key informant interview participant

In Nepal, interviewees also reported women's reluctance to draw additional attention from party leaders, their opponents, and the media by filing electoral complaints. According to multiple sources, the media in Nepal covers prominent women by

focusing primarily on their appearance, asking what their male relatives think about their participation in politics, calling their morality into question, and generally perpetuating a culture that blames women for reporting, rather than blaming the perpetrators of the violations.³⁴ Parties also pressure women to refrain from filing complaints, which they worry might bring negative attention to the party and require it to invest time in an issue that it does not think is important. In Malawi, multiple interviewees noted that sexual harassment – including pressure to exchange sexual favors for needed resources from male party leaders – is rampant within political parties. Still, many women are reluctant to report incidents because so much social stigma is already attached to their running for office. Interviewees across multiple country contexts reported that women are reluctant to report incidents of electoral violence and harassment due to the shame attached not just to having experienced those issues, but to participating in politics in general. Further, they reported that bringing a complaint attracts additional attention and scrutiny that will redound not just to their own reputations but those of their families. Without support from families, communities, or their political parties – and with increased media attention – women are deterred from filing electoral complaints.

Finally, the time, financial, and emotional costs associated with pursuing an electoral complaint are significant barriers. Interviewees across country contexts noted that women candidates were often running for office in addition to significant household responsibilities, leaving them with limited time and resources in the face of grueling (and sometimes violent) campaigns. At the end of such a taxing experience, many interviewees noted that women are often completely drained and unable mentally, physically, or financially to afford a long court battle. For rural women in particular, as well as women with disabilities, proximity to courts presents a challenge, as physically accessing centers of justice can be a time-consuming and expensive ordeal. An interviewee in Honduras noted that the process is complicated and time-consuming and requires going to multiple places to complete filing processes.

“Only those that can afford it get justice. [Parliamentary] election results were nullified because the candidates had money and could afford lawyers. What happens to an ordinary woman?”
– Key informant interview participant

What legal or institutional reforms are needed to increase women’s equal access to not just EDR mechanisms but to true electoral justice?

“It’s really important to encourage women to apply, to have a policy of appointing if not equal, almost equal numbers of women to judicial positions and to local election officer positions. Again, this is a matter of public trust. The public trusts a system that looks like the country.”

– Key informant interview participant

Women face a variety of barriers in understanding and accessing EDR mechanisms, including resource, time, and information barriers. However, true electoral justice requires not only reducing those barriers but also ensuring that, once someone reaches the EDR mechanism, the process is fair, efficient, effective, and transparent.³⁵

In addition to being underrepresented among both candidates and litigants, women are underrepresented across positions of power in government and independent

³⁴ See, e.g., THT Online. (2022, April 1). [Social media are full of misogynistic content against women in politics in Nepal: Report - OnlineKhabar English News](#) The Himalayan Times; THT Online. (2023, March 10). [Addressing hate speech and gender based digital violence a key contemporary challenge said experts](#). The Himalayan Times; Dahal, P., Joshi, S. K., & Swahnberg, K. (2022). [A Qualitative Study on Gender Inequality and Gender-based Violence in Nepal](#). *BMC Public Health*, 22(1), 1–15.

³⁵ United States Agency for International Development. (2018). [ELECTIONS ON TRIAL: The Effective Management of Election Disputes and Violations](#).

institutions. While descriptive representation is not synonymous with gender equality, ensuring government institutions better reflect the population is essential to increase citizen trust and ensure diverse perspectives are represented among decision-makers. In Kenya, for example, three of seven justices of the high court are women, and women have achieved near parity as judges and magistrates. The high levels of representation of women in Kenya's judicial bodies is the exception in a country where, despite a constitutional requirement that no more than two-thirds of any elected or appointed body should be persons of one sex,³⁶ women remain underrepresented across leadership positions. In Indonesia, neither of the national EMBs meets the 30 percent quota requirement; there is only one woman out of seven commissioners in the national EMB and one of five at the national supervisory level. The fact that the EMBs themselves do not meet this quota is not a positive signal to those seeking enforcement of legal protections for women.

While women's lack of representation in political and government leadership positions is an issue beyond electoral justice, the judiciary and EMBs do have roles to play in encouraging gender equality in leadership positions. This can be achieved by promoting affirmative action measures like gender quotas and coupling them with enforcement

"When women are involved in the justice sector, they bring a unique perspective and, through decision-making, they contribute to better inclusion for all society."

- Key informant interview participant

mechanisms to ensure compliance with commitments to increasing women's leadership in the justice sector and electoral institutions. A higher proportion of women in judicial and electoral roles alone will not solve gender inequality in the justice sector. Still, it is one way to increase the chances that women's experiences and needs are taken into account when developing processes and procedures for adjudication of electoral complaints. In addition, given the mistreatment and stigma many women encounter when bringing claims related to electoral violence and other sensitive matters, all judicial and EDR personnel – regardless of gender – should receive training on gender-sensitive complaint management.

In many countries, the legal framework can be strengthened to increase women's ability to participate in the electoral process as voters, candidates, political party members, and election officials. An updated legal framework must include sanctions for non-compliance sufficient to result in deterrence as well as the development of an EDR system that properly investigates, prosecutes, and remedies violations of the law. Further, the legal system must be equally accessible to all litigants, which may require reducing barriers to filing cases, including court fees, and increasing the availability of pro bono counsel trained on election issues. For example, in Kenya, the electoral justice system has taken steps to reduce barriers to women accessing electoral justice. Court case filing fees have been reduced for women candidates, and, in the wake of COVID-19, more people have access to virtual proceedings. These changes should reduce the time and expense associated with traveling to litigate cases. However, because women are less likely to have access to the requisite technology, particularly in rural areas and villages where they are also more likely to be candidates, virtual proceedings may still place women at a disadvantage when seeking electoral justice.

Finally, while changes to the legal framework and improving the gender balance of EDR and EMB leadership are key reforms, one of the major barriers that interviewees across contexts identified was the lack of fair and standardized systems to resolve intraparty disputes. As noted above, many women candidates encounter their first challenges

³⁶ Known colloquially as the "two-thirds gender rule," Article 27 of [the Republic of Kenya's 2010 Constitution states](#) that the "State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of electoral or appointive bodies shall be of the same gender."

during the candidate nomination process and struggle to find redress within intraparty processes, either because they don't exist or because they are so opaque as to be effectively inaccessible. Those challenges continue when women have complaints against their party leadership or claims of sexual harassment, electoral violence (on- or offline), or campaign finance or other violations against other candidates within the party. In Kenya, the Political Parties Disputes Tribunal (PPDT), a judicial body established under the Political Parties Act, is one promising model to provide for independent resolution of intraparty disputes. The tribunal has the mandate to hear, among other complaints, disputes between members of the same political party, disputes between a party member and party leadership, or disputes among parties. ADR mechanisms like the PPDT may be a way for women candidates (or prospective candidates) to feel they have access to an independent arbiter for some of the most common types of disputes without having the stress and expense of a full trial.

What can electoral management bodies and EDR bodies do to promote women's access to electoral justice and the effective adjudication of women's disputes?

EMBs play crucial roles in enforcing electoral stakeholders' compliance with quotas and other temporary special measures, codes of conduct, and campaign finance regulations. Therefore, in many systems they are the first destination to ensure electoral justice is administered at the point of violation rather than requiring a claim to be brought. For example, EMBs often oversee campaign finance regulations, which in some countries are designed to increase the financial support available to women candidates, by monitoring parties' and candidates' compliance with the regulations and administering sanctions when they find violations, EMBs can promote women's equal access as political candidates through the enforcement of gender-sensitive campaign finance regulations. In addition, EMBs are often responsible for certifying that candidate lists comply with gender quota requirements. In Nepal, for example, the Political Party Act requires that one-third of all members of committees, at all levels of the party, are women. If parties do not observe the quota, the ECN has the power to refuse to register a new party or to decline to allow an existing party to participate in elections. However, stakeholders report that major parties have failed to adhere to the 33 percent threshold but are still able to participate in elections. Because of the ECN's failure to enforce the law, some people do not file complaints because they may not believe their issues will be resolved. When EMBs regularly and equitably enforce the law and administer electoral justice, people feel more confident in the fairness of the system; the opposite is true when the law is rarely or inconsistently applied or when penalties are not levied for violations.

"Given the major challenges that women face, the EMB has a particular responsibility to do whatever it can within its mandate to foster an electoral environment where women can contest on an equal footing with their male counterparts."

- IFES' Gender Equality & Election Management Bodies: A Best Practices Guide

The decentralized nature of many EMBs – with electoral staff interacting with voters and candidates all the way down to the polling station level – provides significant opportunities for well-trained EMB staff to increase women's efficient access to electoral justice. In Nepal, citizens can file complaints at any level of the electoral body, including with poll workers, returning officers, provincial and district officers, and other ECN staff; all are empowered to resolve electoral complaints at the local level. There is no fee for filing disputes with the ECN, and citizens do not need legal

representation to bring cases to the ECN. These stipulations make it much less resource-intensive for complainants to pursue electoral violations. This more localized approach to electoral justice is a positive step forward for access to justice, including for women, who might have less time and mobility, and fewer resources, to pursue electoral complaints. If these violations can be adjudicated and resolved at the local level in a timely, transparent manner, access to electoral justice will certainly improve.

When election-related disputes do come before courts, many justice system actors are not sufficiently prepared to handle cases related to violence against women in elections. To begin with, most police officers are men, and women may not feel comfortable reporting gender-based violence or harassment to them. In addition, those tasked with receiving and handling receiving related to gender-based violence – whether members of law enforcement, EMB personnel, or judges – often have not been sufficiently trained on how to handle these cases sensitively, which creates additional barriers for women interested in pursuing cases related to electoral violence. Interviewees noted the judicial system can be “hostile” to women, recounting instances when people in the court system have made fun of women survivors of violence, or court officials ask them insensitive questions. Multiple interviewees noted that women do not want to file these types of cases as they will be “re-traumatized” through the judicial process. Providing sensitization and training for law enforcement, EMB, and EDR personnel on how to appropriately treat those making claims related to gender-based violence and harassment is essential to ensure that more women are willing to pursue their claims, are treated with dignity and respect, and receive fair hearings.

What role can civil society play in promoting women’s access to electoral justice?

Civil society organizations have critical roles to play in increasing women’s access to electoral justice. Interviewees, including civil society actors, described promising practices related to advocating to government institutions and political parties for necessary changes, partnering with institutions to support the development and delivery of improved services, and providing direct support to women seeking electoral justice. Stakeholders identified key areas (discussed further below), where civil society organizations, including women’s rights organizations, legal organizations, and election-related organizations, among others, can promote women’s access to electoral justice.

Many countries have ratified international treaties and instituted national laws to advance gender equality. However, both election laws and implementing regulations can often be strengthened to better protect the rights of women voters and candidates and increase women’s equal access to justice. Civil society can advocate both for the adoption of new legislation – including quotas, campaign finance regulations, and laws that specifically penalize political violence against women – and, essentially, for the rigorous and fair enforcement of existing provisions so fewer women experience electoral violations or are left to seek justice in court. This includes gathering and providing evidence to legislative and judicial bodies regarding violations of codes of conduct, quota laws, laws prohibiting family voting, and campaign finance regulations that often specifically disadvantage women in elections.

In addition, given the experiences of women candidates, including mistreatment by their own political parties, other candidates, and judicial actors when attempting to seek electoral justice, it is clear that gender sensitization training is needed across electoral systems. Civil society can partner with EMBs, EDR bodies, and political parties to improve their internal culture and support the development of gender-sensitive EDR systems and processes. This could

extend to the development of gender-sensitive voter and candidate education programs to ensure that all voters and candidates have a clear understanding of the election law and where and how they can file electoral disputes.

Women's rights organizations can partner with legal services organizations and bar associations to increase access to pro bono legal services for women who seek to bring electoral justice claims. In Malawi, where legal services are prohibitively expensive for many people, especially women, interviewees recommended leveraging the pro bono requirements that exist for all lawyers and carving out a specific proportion of time that should be dedicated to women's access to justice. Given the complexity of election law and cases, pro bono and legal services providers should receive training on how to represent clients effectively in election-related disputes and information on the types of violations that women are most likely to encounter. Election observation organizations and missions can play critical roles in recording incidents of electoral violence against women and documenting how well procedures for addressing electoral violations of all kinds are understood and followed. A number of resources are available to election observers related to gender-sensitive election monitoring,³⁷ and resources specific to election dispute observation provide instructions for observers to record grievances regarding the unequal treatment of women in the electoral process, assess whether women's complaints are handled in the same manner as others, and take note of when grievances exist but women choose not to file.³⁸ These are important steps but, as noted in the desk review, election observation reports do not adequately cover gender and electoral disputes. Civil society could address this issue by encouraging observation organizations to recruit and train women observers, and political parties to employ women agents as observers and poll station witnesses. Insufficient numbers of women observers and agents can render women-only polling stations or registration centers vulnerable to fraud and intimidation.

Another Word on Data: Promising Steps from Kenya and Nepal

The lack of sex-disaggregated data on the number, type, and resolution of electoral disputes is a significant barrier to better understanding the nature of electoral violations and access to electoral justice for both women and men. Insufficient data – in particular, sex-disaggregated data – are collected and available on the number, nature, and resolution of election complaints filed in EMBs and the courts.

In Kenya, a new electronic CMS offers a promising mechanism to track cases more effectively. With a coordinated EDR filing system, electoral institutions, candidates, political parties, and civil society will be better able to understand the nature of electoral justice claims filed, including information on who files complaints, who the respondents are, whether either or both parties are represented by a lawyer, at what stage of the process complaints are filed, and the nature and ultimate resolution of the complaint.

The ECN has instituted a new CMS that it will use to register all disputes. Presently, while gender-disaggregated data on voter registration, candidate nomination, and voter turnout are collected, but data on the sex of the complainants and respondents are not. By improving the new CMS to include sex-disaggregated data on those filing complaints or acting as respondents or plaintiffs, the role of lawyers, and the nature of disputes affecting women, the ECN would have valuable data to examine the number of cases filed by women compared to men, whether women file different types of complaints, and if women's cases are resolved at higher or lower rates. It is also important to collect data on women as respondents to analyze the types of cases filed against women, the types of remedies and sanctions imposed, whether they were present at the hearing (if there was one), and whether they were provided with adequate defense by the party, for instance.

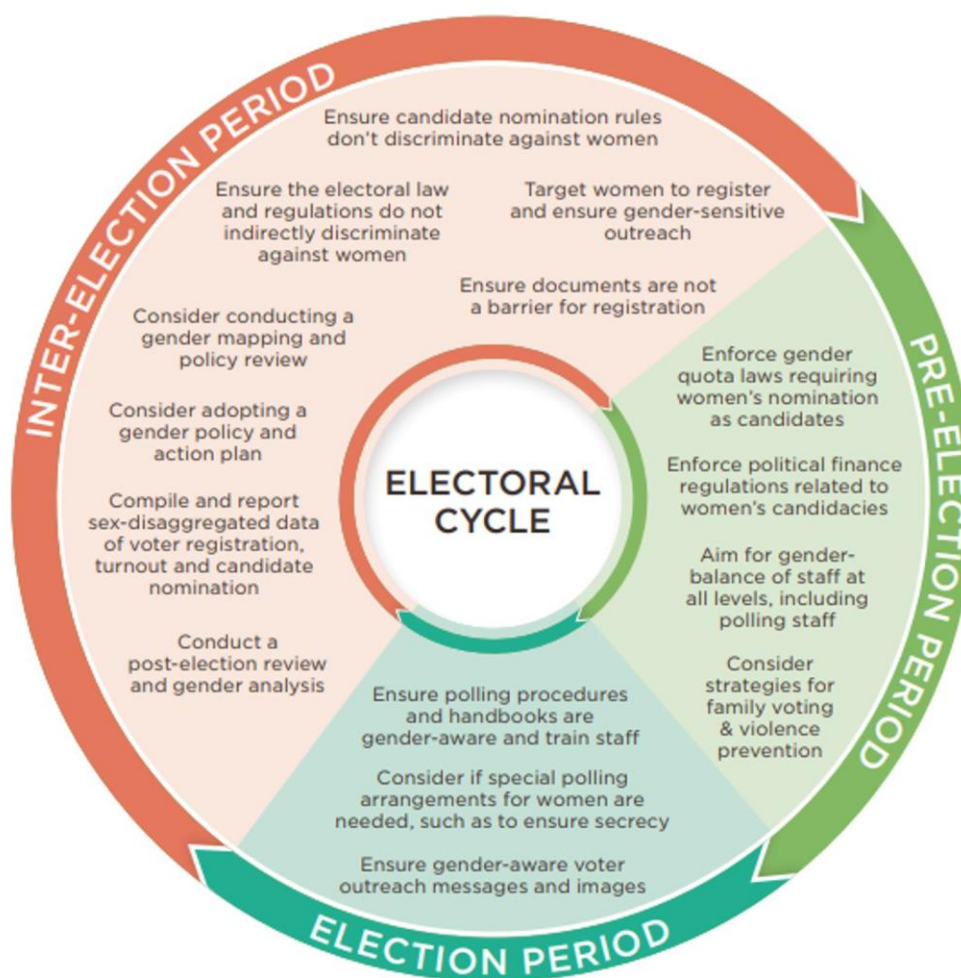
³⁷ See, e.g., International IDEA. (n.d.). [Election Coverage from a Gender Perspective A Media Monitoring Manual](#).

³⁸ See, e.g., Organization for Security and Co-operation in Europe. (2019b).

Recommendations

Increasing women's access to electoral justice will require actions (many discussed in detail above) by political and electoral actors throughout the electoral cycle. As the graphic below shows, Election Day, and indeed the broader campaign period, is just one part of the electoral cycle. With respect to systems change, including efforts to improve electoral and EDR processes to be more responsive to the needs and experiences of women, the period between elections can be a critical time to identify and implement needed reforms.

Figure 1. Electoral Cycle³⁹



This section provides recommendations for concrete steps that electoral actors and stakeholders can take to improve women's access to electoral justice. While the recommendations are based on the desk review and the field research described above and aim to be as comprehensive as possible, properly implementing them will require careful analysis of the specific context, legal framework, and data, as well as appropriate tailoring to the relevant context.

³⁹Graphic excerpted from IFES' [Gender Equality & Election Management Bodies: A Best Practices Guide](#). IFES – The International Foundation for Electoral Systems.

Strengthen and Enforce the Legal Framework

As shown in the graphic above, the inter-election period provides an opportunity for legislative bodies, the judiciary, and electoral institutions to review the legal framework and any electoral disputes filed during the pre-election and election periods to ensure that the electoral law and regulations do not discriminate against women voters and candidates and that enforcement during the previous election cycle was equitable. This period can also be an opportune time for **legislators** to strengthen the legal framework by increasing quota thresholds, improving campaign finance laws to better support women candidates, criminalizing political violence against women, and increasing penalties for violations of electoral laws. In a number of countries across Latin America, for example, “political violence for reasons of gender” is a specific offense that can result in fines, the dismissal of candidacy, the nullification of election results, or jail time.⁴⁰ Mexico – one of only six countries in the world that has reached gender parity in the legislature – met this benchmark in part because women in the legislature reached across party lines to work together and consistently strengthen the electoral framework to promote gender equality in politics.⁴¹ In Ecuador, **civil society organizations** have provided instrumental support to operationalize 2020 reforms to the Code of Democracy, producing concrete tools to drive the enforcement of laws prohibiting political violence against women.⁴²

Regulations, Codes of Conduct, and Guidelines

Given the challenges that women candidates face in realizing their political and electoral rights within political party structures, **political parties**, with support from **EMBs** and **civil society organizations**, should develop intra- and inter-party codes of conduct, guidelines, and dispute resolution mechanisms to ensure women’s equal access to the political processes. In Kenya, for example, structures such as the Office of the Registrar of Political Parties and the Political Party Leadership Committee could be leveraged to standardize and enforce gender-sensitive intraparty dispute resolution processes through the development of model guidelines and principles to guide the resolution of intraparty disputes. Once such mechanisms are established, they should be decentralized and localized to make it easier for women to access the process.

Nepal has an Election Code of Conduct that is generally revised before each election. The current Election Code of Conduct includes a clause that prohibits the character assassination of women as part of electoral campaigns: “No election campaign shall be carried out or cause to be carried out by undermining the feelings or character of women.”⁴³ Candidates must provide a self-declaration that they will be committed to complying fully with the Code of Conduct. The ECN may impose a fine of 200,000 rupees (about \$1,500) or cancel a candidate’s candidacy for violating the Code of Conduct. Such codes of conduct – signed by all candidates – provide “rules of the road” for campaigns and the grounds for political parties, EMBs, and electoral courts to leverage in holding candidates accountable. When regularly updated, publicized, and enforced, codes of conduct can be powerful tools for addressing common challenges that women candidates and voters face in realizing their political and electoral rights.

⁴⁰ See, e.g., the Violet Coalition’s excellent Roadmap to Report Gender-based Political Violence: Rosales, R. (2023, July 17). *Coalición Violeta presenta su Hoja de Ruta para Denunciar la Violencia Política Basada en Género – Violeta Sí, Violencia No.*

⁴¹ Corley, R. (2022, March 7). *Infographic | Mexican Women in Politics* | Wilson Center. www.wilsoncenter.org.

⁴² *Ecuador’s 2020 Code of Democracy, Article 280*, which establishes that by 2025 political party lists must have an equal proportion of men and women candidates and provides for both vertical and horizontal parity in candidate lists and penalties for political violence on the basis of sex.

⁴³ Election Commission of Nepal. (2016). *Election Code of Conduct 2072 (2015) (First Amendment, 2016)*. Unofficial translation.

Voter and Candidate Education

EMBs should provide comprehensive voter education to all citizens on their rights and responsibilities as voters. This information should be presented early in the pre-election period, delivered through a variety of methods and media, and designed to reach all communities throughout the country. This requires tailoring information to those with lower levels of education and literacy, linguistic and ethnic minorities, and persons with disabilities. Voter education should include easy-to-understand information on the election law, how to report suspected violations of the law or to file complaints, and where to can get additional information and resources on electoral justice.

EMBs can partner with **civil society organizations** and train women from around the country on relevant election information. Those women could take the information back to their communities and conduct door-to-door campaigns to share voter information. Because men in households often answer the door, it will be important for voter educators to ask that all eligible voters be present to receive voter information (some interviewees reported that male family members might not pass along the information to their wives, mothers, sisters, or other women members of the household). Voter education should also be conducted at times when women are likely to be home and available or conducted in places that women often frequent (like public markets).

Similarly, all candidates should receive training on the election law, including quotas and temporary special measures, campaign finance regulations, and code of conduct provisions. **EMBs** should provide standardized candidate training and include information on any available intra- and inter-party dispute resolution mechanisms as well as the formal EDR process. **Political parties** should take special care to ensure that women candidates have information on the processes and procedures – including timelines and evidence to preserve – for filing a complaint, claim, or case in the face of a suspected electoral violation, including any legal resources available. Candidate education should include:

- *What to do when, how, and how much it will cost:* Time limits and process for filing electoral disputes, including filing fees, deadlines, and locations to file cases around the country.
- *What to expect:* Types of remedies available at each stage of the electoral process (e.g., warning, administrative fine, rejection of candidate application or party list, or others).
- *What to collect:* Evidence preservation – what can and should be collected and preserved in the case of a suspected violation, (e.g., witness statements, hate speech social media posts, photos of campaign materials defaced, or other items).

In the event the EMB and political parties fail to provide sufficient training, information, and supports, **civil society organizations** should offer training for all women candidates, across political parties, on relevant electoral justice processes and procedures. This should include information on legal aid services, psychological supports, and financial resources as available to cover the costs for filing a claim. In the event that cases of harassment, intimidation, and violence against women candidates occur, civil society should advocate to the relevant authorities that the perpetrators be dealt with swiftly and in accordance with the law.

Training, Staffing, and Personnel

A common theme throughout the collection of data for this guide, both for the desk review and fieldwork, was the need for stakeholders across the electoral justice process – political parties, law enforcement, EMBs, and election courts – to be more gender-balanced in their composition and better trained to meet the specific needs of women seeking to participate in the electoral process.

Electoral institutions, including EMBs and EDR and ADR mechanisms, should strive for gender parity at all levels of staff and promote affirmative action measures (such as gender quotas) that result in more women serving in the justice sector and electoral institutions. While a higher proportion of women in judicial and electoral roles alone will not solve gender inequality in the justice sector, this step can increase the chances that women's experiences and needs are taken into account when developing processes and procedures for adjudicating electoral complaints. And, because women may be more comfortable reporting incidents of violence or harassment to other women, EMBs should consider having women EMB staff members trained and designated as points of contact for campaign regulation information and to field reports of violations or harassment against women candidates. As much as possible, those positions should be established across the country and publicized so women voters and candidates know whom they can reach out to with questions or concerns.

Law enforcement may be the first point of contact for women candidates and voters who face gender-based violence during the pre-election and election periods. Women may be reluctant to report these incidents because of the way they are treated by law enforcement and judicial personnel in their attempts to seek justice. Therefore, training for law enforcement and security personnel on how to support women victims of violence, conduct investigations into electoral crimes, and preserve the chain of evidence is essential. During the election period, local security personnel and EMB staff are often engaged to maintain order at polling stations. **EMBs**, with the support of civil society, should provide training for Election Day staff to help ensure gender issues are integrated into their electoral operations. This should include, in the case of training for security forces, increasing awareness of gender issues related to security, information on the

Promising Practice: The Case of Mexico and the Violet Lens

Over the last decade or so, as issues of unconscious bias and awareness of the need to apply a gender lens to enforcement of the law have gained prominence, governments and international organizations have taken steps to provide additional training and resources so judges and magistrates are better prepared to administer justice fairly. In Mexico, where election-related cases are adjudicated by a dedicated court, the [Federal Election Tribunal](#) has led the way by producing a guidebook on judging with a gender perspective in electoral matters. This resource “gathers accumulated jurisdictional experience, case-law and doctrinal development in the field, with the final objective of accelerating the modification of social and institutional practices that make effective judicial protection of women's rights effective in all countries.” In providing judges a “violet lens” to apply in assessing the relevant electoral law and the facts of the particular case, the guide encourages judges to consider the relevant power dynamics in play, confirm the existence of stereotypes and inequalities, utilize inclusive language, and prevent revictimization of those who have experienced gender-based discrimination or violence. Such tools and approaches are essential to help the justice system ensure that men, women, and people of all genders are able to rely on the courts when seeking electoral justice.

For more see the excellent: [Guide to Judge with a Gender Perspective in Electoral Matters](#)

electoral law, and training on how to help prevent electoral violence targeted at women and how to respond to women who have been victims of electoral violence with respect and sensitivity. All **EMB personnel** should receive training on implicit and unconscious bias, stereotyping, gender equality, healthy masculinities, and other relevant topics to help shift harmful cultural and social gender norms and to create a more enabling environment for women to participate in elections and report electoral violations. **EMB and judicial personnel** who will be involved in the EDR process should receive training on gender-sensitive electoral justice, including topics such as gender equality; cases and complaints that are more likely to affect women (and how to handle and resolve them); and political violence against women, including violence that occurs as part of the electoral cycle and violence that occurs online. **Judges, magistrates, clerks, and other relevant judicial actors** who will handle elections cases should be trained on gender quota rules (and how they apply) and any other specific provisions that support women's political participation.

Finally, EMBs, judicial institutions, and political parties should establish gender units or departments that are responsible for training and gender-mainstreaming programs, processes, and resources. In particular, **political parties** should make significant efforts – through sensitization and allies training for men candidates, staff, and leadership – to improve the environment for women candidates so women are not confronted with discrimination and violence within their own parties.

Access to Courts and ADR Mechanisms

In addition to training personnel, **electoral courts** should seek to make court services more readily available to all potential litigants, first addressing those barriers that particularly impact women, including court fees and the cost of traveling to file complaints. This may involve ensuring that electoral justice systems have localized offices or resources so complainants do not have to travel far to file complaints, provide evidence, or attend court proceedings. These resources could include expanding the availability of remote filing and remote or virtual court processes and endeavor to make virtual court stations – with computers and reliable internet connections – more widely available, prioritizing areas furthest from existing court services. Courts should also conduct gender-sensitive outreach campaigns so more people are aware of the stations and to provide information on the steps to take in filing claims. Online filing may also make it easier to ensure the privacy and safety of the person filing, which is especially important for victims of violence. Finally, courts should consider eliminating fees for file electoral complaints for women complainants, reduce fees to a symbolic fee, or – to address concerns of opening floodgates for meritless cases – require deposits to file complaints that will be returned once it is determined that the case has merit.

ADR mechanisms are another way to increase access to electoral justice for women litigants. For example, in Nepal, which has a long cultural tradition of resolving disputes through a community mediation process, the 2011 Mediation Act details what cases can be resolved through mediation and encourages women's representation as mediators. However, mediation is still dominated by men and it is not used formally to handle electoral disputes, although in practice IFES research found that monitoring committees, returning officers, and presiding officers use informal modes of resolution to resolve disputes related to campaigns, for instance. While these mechanisms are not explicitly provided for in the EDR directive on dispute resolution, they do present an opportunity to ensure a quick and decentralized mechanism to hear disputes related to women and to have women be part of the mediation at the community level.

In Malawi, the EMB has established local-level multiparty liaison committees (MPLCs), consisting of political party and EMB representatives, to provide more efficient resolution of electoral disputes at the local level. Interviewees noted that the MPLCs are useful but require greater representation of women to fairly represent the interests of all voters and candidates, especially given the reluctance of the court to intervene in intra-party disputes, including those that take place during highly combative primary campaigns. Interviewees identified District Peace Committees, which have mandatory women's participation including women chairs and a legal (versus administrative) basis, as a better option to increase women's access to justice through ADR mechanisms. As a general matter, ADR processes, including mediation, are not appropriate for all types of disputes; for fundamental rights such as candidate eligibility to stand for election or election results petitions, a formal adjudication proceeding guaranteeing right of defense is crucial, with an appeal to a court of law.⁴⁴

Data, Analysis, and Reporting

Finally, additional research and data collection are needed to better understand the number of women seeking to contest for office at all levels, and in all political parties. In addition, sex-disaggregated data should be collected for the electoral justice cases brought at every stage of the process, including the nature of the claims brought, the number and sexes of complainants who appear *pro se* (that is, unrepresented by counsel), and the outcomes of those EDR processes, at every level. Depending on the structure of the ADR and EDR systems, **the EMB and/or the judiciary** should utilize a CMS to track and report this information. **Political parties** should be required to report data on the number of cases for which they retain counsel for complainants, as well as the number and gender of complainants for which they decline to provide counsel. This data should be collected in the pre-election and election periods and analyzed in the inter-election period to inform policies and decisions relating to subsequent elections, particularly with respect to women's ability to equally access complaints and appeals, including informal or alternative justice mechanisms.

⁴⁴ The International Commission of Jurists noted in a recent publication on laws addressing online gender-based violence (OGBV) against women, "Criminalized forms of OGBV should not, mandatorily, or otherwise, be referred to alternative dispute resolution procedures, such as mediation or conciliation. Alternative dispute resolution procedures should not constitute an obstacle to women's access to formal justice." See [International Commission of Jurists. \(n.d.\). What is OGBV?](#) This principle extends to all forms of gender-based violence, including incidents that take place in the electoral context.

Annex A: Desk Review

Introduction

Though there has been significant progress in the past decade, women's equal and meaningful participation in political life still lags behind their male counterparts. As of January 2022, women represented just 26.1 percent of representatives in national parliaments⁴⁵ and 34 percent of local elected representatives.⁴⁶ The gender gap in elected representation reflects a number of individual, institutional, and cultural barriers that women face when running for office and serving in these roles. In addition to affecting women candidates and elected officials, many of these barriers also impact women seeking to participate more generally in civic or public life in other formal and informal roles – for example as election officials, political party members, voters, electoral judges, observers, civil society activists, and community advocates.

One barrier that limits women's participation in political and electoral processes is unequal access to electoral justice mechanisms.⁴⁷ As with other parts of the electoral process, women face challenges that may limit their access to and participation in electoral dispute resolution (EDR) and alternative dispute resolution (ADR) processes. Although the barriers exist, there is little research on how EDR and ADR processes can be more gender-sensitive and inclusive for women. However, a recent guide to judging electoral matters through a gender lens is an important contribution to the literature.⁴⁸ Democracy is only possible when it is inclusive and representative, so neglecting to take gender considerations into account in the electoral justice process – an essential piece of the democracy puzzle – is to risk perpetuating a process that, at its core, is not democratic. If countries aim to be true democracies, it is essential to consider the impact of gender on elections and on electoral justice processes more specifically.

Developing a better understanding of women's challenges in accessing electoral justice institutions (whether formal or informal) has implications for how electoral management bodies, parliaments, judicial bodies, and other electoral justice actors design and implement their EDR mechanisms and how they address electoral disputes – including how electoral justice actors are trained and what procedural requirements are put in place to access these processes. International organizations that provide support to these stakeholders, and donors that fund this work, would also benefit from having a more nuanced understanding of how well these processes serve individuals in different ways, especially as they provide technical assistance and support to improve EDR and ADR processes. This desk review – organized by key finding – examines literature on women's access to justice, country-specific assessments of EDR and ADR processes, election observers' reports, and publications that review existing electoral justice mechanisms. The findings of this review, together with key informant interviews from different regions, and case studies from Kenya and Nepal, will inform a guidebook with recommendations on how different electoral institutions and international development assistance providers can make electoral justice more gender-sensitive and thus more responsive to women's needs and experiences.

⁴⁵ Interparliamentary Union (2022). [Women in Parliament in 2021](#).

⁴⁶ UN Women and Women in Local Government. (2022). [Elected Seats Held by Women in Deliberative Bodies of Local Government. 1 January 2022](#).

⁴⁷ For the purposes of this paper, *electoral justice* refers to ensuring every step of the election process is in line with the law and protects fundamental electoral rights (to vote, to be elected, to assemble, to form and join political parties).

⁴⁸ Ravel, A., et al. [Guide to Judge with A Gender Lens in electoral matters](#). (2022, October.) Gender Equality Observatory.

Background

Credible and inclusive elections are a cornerstone of resilient democratic governance. An electoral justice system that is transparent and inclusive can bolster citizens' trust in elections, making them more willing to accept election results and ensure a more peaceful post-election period and transition of power.⁴⁹ Indeed, an inclusive, fair EDR process is enshrined in various international and regional normative frameworks and obligations, including the United Nations International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.⁵⁰ In particular, those standards guarantee the right to be "treated equally by the law and the courts."⁵¹ In addition to those international norms, most national constitutional frameworks guarantee equality before the law and access to justice. Simply put, equal access to credible electoral justice processes is a human right.

Regardless of this fact, many law or justice systems do not consider "gendered economic, structural and cultural barriers" and are not "representative of the people they serve."⁵² Disregard for these considerations, combined with persistent and systemic societal and institutional gender inequality, often mean that women are subject to discrimination in the justice sector – and thus subject to the further discrimination, violence and harm that comes when perpetrators are not held accountable for their crimes. While ensuring that justice systems integrate gender considerations can help women seek justice, reducing gender inequality on a broader scale – for example, by shifting negative cultural beliefs and harmful gender norms – would also lead to a

Disputes during the electoral process may relate to:

- The implementation of an electoral law, including a gender quota law;
- The voter registration process;
- The candidate nomination process;
- The campaign period (including campaign finance violations, vote buying, campaigning outside the designated time period, and unlawful conduct regarding opponents);
- The voting process (i.e., unlawfully adding or removing ballots, intimidating or interfering with voters);
- Gender-based violence in politics, including hate speech; or
- Election results.

more inclusive justice sector. A gender lens on justice processes is also necessary because "experiences of injustice are gendered, and ... women have been the primary or only victims of certain forms of violence, usually perpetrated by men."⁵³

While women's access to justice research has primarily focused on issues related to gender-based violence, property rights, and marriage rights, some findings from this work can be applied to the electoral justice sector. The broader literature on women's access to justice suggests that women might not have equal access to resources (including money, time, and information) that would enable them to pursue legal or judicial resolutions. This literature also demonstrates that legal and judicial actors may, whether consciously or not,⁵⁴ reinforce discriminatory practices that discourage or prohibit women from bringing complaints forward. Because of the lack of sex-disaggregated data

⁴⁹ Solijonov. (2016).

⁵⁰ [Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections \(GUARDE\)](#). (2024).

⁵¹ Ibid, p. 180.

⁵² Gordon, E. (2019). P. 1.

⁵³ Ibid, p. 9.

⁵⁴ "There were just so few women lawyers and no female judges. We definitely stood out! However, over the years, what really gnawed at me was the embedded gender bias in the decision-making process. I'm not sure judges or juries were even aware of this bias or how it might have affected their decisions." [One Woman's Quest for Equality and Fairness: The Impact of Gender Bias on the Judicial Decision-Making Process](#). (n.d.). www.jamsadr.com.

related to EDR processes, and due to the dearth of current research that specifically addresses women's access to justice in an electoral context, the Findings section below cites research on women's access to justice more broadly and applies it to the electoral context. While this body of research focuses on women's access to justice overall, many of the principles are relevant to the electoral context and provide helpful lessons about how to make electoral justice more accessible to women.

Some researchers and practitioners have hypothesized that ADR processes could allow women more access to electoral justice mechanisms; a more nuanced understanding of these processes and women's experiences with them would help ensure they increase equitable access to justice and fair and transparent resolutions to women's disputes. For example, while ADR processes might increase women's access – as they are often more local, less expensive, and less public than more formal EDR processes – they also rely on traditional leaders, political parties, and election management institutions (all of which tend to be male-dominated) that might continue to sideline women and their concerns and needs.⁵⁵ If we are to attempt to ensure ADR processes do not replicate the patriarchal institutional issues of their more formal counterparts, it is critical to analyze which parts of ADR processes present the most challenging barriers for women and which access points will be most effective to target to ensure adequate justice.

It is worth noting that, while people of all gender identities experience challenges in accessing fair and transparent electoral justice processes, this review and the associated Practitioner's Guide focuses on how electoral justice processes can better serve *women*. It is also worth noting that women are not a homogenous group; women from different backgrounds and with different identities might have different experiences and needs in relation to electoral justice processes. In particular, women who also belong to other marginalized groups – such as women with disabilities; women who are members of the lesbian, gay, bisexual, transgender, queer, and intersex community (LGBTQI+); women from rural areas; Indigenous women; women from ethnic and religious minorities; and young and older women – face compounding discrimination. This results in unique challenges in seeking electoral justice. Where possible, this desk review seeks to apply an intersectional lens to its analysis, endeavoring to explore the challenges and needs of particular groups of women and not only for “women” as a general group with all the same needs and experiences.

⁵⁵ Anyanwu, U., Roblot, T., and Cox, R. (2024, May 16). [Alternative Dispute Resolution in Elections: A Practitioner Brief](#). IFES – The International Foundation for Electoral Systems. www.ifes.org.

DEFINITIONS

ADR: “[A] process to resolve a dispute in lieu of traditional litigation e.g. mediation, arbitration or settlement conferences.” [From the Building Resources in Democracy, Governance and Elections (BRIDGE) EDR curriculum]

Dispute resolution: “[A]ll processes that are used to resolve disputes, whether within or outside formal proceedings. Dispute resolution processes may be facilitative, advisory or determinative.” [From the BRIDGE EDR curriculum]

Election disputes: “[A]ny complaints, challenges, disputes, claims, recalls and contestations relating to the electoral process.” [From the BRIDGE EDR curriculum]

Gender: “[T]he characteristics of women, men, girls and boys that are socially constructed. This includes norms, behaviors and roles associated with being a woman, man, girl or boy, as well as relationships with each other. As a social construct, gender varies from society to society and can change over time.” [From the World Health Organization]

Gender-based violence: [A]ny harm or suffering that is perpetrated against a woman or girl, man or boy, or any individual and that has a negative impact on the physical, sexual or psychological health, development or identity of the person. The cause of the violence is rooted in gender-based power inequalities and gender-based discrimination. [Adapted from “Preventing and Responding to Gender-Based Violence: Expressions and Strategies, by Sida]

Gender justice: “[T]he protection of the rights of everyone irrespective of their sex or gender identity or gender expression, and the prevention and punishment of gender-based violence and gender-based discrimination. It also refers to a system of law and its application which is non-discriminatory and fair, and thus gender responsive. In other words, the justice system is attentive to lived realities of men, women and people of diverse sexual orientations and gender identities and expressions. Gender justice directly contributes to the promotion of gender equality and to security and the rule of law.” [From *Justice and Gender* by Eleanor Gordon, 2019]

Gender-sensitive: [A]n approach that takes into consideration the diversity of people of different genders, their specific experiences, perspectives and challenges. [Adapted from *Inclusive Electoral Processes* from UNDP and UN Women]

Intersectionality: “[T]he interconnected nature of social categorizations such as race, class, and gender, regarded as creating overlapping and interdependent systems of discrimination or disadvantage; a theoretical approach based on such a premise [Oxford Dictionary].” “Intersectional theory asserts that people are often disadvantaged by multiple sources of oppression: their race, class, gender identity, sexual orientation, religion, and other identity markers. Intersectionality recognizes that identity markers (e.g., ‘woman’ and ‘black’) do not exist independently of each other, and that each informs the others, often creating a complex convergence of oppression.” [From YW Boston]

Implicit and unconscious bias: [B]eliefs developed from personal experience, culture, socialization, and existing stereotypes that influence our opinions and/or decisions about certain groups of people, outside our awareness bias or discrimination that occurs outside a person’s awareness because of social stereotypes (based on a person’s experience, culture, and socialization) about groups of people. [From IFES’ *Allies for Equality* curriculum]

Findings

Finding 1: There is a lack of research on women's access to electoral justice and a dearth of gender-disaggregated information.

In general, there is a dearth of gender-disaggregated data in the elections and politics space. This information could be helpful in identifying barriers to women's equal and meaningful participation and in developing data-driven and evidence-based solutions to address those challenges. While the Inter-Parliamentary Union maintains an up-to-date database of the proportion of women in national parliaments around the world, there is no regularly updated global database of gender-disaggregated data related to local elected bodies, voter registration, or voter turnout. As with other elections-related data, many countries also do not collect gender-disaggregated information on electoral dispute issues, including on who files cases or complaints. Gender-disaggregated data related to electoral complaints could be used to determine whether women and men file different types of complaints, whether cases filed by women or men complainants are equally likely to succeed, and to better understand women's experiences of electoral justice. Some evidence from an IFES EDR assessment in Ukraine showed that police investigators and prosecutors were not effective in gathering the evidence needed for electoral violation claims, leading to a small number of charges being filed and even fewer convictions. This was "particularly true of gender specific violations and sexual harassment of women candidates," demonstrating the type of analysis that could be done with more widely available gender-disaggregated data.⁵⁶ The Handbook for the Observation of Election Dispute Resolution from the Organization for Security and Co-operation in Europe (OSCE) specifically asks election observers to record any grievances about the unequal treatment of women in the electoral process, assess whether women's complaints are handled in the same manner as others, and take note of when such grievances exist but women choose not to file.⁵⁷ Despite this guidance, there is a lack of robust gender analysis related to EDR in the election observer reports reviewed for this study.

There is also a lack of centralized, updated data on how many women have roles in EDR bodies and judicial institutions, particularly at the local and regional levels. While having women as police, detectives, electoral officials, judges, prosecutors, and in other important roles does not necessarily mean that EDR systems will be more gender-sensitive, descriptive representation remains important. EDR and other electoral bodies will certainly do better to garner the trust of the public if those institutions look like the population they represent.

Finding 2: Many countries have national legal frameworks that prohibit gender discrimination and guarantee women's political participation, but enforcement of these laws remains a challenge.

Though women face barriers to accessing electoral justice in many places, many countries have legislation or commitments to international law that guarantee women's equal right to participate in politics and elections. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a legally binding international treaty that guarantees women a set of universal rights, including the right to participate meaningfully and equally in public life (Article 7) and to equality before the law (Article 15). Almost every country has ratified the treaty, with the exception of the Holy See, Iran, Niue, Somalia, Sudan, Tonga, and the United States.⁵⁸ In addition to CEDAW, the Universal Declaration of Human Rights, known as one of the fundamental texts for human and civil rights, states that all people are entitled to equal protection under the law and that "everyone has the right to an effective remedy

⁵⁶ Ennis, D., and Ellena, K. (2018). Electoral Justice for Ukraine Assessment and Recommendations. IFES – The International Foundation for Electoral Systems. (Not publicly available).

⁵⁷ Organization for Security and Co-operation in Europe. (2019b).

⁵⁸ United Nations Human Rights Office of the High Commissioner. (2022). [Ratification status for CEDAW - Treaty Body Database](#).

by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁵⁹ Governments around the world have made these commitments by ratifying these and other human rights treaties, voting for human rights instruments in the United Nations, and enshrining many of these rights as part of domestic legal frameworks, including their national constitutions.

As noted, many countries' constitutions include clauses that guarantee gender equality and prohibit discrimination at the national level. Some even have laws that focus on gender equality and women's empowerment, and many countries have national institutions or ministries that are meant to guarantee gender equality. However, although these laws, policies, and regulations exist, they often are not implemented in a robust or meaningful way.⁶⁰ Having the laws in place, though, can give activists and other stakeholders a legal basis on which to advocate for reform.

One specific type of law meant to ensure women's political participation is gender quota laws, which are in use in more than half the countries in the world.⁶¹ Gender quotas are affirmative action measures that are designed to increase the number or proportion of women candidates or elected representatives (or both). Types of quota designs can vary for different electoral systems, but all are meant to increase women's participation – often with the goal of achieving a critical mass – in elected or appointed bodies.⁶² Despite this intention, gender quotas are not always effective in their goals because of lax implementation by those responsible and because of a lack of political will among political parties to follow the laws in good faith. For example, some countries' legal and regulatory frameworks do not impose penalties when political parties choose not to comply with a gender quota. In Ukraine, the law requires parties to include gender quotas as part of their party statutes, but there are no legal sanctions for non-compliance.⁶³ In Burkina Faso, the Law on Gender Quotas, passed in 2020, requires parties to include 30 percent of members of each gender (based on the gender binary) on their party lists and requires the first two-thirds of names on each party list to alternate between women and men.⁶⁴ Parties are given a financial incentive if they comply but face no penalties if they do not. As a result, in the 2020 general elections, out of a total of 1,565 national and provincial party lists, only 267 (17 percent) were headed by women. Currently, women make up just 19.7 percent of Burkina Faso's Parliament, far below the 30 percent minimum that the quota endeavors to achieve.⁶⁵

In countries where there are consequences for non-compliance, election commissions often have roles in enforcing the quota. In Indonesia, the independent General Election Supervisory Agency, the Bawaslu, disqualified the candidate lists of a party in two electoral districts for non-compliance. The Bawaslu allowed parties to adjust the lists to bring them in line with the quota, “simultaneously enforcing the gender quota and ensuring efficient election administration.”⁶⁶ In many places, though, political parties are creative in finding loopholes when they do not want to field women candidates, even if there are sanctions for quota non-compliance. In Nepal, parties are required to nominate members of different genders for the mayoral and deputy mayoral positions in local elections if they put

⁵⁹ United Nations. (1948).

⁶⁰ Orozco-Henríquez, Ayoub, and Ellis. (2010).

⁶¹ Institute for Democracy and Electoral Assistance (IDEA), Inter-Parliamentary Union, & Stockholm University, [Gender Quotas Database](#). (2021).

⁶² International IDEA. (2022). [Gender Quotas Database](#).

⁶³ Chirillo, G., Daiier, Z., Kovryzhenky, D., Palagnyuk, O., and Saveli, S. (2019, September). [Gender Analysis of Ukraine's Electoral and Political Process](#).

⁶⁴ Chirillo et al. (2021). (unpublished) [CEPPS Gender Assessment Report: Executive Summary](#).

⁶⁵ Alliance Sahel. (2023, April 13). [Contribute to the Effectiveness of Women's and Girls' Rights](#).

⁶⁶ Waugh, R. (2021). [IFES Election Case Law Analysis Series: Lessons on Gender Equality and Women's Political Participation](#). IFES – The International Foundation for Electoral Systems.

forward candidates for both roles. In the 2022 elections, however, parties formed a coalition, putting candidates up for only one role or the other and therefore avoiding the gender quota requirements.⁶⁷ As a result, though there were 266 women candidates for mayor, only nine were elected, representing 4 percent of mayoral posts. Most women were elected as deputy mayors or vice chairpersons, 78 percent of whom are women.⁶⁸

As described above, even when countries have quota laws, they are not always implemented properly. Countries have a responsibility to enforce their quota laws, and EMBs and other enforcement institutions have a duty to ensure compliance. It is much more difficult for women party members, candidates, or citizens to bring forward cases related to lack of implementation of the quota law because of the resources required to do so. In the first paper in the IFES Election Case Law Analysis series, a review of gender quota–related adjudicated cases found that, “while courts can play important roles in enforcing laws intended to promote gender equality and protect the equal political participation of women, these efforts will ultimately be ineffective, and even pyrrhic, without both societal and institutional action.”⁶⁹ The paper examines a variety of countries, including Argentina, Spain, and Kenya, to describe how courts have handled litigation regarding the constitutionality of gender quotas and the enforcement of their implementation. Ultimately, it is clear that rulings regarding gender quota cases have served both to promote and to limit women’s political participation. Before these cases get to the courts, however, the challenges women face when a quota is not implemented properly could result in disputes within their own parties, and they may be reticent to raise issues as party leadership (often dominated by men) could retaliate against them.

Gender quota laws not only apply to elected positions; some countries have legal requirements for certain proportions of political party members, political party leadership, or other public or civil institutions to be women. As with gender quotas for elected positions, these regulations are meant to ensure a critical mass of women members so they feel less tokenized and can work together to push forward gender-sensitive policies and policies that are particularly important to women. In addition to the critical mass benefit, institutions that include women as significant proportion of members demonstrate to women who use those institutions’ services that they are spaces for women. The fact that women work in those institutions can make it easier for women who need them to feel comfortable and as if they belong in these spaces. Having more women as part of EDR institutions or EMBs may make women complainants more comfortable filing disputes and pursuing justice, so ensuring the effective implementation of gender quotas that pertain to electoral bodies that are responsible for electoral justice procedures is critical to ensuring women’s access to electoral justice.

In addition to quota regulations, campaign and political finance laws can be used to promote gender equality. However, as with the laws described above, implementation is often lacking. In some countries, electoral law stipulates that parties must use a certain proportion of their public funding to promote women’s access to and inclusion in elections. But in many cases, parties do not use this funding to meaningfully promote women’s political participation, instead finding ways to spend it on events and items that support women in politics only superficially. For example, an IFES gender assessment of electoral and political processes in Honduras found that, while parties were required to use a portion of their public funding for women’s empowerment activities, they instead used it for

⁶⁷ Neelam, A., Shrestha, P., and Giri, K. (2022). Centre for Gender and Politics South Asia. (2022, June). [Gender Analysis of Nepal's Local Elections - May 2022](#). ResearchGate.

⁶⁸ Ibid.

⁶⁹ Waugh, 2021.

“catering, decorations, and flowers for holidays like International Women's Day, the International Day of the Child, Mother's Day, among others.”⁷⁰ Despite the disingenuous way that parties spend funds earmarked for women's participation, lax monitoring of campaign and political finance laws means that parties are not held accountable. The lack of monitoring and enforcement means that individual candidates are often not punished for violating the law, which often gives male candidates (who are likely to have more resources, money, and connections than their women counterparts) a further advantage over women candidates. For example, in Nepal, an IFES study found that “despite the issuance of the political finance regulations, candidate and political party expenditures lacked transparency, with domestic observers noting a lack of monitoring mechanisms, without which the [Election Commission of Nepal] was unable to enforce the spending limits.”⁷¹ Without fair and inclusive electoral justice mechanisms to hold parties and candidates accountable, these violations will continue to occur.

Finding 3: Women often lack the resources required to pursue electoral complaints.

Women are more likely to be poor, have less control over finances, and have more domestic and care responsibilities than men. All these elements impact their ability to participate in political and electoral processes in general and to bring forward electoral disputes in particular.⁷² With these greater limitations on both time and money, it can be more challenging for women to travel to courts that are not near their homes (a particular struggle for rural women) and more difficult for them to pay costs associated with bringing forward electoral complaints (e.g., filing fees or costs of counsel).⁷³ The challenges are often compounded for women with disabilities, who might have less mobility or need to travel with companions to assist them. Women with disabilities might also depend on family members for money, and thus might not have sufficient control over their finances to draw on the funds required to file electoral complaints. For example, Malawi's High Court, which governs electoral matters, is only present at the regional level, and “courts in rural areas are poorly resourced, poorly managed, and offer a limited range of services.”⁷⁴

Data from 173 countries reveals that 25 percent of them require the payment of a fee or deposit when lodging electoral complaints contesting the results of an election, and 13 percent charge a fee or require a deposit to file a complaint regarding candidate nomination processes.⁷⁵ According to the OSCE Handbook for the Observation of Election Dispute Resolution: “Filing fees may present additional barriers to [the] EDR system. Analysts should inquire into the fee requirements and assess if they are overly prohibitive. While fees are a means of preventing frivolous complaints, they also can create a barrier to the process, especially for women and other underrepresented groups. When considering financial implications, legal analysts should also evaluate less obvious costs related to filing complaints such as legal fees for representation, court fees, costs of transportation for witnesses or other key stakeholders.”⁷⁶ In the 2019 elections in Malawi, research found that “women candidates who were aggrieved by the electoral processes bemoaned the lack of readily available legal assistance from the state and other non-state actors” as they did not have the resources to hire private lawyers.⁷⁷ In a 2018 IFES Electoral Integrity Assessment in Kenya,

⁷⁰ Chirillo, G., and Andrea Rosario. (2021). [CEPPS Gender Assessment Report: Honduras](#).

⁷¹ Cantrell, A., Ohman, M., and Bhatta, M. (2020, January 27). [The Cost of Representation: A Study of Women's Representation and Political Finance in Nepal](#). IFES – The International Foundation for Electoral Systems.

⁷² Gordon, 2019.

⁷³ Organization for Security and Co-operation in Europe. (2019b). P. 68. “The legal analyst should assess whether in practice women face unequal conditions in accessing the EDR process. While the law might provide equal conditions, in practice procedures could disproportionately burden women. For example, procedures for filing complaints or appeals that require travel or the payment of filing fees may pose a greater barrier for women in societies where there is inequality of pay for equal work.”

⁷⁴ Malunga, B. (n.d.). Women's access to justice in Electoral Cases. (Not publicly available).

⁷⁵ Solijonov, 2016.

⁷⁶ OSCE ODIHR, 2019.

⁷⁷ Malunga, n.d.

researchers found numerous challenges that women candidates faced in pursuing electoral justice: “In terms of resources – as legal aid was reportedly only available during the general election, not during the primaries – women did not have the resources to pursue a claim after they had spent all funds available during the primary campaign period.”⁷⁸ A Carter Center observation report from the same election found that “some women who lost the primaries and believed they had credible evidence to dispute the election results were unable to challenge the results through the Political Parties Dispute Tribunal (PPDT) because of the prohibitive costs of the dispute process, including the need to travel to Nairobi to defend their case.”⁷⁹ For the 2022 elections, the PPDT was decentralized to seven regions, and the e-filing system was made more accessible.⁸⁰ Kenya Supreme Court Chief Justice Martha Koome noted that this change was to “ensure access to justice with respect to this category of disputes will be cost-effective, expeditious and convenient.” It is unclear what effect this change had on the ability of complainants to file cases, or whether it was implemented in a systematic way throughout the country.

While the COVID-19 pandemic has had devastating consequences around the world, it also resulted in some countries increasing the availability of electronic methods to file cases and some even conducting justice proceedings virtually. While not everyone has access to the internet (it is important to know that the gender gap in access to the internet is largest in the world’s least developed countries at 32.9 percent),⁸¹ it is more likely that women could go to a nearby place to file a case or attend a hearing virtually than to travel to a capital city for the same purpose. Examining the rise of electronic filing and hearings could provide important information on whether this method provides greater access for women.

Finding 4: Electoral justice institutions may not adequately or properly address women’s cases and complaints.

Judicial and electoral institutions that are responsible for hearing and adjudicating electoral complaints – including electoral management bodies, courts, prosecutors, and police – are often led primarily by men. Global comparative data on women’s representation in the justice sector are not available, but data that are available show an underrepresentation of women in the judiciary in many countries – and the representation is even weaker for women who also belong to

“While the law and the justice sector may purport to be objective and impartial, they are inherently subjective and gendered; the law is often made by men and the justice system is often dominated by men of a specific or privileged demographic.”

– Eleanor Gordon, “Justice and Gender”

other marginalized groups, such as ethnic or religious minorities.⁸² A 2019 study by the OSCE found that, even in countries with a gender balance in justice institutions, women are not proportionally represented in senior management positions.⁸³ The study notes that “gender balance and minority representation in justice systems are “important factors in fairer justice system outcomes,” citing the fact that public trust is greater for justice systems that are more diverse and that increased workplace diversity leads to increased understanding of issues and

⁷⁸ Ellena, K., Chirillo, G., and Shein, E., editors. (2018, June). Kenya Electoral Integrity Assessment. IFES – The International Foundation for Electoral Systems. (Not publicly available).

⁷⁹ The Carter Center. (2018). [Kenya 2017 General and Presidential Elections FINAL REPORT](#).

⁸⁰ Christian, A. and Sorotina, M. K. (2022, April 25). [Judiciary Decentralizes Political Parties’ Disputes Tribunal](#). Kenya News Agency.

⁸¹ Sanou, B. (2017). [ICT Facts and Figures 2017](#). International Telecommunications Union.

⁸² Gordon, 2019.

⁸³ Organization for Security and Co-operation in Europe. (2019a). [Gender, Diversity and Justice Overview and Recommendations](#).

considerations that may affect different marginalized groups.⁸⁴ A review of access to justice in five European countries also found that equal gender representation in judicial positions (as judges and in administrative roles) can have an impact on the gender-responsiveness of courts.⁸⁵ Because gender inequality is a widespread global phenomenon, and because many men around the world continue to hold regressive, harmful beliefs and attitudes about how women should think and act, these negative perceptions can influence how the men who dominate those institutions handle women's cases and complaints around the electoral process.

In particular, judicial institutions might not handle cases of gender-based violence and gender-related hate speech and harassment in safe, effective ways. Though many countries have laws that prohibit gender-based violence, police, prosecutors, and judges often do not handle such cases with the sensitivity required.⁸⁶ In fact, in some countries, police and security forces are the perpetrators of election-related violence.⁸⁷ Violence against women in elections and politics is a persistent, serious barrier to women's equal and meaningful access to the electoral and political process – not to mention a human rights violation and a crime that causes lasting physical and mental harm.⁸⁸ The Armed Conflict Location and Event Data Project (ACLED), which tracks instances of political violence and protest around the world, has called the level of targeted political violence against women “unprecedented.”⁸⁹ In every part of the world, violence against women in elections suppresses their participation as voters, candidates, election officials, and community leaders. In Zimbabwe, for example, research found that women candidates and party members were subject to attacks on their moral character, physical attacks (including when they campaigned door-to-door), and intraparty abuse and sexual harassment in the form of sexual bribery. In addition, fear of domestic violence as retaliation for participating in politics restricted women's participation.⁹⁰ IFES' Violence Against Women in Elections assessment in Zimbabwe found that police did not document instances of reported sexual assaults and rapes at Zimbabwe African National Union Patriotic Front (ZANU-PF, Robert Mugabe's party) base camps, as “they did not want ‘to interfere in political issues’ or because they were afraid that members of the ZANU-PF in power would retaliate or because they themselves were members of the ZANU-PF.”⁹¹ In addition to these concerns, the assessment found that “re-traumatization at the hands of law enforcement and lack of trust in the legal system strongly deter women from seeking justice” for violence they face during the electoral process.⁹²

But not all unequal or discriminatory practices of these institutions can be attributed solely to social or cultural attitudinal barriers. In many judicial institutions and electoral bodies, commissioners, judges, lawyers, and police officers may not be trained in how to handle cases that have particular gender dimensions.⁹³ A United Nations programming guide on preventing violence against women in elections noted that “lack of gender-sensitive training and female personnel within police and the justice system” and “lack of sensitization on the part of the adjudicating body” prevent or slow women from getting justice in instances of electoral violence.⁹⁴ In response to this issue, the

⁸⁴ Ibid., p. 6.

⁸⁵ Council of Europe. (2016). [TOWARDS GUARANTEEING EQUAL ACCESS TO JUSTICE FOR WOMEN](#).

⁸⁶ Gordon, 2019.

⁸⁷ Human Rights Watch. (2021, September 21). [“I Had Nowhere to Go”: Violence Against Women and Girls During the Covid-19 Pandemic in Kenya](#).

⁸⁸ Huber and Kammerud. (2016).

⁸⁹ ACLED. (2021, December 8). [Violence Targeting Women in Politics on the Rise, New ACLED Data Show](#).

⁹⁰ Bardall, Murombo, Hussain, and Greg-Obi. (2018).

⁹¹ Ibid.

⁹² Ibid.

⁹³ Gordon, 2019.

⁹⁴ Ballington, J., Bardall, G., and Borovsky, G. (2017). [Preventing Violence Against Women in Elections: A Programming Guide](#). UN Women and United Nations Development Programme.

Supreme Court of Mexico developed a protocol on how to apply a gender perspective in making judicial decisions.⁹⁵ The guide includes a checklist that judges can use to ensure they employ a gender lens to their cases, because “introducing a gender perspective into legal reasoning can lead to resolutions that may have come out differently without the benefit of such a perspective. The result of judicial decision-making with a gender perspective is access to justice for those who, because of their biological, physical, sexual, gender, or contextual situation, are at risk of having their rights go unrecognized.”⁹⁶ In addition to this 2014 publication, the Supreme Court of Mexico released a guide in 2022 that gives judges the tools to adjudicate specifically from a gender perspective.⁹⁷ The guide supports judges to conduct a situational analysis, determine the applicable law(s), give arguments, and make decisions – all with a gender perspective. It notes the need for training for electoral judges and institutions on gender-sensitive adjudication.

Despite some attempts to integrate a gender perspective into the judicial system, its absence in judgements still exists and can lead to harmful judgements: “if judges and prosecutors are unfamiliar with the dynamics of gender-based violence crimes and the effects it has on [survivors] beyond the purely physical, they may misinterpret a [survivor’s] actions or demeanor as an indicator of lack of credibility.”⁹⁸ This example applies to cases that might be brought forward regarding violence against women in elections or politics (or both). In Haiti, an IFES assessment from 2018 found that, in general, women’s access to justice for crimes related to gender-based violence is extremely limited, impeding their ability to seek justice for elections-related violent crimes.⁹⁹ In Ukraine, an IFES EDR assessment found that “a lack of election-related specialization in the local courts, as well as limited training on election cases (and no targeted training on election violations uniquely impacting women), mean that many judges lack knowledge of electoral law and are not familiar with the expedited procedures applicable until they are asked to adjudicate an election case.”¹⁰⁰ In particular, “neither police nor prosecutors seem to have much understanding of the particular challenges facing women candidates, including gender-based harassment and intimidation.”¹⁰¹

In advance of the 2022 Kenyan elections, the country’s Independent Electoral and Boundaries Commission (IEBC), attempted to implement a judgement from the 2017 elections, *Constitutional Petition No. 19 of 2017 in Katiba Institute vs Independent Electoral & Boundaries Commission*. In that case, the court ruled that political parties must comply with the constitutional gender quota during the nominations process. When the IEBC took steps to implement the judgement, including by rejecting candidate lists that did not comply with the two-thirds gender rule, it was challenged in court on the grounds that the IEBC’s actions were not in line with the Constitution because these actions did not allow for public participation and stakeholder consultations. Though the IEBC was attempting to uphold its constitutional responsibility to implement the gender quota, the High Court sided with petitioners and postponed the implementation of the two-thirds gender rule with respect to candidate lists for the 2022 elections.¹⁰² The reasoning presented in the ruling is one example of the ongoing need to sensitize judges to the importance of understanding how to properly implement gender quota laws and other gender-specific legislation.

⁹⁵ Supreme Court of Mexico. (2014, March). [Judicial Decision-Making with a Gender Perspective: A Protocol](#).

⁹⁶ Ibid.

⁹⁷ Ravel et al., 2022.

⁹⁸ Ibid, p. 10.

⁹⁹ Bardall, G., et al., (2018). [Violence Against Women in Elections in Haiti: An IFES Assessment](#). IFES - The International Foundation for Electoral Systems.

¹⁰⁰ Ennis and Ellena, 2018.

¹⁰¹ Ibid.

¹⁰² [Marube Ombeta, Kamotho Njenga v. Independent Electoral and Boundaries Commission](#) (n.d.). • Page 1 • Election Judgments – IFES. Electionjudgments.org.

Finding 5: Political parties often act as barriers for women accessing electoral justice.

Political parties can play important roles in promoting women's participation in elections, but they can also create additional barriers for women in the electoral process. Parties can feel particularly threatened when women bring forward cases or complaints that might do damage to a party's reputation or legal standing. Political parties often do not address women's cases and complaints seriously and equally, particularly with respect to electoral law or violations of party regulation that occur during the candidate nomination process (highlighted by the examples below). In many countries, depending on the electoral system, party leadership selects candidates who will either be nominated on party lists or who will be supported (financially or otherwise) in certain primary races. Party leadership tends to be dominated by men, and party leaders often make these decisions in non-transparent, closed-door sessions where women are often not invited or permitted.¹⁰³ If potential women candidates have issues with how certain candidates were selected, the options for recourse are either non-existent or processes exist but are conducted in a way that is unfair and biased towards the wants and needs of male party leadership.

In Mexico, IFES research found that parties historically identified "ways to comply with the letter of the law while betraying its spirit, including techniques such as nominating and electing a woman candidate, forcing her to resign, and then putting a man in her place."¹⁰⁴ A 2018 IFES Electoral Integrity Assessment in Kenya found that, even though party primaries occur, "many candidate positions are 'pre-negotiated' by party leaders, elders, ethnic leaders, and wealthy aspirants."¹⁰⁵ The assessment also found that, while more parties had established internal EDR procedures than in previous elections, the procedures and structures "were all centralized with core party leadership," who tend to be men.¹⁰⁶ When this assessment was conducted in 2018, parties were required to conduct their own internal dispute resolution procedures before bringing cases to the election commission. Now, however, party members are required only to *attempt* to use their own intraparty mechanisms before bringing cases forward to the PPDT, an institution that can be used to settle intraparty disputes. Because party members only need to *attempt* to use the internal party system, this new regulation may allow greater access to the PPDT for those with less power in the party, such as women party members.

Finding 6: Women do not have equal access to information about how to pursue electoral complaints and about what is needed to bring forward a successful case.

Women around the world often have different needs for accessing civic education and voter information. While general voter education campaigns are helpful, it is essential to design campaigns in a way that targets women voters specifically and that shares messages about the importance of their participation and rights.¹⁰⁷ Lack of targeted voter information often disproportionately affects women from other marginalized groups, such as older women, women from rural areas, or women with low or no literacy. Information on EDR is no exception to this problem; women often do not know how to file and pursue electoral complaints, and they may not know what evidence or resources are needed to bring forward a successful case. In Malawi's 2019 elections, evidence showed that "most women [had] no access to legal information which would help them know a legal matter and pursue such matters in court."¹⁰⁸

¹⁰³ Hubbard and Grieg (2020).

¹⁰⁴ Waugh, 2021.

¹⁰⁵ Ellena, K., Vickery, C., and Reppell, C. (2018, May). [Elections on Trial: The Effective Management of Election Disputes and Violations](#). IFES | International Foundation for Electoral Systems.

¹⁰⁶ Ibid.

¹⁰⁷ Ballington, J., et al. (2012.) [Empowering Women for Stronger Political Parties](#). National Democratic Institute. www.ndi.org.

¹⁰⁸ Malunga, n.d.

According to IFES' assessment of violence against women in elections in the Autonomous Region of Bougainville, there is a lack of awareness among voters and candidates about how to report gender-based violence in elections.¹⁰⁹ Women interviewed for a similar assessment in Papua New Guinea did not know where they should report electoral crimes: "[T]his lack of clarity on the process to report electoral violations ... represents a large gap in protection for women in the electoral process."¹¹⁰

Finding 7: Societal stigma and harmful cultural attitudes keep women from reporting certain electoral justice violations.

In many countries, when women report crimes – particularly when those crimes occur in private or domestic spaces or when women face gender-based violence in the context of stepping outside their traditionally prescribed gender roles (as is often the case when women run for office), they face social stigma due to harmful cultural attitudes and restrictive gender roles. Women may also face online harassment, hate speech, and disinformation that targets them for behaving outside restrictive gender norms.¹¹¹ Women in these contexts may face not only additional social consequences for filing cases but also more tangible ones, like being ostracized by their families and communities, or their husbands filing for divorce. These social norms will differ based on other factors, such as whether women live in more urban or rural areas and whether they belong to other marginalized groups (for example, families often feel they need to “protect” women with disabilities because of their gender identity and disability status, and so might discourage these women from drawing attention to themselves by filing complaints). The way that judicial actors and electoral institutions handle gender-based violence cases (see Finding 4) may re-traumatize women.

In Bougainville, IFES found that restrictive gender roles must be addressed in order to decrease impunity for violence against women in elections.¹¹² In Zimbabwe, women are discouraged from reporting instances of electoral violence and may even be told they deserve to be subject to violence if they do not conform to society's idea of traditional gender roles. One survivor of violence “was told by a local chief council that she deserved what happened to her because she did not behave according to social norms for women.”¹¹³ Cultural attitudes in Papua New Guinea mean that election-related violence that occurs in the home (when, for example, women want to vote for a candidate or party that is different than the one male family members selected) is often not reported “as it is seen as a family affair, and if it does get reported, it is typically handled within the community rather than through the formal legal system.”¹¹⁴ In Iraq, women candidates were hesitant to report violations related to gender-based violence and hate speech online because of “lack of social progress toward women's issues, lack of accountability mechanisms, and also citing a fear of retaliation if they reported attacks to Iraqi authorities.”¹¹⁵ The CEDAW Committee found in Haiti that “lack of awareness and reticence to file complaints because of fear of social stigma and prejudice” held women back from reporting gender-based violence crimes.¹¹⁶ Judicial institutions play key roles in ending impunity for electoral crimes experienced by women, but without widespread institutional and cultural changes that more broadly shift harmful societal gender norms and more specifically normalize women's equal and meaningful participation in politics, the legal system can only do so much to prevent and mitigate these crimes.

¹⁰⁹ Dyer, A., Bardall, G., and Rogers, T. A. [New Assessment on Violence Against Women in Elections in the Autonomous Region of Bougainville](#). (2019a). IFES – The International Foundation for Electoral Systems. www.ifes.org.

¹¹⁰ Dyer, Bardall, and Rogers. (2019b).

¹¹¹ Scott, V. (2021, April 1). [Understanding the Gender Dimensions of Disinformation: Overview: Gender & Disinformation](#). Counteringdisinformation.org.

¹¹² Dyer, Bardall, and Rogers, 2019a.

¹¹³ Bardall, Murombo, Hussain, and Greg-Obi. (2018).

¹¹⁴ Dyer, Bardall and Rogers, 2019b.

¹¹⁵ Iraq Foundation. (2022).

¹¹⁶ United Nations Human Rights Office of the High Commissioner. (2016).

Finding 8: ADR processes could be opportunities for women's electoral justice complaints to be heard, but they may also be vulnerable to the same institutional and cultural biases as formal electoral judicial processes.

ADR processes are relatively informal, consensus-driven processes that can be used to resolve electoral disputes outside of formal judicial and institutional processes. ADR can involve “a range of approaches – from negotiation, to mediation, to fact finding mechanisms, to semi-private decision-making forums such as binding arbitration – that are intended to help parties reach agreements. They supplement and enhance a country's formal judicial processes, by providing an alternative avenue for parties to resolve their disputes.”¹¹⁷ Some ADR processes, such as those facilitated by non-state justice providers, can be “more accessible, affordable, trusted and transparent, and can provide a swifter and fairer response,” but they can also be “discriminatory or exclusionary” and “often replicate and reinforce dominant power structures and gender bias.”¹¹⁸ Recent IFES research found that ADR structures can often reproduce and perpetuate issues found in more formal EDR systems; in fact, “traditional or customary ADR mechanisms are often dominated by elders, community or religious leaders, and therefore also likely to be led by men. The same applies to mediation led by political party leaders.”¹¹⁹ In addition, “evidence from such bodies outside the electoral field shows that they have often prioritized the goal of achieving resolution of the conflict, without necessarily taking account of issues that are particularly important or relevant to women, in particular gender-based or sexual violence.”¹²⁰

A related concern is that ADR mechanisms – because they are meant to be an alternative way to resolve disputes in order to avoid the formal justice system – may lead to increased pressure on women to abandon their claims in the interest of preserving community cohesion or promoting conflict resolution over justice and accountability. In instances when the responsible institution for ADR is *also* the subject of a complaint, this conflict of interest could be harmful for the justice process. For example, if a woman party member were to bring forward a dispute related to party nomination to an internal party dispute resolution process, she could face pressure to drop her claim, as party leadership would not want negative press and also would not want to rule in her favor (as they are likely to have made the decision that she is disputing). While men might also be reluctant to bring forward disputes for the same reason, male party members often have greater access to and stronger relationships with party leaders and, because of societal gender biases, might not be punished in the same way that women would. A 2016 IFES EDR assessment in Kenya also posited that “there is also a risk that ADR mechanisms can be used to make legitimate grievances ‘go away,’ to the detriment of the complainant (and this may disproportionately affect women and other marginalized groups).”¹²¹ If cases brought to ADR bodies are seen as less legitimate, it may be more difficult to get fair and meaningful resolution to legitimate claims through these bodies.

¹¹⁷ Vickery, Chad, ed., (2011, May 16). [Guidelines for Understanding, Adjudicating and Resolving Disputes in Elections \(GUARDE\)](#). IFES – The International Foundation for Electoral Systems.

¹¹⁸ Gordon, 2019, p. 6.

¹¹⁹ Roblot, Cox, and Anyanwu. (2024).

¹²⁰ Ibid.

¹²¹ Ellena, K., and Roblot, T. (2016, November). Election Dispute Resolution Assessment White Paper. IFES Kenya. (Not publicly available).

IFES' ADR research found that an ADR system can be a way to support women's equal access to electoral justice provided that:

- "It is designed very carefully in order to give priority to women's voices and agency, i.e. to empower women, and to protect women's rights;"
- "The use of ADR is strictly voluntary for the woman concerned and never mandatory;"
- "The ADR body is trained specifically to deal with such cases, including being aware of societal power imbalances;"
- "Trained personnel assess that the survivor will not be at further risk by pursuing ADR;"
- "It is not used for serious criminal offenses or to allow the perpetrators of crimes against women to avoid real penalties for such offenses (an exact definition of "serious criminal offenses" may depend on the country context);" and
- "The use of ADR does not prohibit women from accessing or pursuing formal justice, including the ability to appeal the decision of the ADR body."

Areas for Further Inquiry

While existing research provides some information on EDR and ADR systems and on women's access to justice more broadly, more research is needed to understand specifically how EDR and ADR systems can be more gender-sensitive and more responsive to women's specific needs and experiences when filing, pursuing, and seeking justice for electoral complaints. Through this research, IFES seeks to develop a more nuanced and complete understanding of how to make electoral justice more gender-sensitive. In particular, IFES will pursue the following lines of inquiry, which were identified as gaps after completing this desk review:

- What are the practical challenges women face in accessing electoral justice at each stage of the electoral cycle and for different elections violations?
- What specific legal or institutional reforms are needed to ensure women's equal access not only EDR mechanisms but to true electoral justice?
- What can electoral management bodies and EDR bodies do to promote women's access to electoral justice and the effective adjudication of women's disputes?
- What role can civil society play in promoting women's access to electoral justice?

Annex B: Kenya Case Study

Country Context

The Government of Kenya has made commitments to gender equality through international treaties,¹²² regional conventions,¹²³ and domestic law, including the Kenyan Constitution.¹²⁴ At the national level, a number of institutions are responsible for addressing issues related to gender, human rights, and justice. These include the Ministry of Public Service, Gender, Senior Citizen Affairs and Special Programmes; the National Commission on Human Rights; and National Gender and Equality Commission. Those commitments include ensuring that women can participate meaningfully in political process and have equal access to justice.

Significant government infrastructure is also dedicated to addressing gender-based violence, a key barrier to women's equal participation in political and electoral processes. The State Department for Gender Affairs (housed within the Ministry of Public Services, Gender, Senior Citizen Affairs and Special Programmes) is responsible for coordinating government action on gender-based violence, which it does through the Gender-Based Violence and Family Protection Directorate, one of four technical directorates. That responsibility is shared with the Ministry of Health, which delivers services to survivors, and the criminal justice system, which is responsible for enforcing the law, including incidents of gender-based violence.¹²⁵ However, as noted in the National Policy on Prevention and Response to Gender-Based Violence, "Conflict, political instability as well as poor enforcement of laws and policies also contribute to the occurrence of [gender-based violence]," and, despite the legal framework in place, "[t]he impact of these laws is however hampered by inadequate enforcement and gaps in various respects."¹²⁶ Kenya's Office of the Director of Public Prosecutions (ODPP) acknowledged that, "[a]lthough Kenya has an elaborate legal framework on [sexual and gender-based violence], the conviction rates have remained low."¹²⁷

Kenya's judiciary is an independent branch of the government that is mandated to deliver justice and uphold the Constitution and other laws. The court system consists of the Supreme Court, the Court of Appeal, the High Courts, and magistrate judges. The Supreme Court is the final court of appeal. The High Court deals with the most serious cases under civil and criminal law, as well as appeals from the lower courts. The High Court is based in Nairobi and has resident judges in cities and towns across the country. Appeals from the High Court are heard by the Kenya Court of Appeal, which comprises at least 12 judges. Less serious cases are heard by Magistrates' Courts. The 2010 Constitution also provides for the use of alternative dispute resolution (ADR) mechanisms to enhance the delivery of justice to all citizens. Kenya's judiciary has established Court Annexed Mediation, which allows courts to receive

¹²² For example, Kenya ratified the [International Covenant on Civil and Political Rights \(ICCPR\)](#) in 1972 and the [Convention on the Elimination of All Forms of Discrimination Against Women \(CEDAW\)](#) in 1984.

¹²³ African Union. (n.d.). [Protocol to the African Charter on the Rights of Women in Africa](#) ("the Maputo Protocol").

¹²⁴ Article 27 of the Kenyan Constitution of 2010 (Section 1, "Every person is equal before the law and has the right to equal protection and equal benefit of the law"; Section 3, "Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.").

¹²⁵ These include the Constitution of Kenya; the Penal Code; Criminal law (Amendment) Act 2003; the Criminal Procedure Code; and the Sexual Offences Act, which, among other things broadens the definition of sexual offenses; the Sexual Offences (Amendment) Act, 2011, which strengthened the 2006 Act; the Sexual Offences Regulations 2008; the Sexual Offences Dangerous Offenders DNA Data Bank Regulations; the Counter Trafficking in Persons Act (2011); and the Prohibition of Female Genital Mutilation Act 2011.

¹²⁶ *Ibid.*

¹²⁷ Office of the Director of Public Prosecutions (Kenya). (2022). [Rapid Reference Guide on the Prosecution of Sexual and Gender-Based Violence Cases in Kenya](#).

mediation matters and all civil matters filed at the courts, conduct mandatory screening, and refer matters to mediation as appropriate.

Brief Overview of Electoral Structures

Kenya has a multi-party democracy and presidential system that holds elections for all national positions every five years. The government is divided into four branches: the legislative, executive, judiciary (discussed briefly above) and devolved government that divides the country into 47 counties. Each county elects a member of the National Assembly, a member of the Senate and a governor. The devolved government is made up of county assemblies with representatives from 1,450 wards across the country.

Kenya has a bicameral legislature consisting of the Senate (upper house) and the National Assembly (lower house). The Senate has 67 members, of whom 47 are elected as representatives of Kenya's 47 counties. Of the remaining 20 seats, 16 are reserved for women, two for representatives of people with disabilities, and two for youth representatives. The National Assembly is made up of 337 members, of whom 290 are elected from single-member constituencies. The remaining 47 seats are reserved for women, who are also elected from single-member constituencies. Each elected member wins in a first-past-the-post system. To win outright in the first round, the president must obtain a majority of the national vote (50 percent plus one vote), plus 25 percent of the vote in at least half of the 47 counties. Members of the Senate and the National Assembly are elected by a qualified plurality vote.

Women's Representation in Politics

Gender equality is enshrined in Kenya's 2010 Constitution, and gender parity in political representation is a constitutional requirement under Article 27(8), which provides that no one gender should occupy more than two-thirds of **appointive and elective bodies**. However, at no point has the Kenyan Parliament been in compliance with the "two-thirds rule" despite multiple lawsuits and court orders for Parliament to issue the enacting legislation to operationalize the constitutional mandate. In April 2020, the chief justice of the High Court determined that he must "advise the President to dissolve Parliament" for its repeated failure to implement the two-thirds rule. This advisory opinion was not heeded, and the Parliament was not dissolved. While the two-thirds gender rule demonstrates Kenya's commitment to promoting women's political participation, "the failure to establish sufficient enabling mechanisms, leaving women under-represented in legislative assemblies and in the electoral process" undercuts the spirit of the 2020 Constitution.¹²⁸

The Political Parties Act (Article 25(2)(b)) also provides that a party is not eligible for the Political Party Fund (PPF) – public money allocated to parties based on prescribed criteria – if more than two-thirds of its registered office bearers are members of the same gender.¹²⁹ To reinforce women's inclusion in the leadership of political parties, the act further directs that 30 percent of those public funds be used to promote the representation of women and other marginalized groups. However, the criteria for accessing those funds are strict, and the PPF was not operational in advance of the 2022 elections.

Following the 2017 election, 75 (21 percent) of the 355 seats in the National Assembly and 21 (31 percent) of the 68 seats in the Senate were held by women. The total proportion of women in the national Parliament going into the

¹²⁸ Diplomatic Service of the European Union. (2018). [FINAL REPORT REPUBLIC OF KENYA General Elections 2017](#).

¹²⁹ Kenya Law Reports. (2012). [The Political Parties Act, 2011](#).

2022 elections was 22.7 percent, far below the one-third minimum required by the Kenyan Constitution and below the international average of women in national parliaments, which stands at 26 percent.¹³⁰

On August 9, 2022, Kenyans went to 46,231 polling stations to cast their votes for president, county governors, the National Parliament, and municipal councils. Of the 16,098 candidates registered to contest the six elections, only 1,962 (12 percent) of the contestants were women.¹³¹ For the first time, a woman candidate ran on a major presidential ticket in Kenya. Martha Karau, a former justice minister, was selected as Raila Odinga's candidate for deputy president. With a turnout of approximately 65 percent of the country's 22.1 million registered voters (down from 80 percent in 2017), William Ruto was elected president with 50.5 percent of the ballots cast, compared to Odinga's 48.9 percent. Women were elected to 6.4 percent of directly elected positions in the Senate, 7.9 percent of directly elected positions in the county assemblies, 13.3 percent of the directly elected positions in the National Assembly and 14.9 percent of governors.¹³² Even with reserved seats in the Parliament, women now comprise 23.28 percent of the National Assembly and 31.82 percent of the Senate, for a total of 24.5 percent of the national legislature – still in violation of the two-thirds gender rule.

Process for Resolving Election Disputes

In Kenya, an *election court* refers to the Supreme Court in exercise of the jurisdiction conferred upon it by Article 163(3)(a) of the Constitution, the High Court in the exercise of the jurisdiction conferred upon it by Article 165(3)(a) of the Constitution, or the High Court in the exercise of the jurisdiction conferred upon it by the Electoral Act. The Supreme Court has exclusive jurisdiction for petitions related to presidential election results; prior to the election, the High Court and Court of Appeal have jurisdiction for pre-election disputes under regular jurisdiction. Jurisdiction over election results petitions is further detailed in the table below.

Election Results Petition	First Instance	Appeals (if applicable)
Members of County Assembly	Magistrates' Court	High Court
County women representatives	Magistrates' Court	High Court
Governor	High Court	Court of Appeal
Senators	High Court	
Members of National Assembly	High Court	
Party list representative to Senate	High Court	
Party list representative to National Assembly	High Court	
Party list representative to member of County Assembly	High Court	
President	Supreme Court	Not Applicable

Electoral laws consist of the Constitution; the Elections Act; the Independent Electoral and Boundaries Commission (IEBC) Act; the Political Parties Act; Election Campaign Financing Act; Election Offences Act; and subsidiary legislation related to the presidential, parliamentary, and county elections and referenda.

¹³⁰ World Bank. (2021). [Proportion of seats held by women in national parliaments \(%\) | Data](#). Worldbank.org.

¹³¹ European Union Election Observation Mission in Kenya. (2022, August 11). [Preliminary Statement: Fundamental freedoms respected in Kenya's general elections, but procedural shortcomings demonstrate the need for improvements](#).

¹³² European Union Election Observation Mission in Kenya. (2022, August 9). [European Union Election Observation Mission Kenya 2022 Final Report](#).

In practice there is an even greater number of structures for resolving electoral disputes, depending on the nature (administrative, civil, or criminal) and timing of the dispute. These institutions include Kenya's election management body – the IEBC and related committees,¹³³ the Political Parties Disputes Tribunal (PPDT), the ODPP, and the judiciary. Each type of dispute has its own filing rules, deadlines, and procedures. This is complicated for both voters and potential disputants to manage and “may lead to overlapping jurisdiction for the resolution of various disputes.”¹³⁴ For example, during the pre-election period, registered voters and candidates can file disputes related to candidate nomination with the IEBC Dispute Resolution Committee. Parties, candidates, and individuals can file complaints to the PPDT related to inter- and intra-party disputes, coalition disputes, or appeals of decisions of the Office of the Registrar of Political Parties. Registered voters, political parties, candidates or their authorized representatives, and any persons aggrieved by an electoral activity also have the right to file complaints about violations of the Electoral Code of Conduct and other electoral violations directly with the IEBC; they may also file constitutional writ petitions to the High Court. Enhanced dialogue between EDR bodies in preparation for the 2022 elections attempted to clarify some jurisdiction-related issues and strengthen cooperation. However, remaining loopholes in the legal framework can only be addressed by legislative amendments.

The IEBC was established and is governed by the 2010 Constitution. Pre-election disputes can be resolved by the PPDT, the IEBC, or the court. Post-election disputes can only be resolved by courts. Magistrates have jurisdiction over cases related to county assembly results, and the High Court resolves post-election disputes related to governors and members of Parliament. The Supreme Court has original and exclusive jurisdiction over issues related to the presidential election and has 14 days to adjudicate those disputes. All other courts have six months to adjudicate election-related disputes. The judiciary appoints election court officers (judges and court officials) to hear election petitions related to election results for county and parliamentary elections.

For adjudication of election offenses such as election offenses, intimidation, and vote buying, the chief justice appointed 119 special magistrates for the 2022 election. The ODPP announced the appointment of 200 special prosecutors in 47 counties and 129 court stations and the establishment of a special unit on election justice, which includes hate speech and election offenses. The law requires the prosecution of election offenses to take place within 12 months of the date of the election. The ODPP also established a special unit to address election offences, including hate speech.

History of Electoral Violence and Disputes

Elections in Kenya have taken place since the country became independent in 1963, and the 2022 elections were the sixth general elections since the end of the one-party state in 1991. There has been a history of violence in the context of many of those elections. Perhaps most significant was widespread violence that followed the announcement of the results of the December 27, 2007, presidential elections, in which more than 1,100 people were killed and hundreds of women and girls sought treatment for sexual assault and rape.¹³⁵ The Office of the United

¹³³ During the election period, the IEBC set up Code of Conduct Enforcement committees, an EDR committee for candidate nomination-related disputes, and peace committees at the constituency level.

¹³⁴ [Election FAQs: Kenya 2022 General Elections](#). (2022). IFES – The International Foundation for Electoral Systems.

¹³⁵ United Nations Human Rights Office of the High Commissioner. (n.d.). [Report from OHCHR Fact-finding Mission to Kenya, 6-28 February 2008](#). As noted, these numbers are drawn from the reports at only one hospital. The actual figure is likely significantly higher given general reluctance to report these types of crimes and the displacement that many Kenyans experienced as a result of the violence.

Nations High Commissioner for Human rights (OHCHR) also noted with concern the “level of gender-based violence that was targeted at female contestants” in the pre-election period. Human Rights Watch documented “widespread sexual violence against women and girls, as well as incidents of sexual violence against men and boys, following Kenya’s 2007–2008 and the 2017 general elections.”¹³⁶ With respect to the 2017 elections, the Kenya National Commission on Human Rights reported 201 cases of sexual violence between August and December.¹³⁷ Only 22 percent of the cases were reported to police, and 54 percent of the reported crimes were found to be perpetrated by security and law enforcement officials.¹³⁸ Further, as noted in the European Union Election Observation Missions (EUE OM) Final Report on the 2017 elections, “the uncertain environment and fears of insecurity also reportedly resulted in more women than men temporarily moving back to rural home areas, and thereby jeopardizing their possibility to vote.”¹³⁹

Only one case of sexual and gender-based violence was reported to the police during the 2022 electoral period, although a number of other cases surely went unreported – including cases of online violence and harassment against women candidates, as documented by UN Women and others.¹⁴⁰ Indeed, the EU EOM report noted “the intimidating climate against women candidates in many places Physical harassment of female candidates was reported from Kirinyaga, Kilifi, Nyamira, and Embu, and women candidates faced stigmatisation through ‘derogatory’ speech, verbal abuse, and threats in some 14 counties.”¹⁴¹ However, overall incidents of election violence were significantly fewer during the 2022 elections.¹⁴²

Access to Justice

Per Article 48 of Kenya’s Constitution “[t]he State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.” Despite the constitutional protection, realization of this right in practice has been “hampered by high court fees, geographical access, understaffing of the judiciary, and a case backlog.”¹⁴³ Access to justice for women, particularly those who experience gender-based violence, has been a particular challenge.

This barrier extends to access to justice for violence against women that has taken place in the context of elections. The Government of Kenya has enacted multiple laws to target gender-based violence and established guidelines for law enforcement, health staff, and judicial officials on how to support survivors, including the 2022 ODPD Rapid Reference Guide on the Prosecution of Sexual-Gender Based Violence Cases in Kenya.¹⁴⁴ Despite these efforts,

¹³⁶ Human Rights Watch. (2021).

¹³⁷ Kenya National Commission on Human Rights. (2018). [Silhouettes of Brutality: An Account of Sexual Violence During and After the 2017 General Election 2017 Election Series](#).

¹³⁸ UN Women. [Believe Survivors. Act Now. Goretti’s Story. Kenya](#). (2021, November 12). UN Women – Headquarters.

¹³⁹ European Union Election Observation Mission in Kenya 2017. (2018, January). [European Union Election Observation Mission Final Report Republic of Kenya General Elections 2017](#). p. 47.

¹⁴⁰ UN Women Kenya and the OHCHR implemented the Let it Not Happen Again project to enhance access to justice for survivors of sexual and gender-based violence in the counties of Nairobi, Kisumu, Bungoma and Vihiga – locations identified as hotspots such crimes. See: UN Women. (2022, December 23). [Kenya’s strides towards eradicating violence against women and girls in elections](#).

¹⁴¹ European Union Election Observation Mission in Kenya 2022.

¹⁴² The UN attributed this to change to “a number of coordinated activities including ‘deployment of human rights monitors across the country; civic education and community dialogue forums to engage youth; integration of sexual and gender-based violence prevention in security sector preparedness; working with women human rights defenders; training of police commanders on human rights-based policing and public order management; and dialogue and exchange between police, the KNCHR and human rights defenders.’” See: United Nations Human Rights Office of the High Commissioner. (2023, March 24). [Partnerships and training helped prevent election violence](#).

¹⁴³ Open Government Partnership. (n.d.). [Implement legislation to increase access to justice \(KE0030\)](#).

¹⁴⁴ Office of the Director of Public Prosecutions (Kenya). (2022).

however, civil society organizations continue to document incidents of women being denied services, not taken seriously when reporting violence, or even being victimized by law enforcement officers, all of which interfere with their ability to access justice. For example, an OHCHR report documenting violence during the 2017 elections noted that in a number of cases the perpetrators were members of the police.¹⁴⁵ The same report noted that the cases remained uninvestigated in the run-up to the 2022 elections. Human Rights Watch has “documented government failure during both periods to prevent election-related sexual violence, effectively investigate cases, hold perpetrators accountable, and ensure survivors have access to ... timely medical and psychosocial care.”¹⁴⁶

In advance of the August 2022 elections, the IEBC, which was ordered by a 2017 court ruling in *Katiba Institute vs. Independent Electoral and Boundaries Commission (IEBC)* to enforce the two-thirds gender rule, reminded political parties of the rule for the submission of party nomination lists and warned them that it would reject lists that did not comply with the rule. In April 2022, the IEBC received nomination lists and noted that several parties had not complied. In early May, the IEBC extended the deadline for submission to allow parties time to revise their lists to comply with the gender rule. Still, it rejected several party nomination lists. However, in mid-May, a ruling for *Adrian Kamotho Njenga vs. Independent Electoral and Boundaries Commission* in effect suspended the implementation of the two-thirds rule in the nomination of candidates for the August 9 general election. One of the reasons provided by the court was that the IEBC had not held public consultations on this rule prior to its adoption, in contradiction with the constitutional provision.

This ruling, and the results of the 2022 elections with respect to women's representation, while disappointing for the realization of the spirit and letter of the 2010 Constitution, does provide some direction for how electoral bodies might continue to drive improvement. The IEBC, judges, and activists have significant roles to play in advocating for the enactment of legislation and regulations to ensure gender requirements in the Constitution are understood and enforced in line with the 2017, 2020, and 2022 court rulings.

Data Collection Methodology

With this context in mind, and a long history of elections-related programming in the country and strong relationships with institutions such as the IEBC and the judiciary, IFES conducted field research in Kenya from February 7–10, 2022. IFES interviewed Kenyan electoral stakeholders on the margins of workshops with the PPDT and the Judicial Committee on Elections (JCE) in Mombasa, Kenya in preparation for the 2022 elections. The IFES Kenya country team facilitated interviews with 10 stakeholders, the majority of which were conducted via individual interviews and in person in Mombasa. IFES held one small group interview with representatives from three leading women's rights civil society organizations in Nairobi and two virtual interviews from the United States following the field visit. Interviewees represented civil society, the judiciary, the PPDT, the IEBC, and academia.

The primary challenge associated with data collection in this case study was IFES's limited time in Kenya during a busy pre-election period and the fact that in-person discussions were limited to Mombasa and Nairobi. In addition, while interviewing participants on the margins of a set of workshops was helpful because of the concentration of

¹⁴⁵ United Nations Human Rights Office of the High Commissioner. (n.d.). [Strengthening prevention of and response to sexual and gender-based violence in Kenya](#).

¹⁴⁶ Human Rights Watch. (2021).

stakeholders in one place, the busy meeting schedule meant that it was sometimes difficult to cover all topics in the conversation. IFES did not interview members of political parties or former or current candidates for office, given the political sensitivities associated with the pre-election period. As a result, the information presented in this case study does not reflect their perspective. Nonetheless, the relevant key findings and recommendations are directed to all political parties based on the discussions with other stakeholders.

In addition to the interviews conducted during the field visit, IFES staff reviewed reports from the PPDT, JCE, and IEBC workshops; relevant election-related FAQs; and reports on election-related disputes and other judicial processes and on women's rights in Kenya. Materials consulted and included in this analysis are cited in footnotes, as relevant. This case study also benefited from the deep knowledge and relationships of the IFES Kenya team, which reflect decades of support to and partnership with Kenya's electoral institution and CSOs.

Key Findings

The Kenya case study field visit and document review led to a number of key findings, including challenges that women in Kenya face in seeking electoral justice and opportunities to make improvements to the existing system. Detailed below, these occur throughout the electoral cycle and include issues registering as candidates, intraparty disputes, electoral violence, and concerns about the process on Election Day and with the results.

Women are underrepresented as litigants due to lack of party support and resources.

A number of the stakeholders interviewed noted that, while Kenya is, as a general rule, an extremely litigious country, the majority of election-related cases are brought by men. One interviewee commented that, while this is consistent with women comprising a smaller portion of the candidate pool, men's representation as litigants in electoral justice cases also outpaces their representation in the candidate pool.

Interviewees had a variety of explanations for this. One noted that men are much more likely to bring a case if they feel they have been wronged, regardless of the merit of their claim, and to come to court to "demand justice" or a recount of the vote. Women are much more likely to be in court because they have been victims of electoral violence or an obvious crime. Another interviewee stated that women often do not bring claims even when they have a strong case, and that those that do have the financial resources to do so or have relatively more power within their political parties and thus have the backing of their parties to bring cases. In addition, while the Political Parties Act requires parties to establish internal party dispute resolution mechanisms, implementation remains weak and is further undermined by lack of information on how to file disputes through those mechanisms. Civil society representatives also reported that by the time women have made the decision to mount a campaign and gone through the electoral process, they are so exhausted and depleted by the experience that bringing a court case to dispute the results, regardless of how valid the merits of the case, feels like a bridge too far.

Interviewees noted that physical barriers, including the distance women have typically needed to travel to file cases, as well as variation in the rules regarding whether cases must be filed in person or can be filed online (only available in Nairobi at the time of the interviews but subsequently expanded across the country to seven PPDT offices in advance of the 2022 elections and to all electoral courts¹⁴⁷) are barriers, particularly for women from more rural areas.

¹⁴⁷ [Judiciary decentralizes political parties' disputes tribunal – Kenya News Agency](#). (2022, April 25). Kenya News Agency.

While the judiciary and PPDT allowed for online filing, the IEBC did not provide opportunities to file online for candidate nomination-related disputes, party nomination disputes, or code of conduct violations during the 2022 elections. The IEBC designed an online platform as part of its electronic case management system (CMS) prior to the elections but did not have sufficient time and funds to operationalize it for use during the elections.

Interviewees raised the disparity in resources as a reason why women do not seek electoral justice. Some noted that women are more likely to lack the funds to retain legal representation and to pay filing fees for court cases. And, while political parties may provide attorneys to candidates to pursue electoral justice, women candidates were seen to receive less support from their parties, particularly in the case of intraparty disputes. Further, a number of interviewees noted that women candidates were often less aware of the process they needed to follow in filing court cases and, importantly, preserving and capturing evidence contemporaneous to a particular incident – another area where political party support was seen to be more available to men. Interviewees observed that training is needed for women politicians and candidates – as well as the police investigating these cases – to know how to preserve the chain of evidence so that, if there is an incident, these women know how to make their case and can be prepared to win.

Women are less willing to bring cases related to electoral violence.

Interviewees, particularly those who have worked on gender-based violence cases, also noted that women who are survivors of electoral violence (especially sexual violence) are reluctant to bring cases even when they have legal and financial support. In some cases, interviewees attributed this to a lack of faith in receiving justice or being taken seriously by the police, which is consistent with reporting by Human Rights Watch and other international organizations with respect to incidents of electoral violence against women. Cases of sexual violence are particularly difficult for women candidates to bring when the perpetrator is a member of their own political party.

Women's rights representatives commented that in some cases of political violence women candidates don't expect to receive justice from the criminal justice system or by revisiting the results of the election, but they do want some acknowledgment of what happened to them. Therefore, in lieu of filing formal court cases, they were willing to have their cases resolved through the ADR process so they could at least receive an apology from the perpetrator. During the 2022 pre-election period, the IEBC established peace committees at each constituency, chaired by returning officers appointed by the chair of the IEBC.¹⁴⁸ Peace committees are responsible for mediating disputes related to the code of conduct and can issue warnings or liaise with other agencies, such as the prosecutor's office or security agencies, when relevant. In 2022, the IEBC published guidelines and a brochure for the committees, but these were completed only a few weeks before Election Day, limiting their impact. If implemented properly at the local level, peace committees have the potential to increase access to dispute resolution at the local level, which can enhance access to justice.

Additional resources are available to women seeking electoral justice.

Interviewees differed on how much the availability of legal representation impacted the rates of women seeking electoral justice. While several noted that women are less likely to have or to be able to afford legal representation, conversations with women's rights activists indicated that lack of awareness of pro bono legal resources may have

¹⁴⁸ S. 17, Elections Act, Schedule II, Code of Conduct: "(1) The Commission may establish peace committees in every constituency during an election and referendum period. (2) Every political party, referendum committee, candidate, official and agent shall- (a) acknowledge the activity of peace committee established at the constituency level by the Commission (...)"

also been an issue. In fact, women's rights activists noted that they had identified a cohort of lawyers ready and willing to provide pro bono legal assistance to women pursuing electoral justice cases, but that a number of women candidates have not been willing or interested in bringing cases. This indicates that there are at least some untapped legal resources available but that other barriers keep these women from filing.

Finally, the electoral justice system has taken steps to reduce barriers to women accessing electoral justice. Court case filing fees have been reduced for women candidates, and, in the wake of COVID-19, more people have access to virtual proceedings, which should reduce the time and expense associated with traveling to litigate cases. However, because women are less likely to have access to the requisite technology, particularly in rural areas and villages where they are also more likely to be candidates, virtual proceedings may still place them at a disadvantage when seeking electoral justice.

Additional findings

An underlying theme of the interviews related to electoral justice was the overall underrepresentation of women in positions of power in the Kenyan government and Kenyan institutions. With the exception of the judiciary – where three of seven justices of the high court are women, and women have achieved near-parity as judges and magistrates – women are underrepresented within political party leadership, as candidates, and in elected positions.

Interviewees noted that political parties play important roles as gatekeepers in choosing to field women candidates in party strongholds (where people are more likely to elect a party's representatives regardless of gender) or prioritizing men candidates in those races. One interviewee noted, "the primary process is the often the hardest part; 60 percent of women lose at the primary level – it's a negotiated democracy." Therefore, while women might make up the requisite one-third of candidates on a party slate, they are more likely to be nominated in districts where they have fewer chances of winning. In addition, intraparty dispute resolution mechanisms, which are often the first stop for many candidates attempting to resolve disputes at the primary stage, are not always seen as safe or effective spaces for women candidates to seek redress, given that parties themselves can feel like an "old boys' club."

Finally, insufficient data – in particular, gender-disaggregated data, are collected and available on the election complaints filed with the IEBC or the courts. The new e-CMS at the courts should help address this issue provided it is resourced and instituted in advance of the next election, but a similar system should also be established at the IEBC. With a coordinated EDR filing system, the electoral institutions, candidates, political parties, and civil society will be able to better understand the nature of the electoral justice claims filed, including information on who files complaints, who the respondents are, whether either or both parties are represented by a lawyer, in what stage of the process complaints are filed, and the nature of the complaint.

Recommendations

Political parties should provide women candidates with the training and support needed not only to successfully contest for office, but also to understand their rights and responsibilities as candidates. This includes training and information on processes and procedures regarding evidence collection and timelines in the event that they believe their electoral rights have been violated. In addition, political parties should provide women candidates with legal counsel at least consistent with the support provided to men candidates, to support their electoral justice cases.

Political parties should also realize their responsibilities under the Political Parties Act to set up internal dispute resolution mechanisms to address disputes from party members or supporters. This is particularly important during the party nomination process, when women often encounter the most resistance but hesitate to bring challenges. These mechanisms should be decentralized and localized so women have easier access to the process and will be less hesitant to bring cases. Finally, political parties should also make significant efforts – through sensitization and allies training for men candidates, staff, and leadership – to improve the environment for women candidates so women are not confronted with discrimination and violence within their own parties.

Electoral institutions, including the PPDT and IEBC, should aim for gender parity at all levels of staff and should provide gender-sensitive civic, voter, and candidate education that is designed to reach voters and candidates of all genders. With this outreach, the electoral justice system can make women candidates aware of the processes and mechanisms available to them in the event they would like to pursue an electoral dispute. This type of candidate education could include:

What to do when, how, and how much it will cost: Time limits and processes for filing electoral disputes, including filing fees, deadlines, and locations to file cases around the country.

What to expect: Types of remedies available at each stage of the electoral process (e.g., warning, administrative fine, rejection of candidate application or party list, etc.).

What to collect: Evidence preservation – what can and should be collected and preserved in case of a suspected violation (e.g., witness statements, hate speech social media posts, photos of campaign materials defaced, etc.).

The IEBC should propose an amendment to the Elections Act in Parliament and adapt its own regulations and processes accordingly to ensure that its efforts to implement the two-thirds gender rule are not quashed in the future. Prior to the 2027 elections, it is crucial to ensure that no remaining political loopholes make it possible to skirt the two-thirds gender rule and that judges are sensitized to the constitutional norms and operational implications of the rule on party lists.

PPDT personnel should be trained on what information they can provide to those seeking to file disputes through the electoral justice system so they can provide all necessary assistance without opening themselves to accusations of interfering with the EDR process. The **PPDT** should take all possible measures to simplify registration and case filing processes and collect and provide resources upon request that are related to interpretation and pro bono or lower cost legal services.

The IEBC should continue its decentralization efforts to ensure that EDR committees can receive complaints on candidate nomination and party disputes at the constituency level, through the returning officer. This amendment would allow for filing at the local level rather than requiring voters and candidates to file in Nairobi only. To be effective and fair, and avoid replicating the dynamics within political parties and EDR mechanisms that disadvantage women, the IEBC should provide gender-sensitive mediation training to those returning officers.

The officer of the Registrar of Political Parties should convene a gender-balanced **Political Party Leadership Committee**, ideally with the participation of the IEBC, to collaborate to standardize and enforce a gender-sensitive

intraparty dispute resolution processes through the development of model guidelines and principles to guide the resolution of intraparty disputes.

The electoral courts should continue to expand the availability of remote filing and remote and virtual court processes and endeavor to make virtual court stations – with computers and reliable internet connections – widely available across the country, prioritizing those farthest from existing court services. The courts should also conduct a gender-sensitive outreach campaign so more people are aware of the stations and to encourage women to file either at a local court or at one of the virtual stations and to provide information on the steps that need to be taken in filing such claims. An online filing platform can also enhance access to justice, as long as it is used as to complement in-person filing. Online filing may also make it easier to ensure the privacy and safety of the person filing, especially important for victims of violence.

Finally, additional **research** and **data collection** are needed to better understand the number of women who seek to contest for office at all levels, and in all political parties. In addition, there gender-disaggregated data should be collected on the electoral justice cases brought at every level and at every stage of the process, including the nature of the claims brought, the number and gender of complainants who appear *pro se* (that is, unrepresented by counsel), and the outcomes of those EDR processes. Political parties should be required to report data on the number of cases in which they retain counsel for complainants as well as the number and gender of complainants for which they decline to provide counsel. As noted, this information could also be collected through the new IEBC CMS and a similar system at the courts, provided they are appropriately resourced.

Annex C: Nepal Case Study

Country context

The year 2022 was a busy year for Nepal, which held four elections in 11 months: the National Assembly elections in January, local elections in May, and the House of Representatives and provincial parliamentary elections in November. The local, provincial, and federal parliamentary elections were the second elections that have occurred since the new Constitution was adopted in 2015. The 2015 Constitution and 2017 Election Law provided for a gender quota,¹⁴⁹ but observers have noted that even with the quota and other affirmative actions, such as application fee waivers for women candidates, challenges persist. These include the lack of commitment of political parties to nominate women to leadership positions and the lack of women in executive appointments. Nepal's electoral justice system is decentralized, allowing for multiple points for reporting potential electoral offenses. However, issues with access to information, lack of capacity or political will by institutions to implement electoral reforms in a timely manner, and social, cultural and economic barriers that perpetuate restrictive and harmful gender roles can make it difficult for women – especially those in rural areas and from marginalized communities – to access electoral justice.

Nepal's Legislative Structure

The Federal Parliament of Nepal consists of the National Assembly (the upper house) and the House of Representatives (the lower house). Of the 59 members of the National Assembly, 56 (eight members from each of the seven provinces) are elected indirectly by an electoral college in each province; the three remaining members are appointed by the president. Of the eight members from each province, three must be women, one must be from the Dalit community,¹⁵⁰ and one must be a person with a disability or from a minority community. Additionally, one of the three National Assembly members appointed by the president must be a woman. National Assembly members serve six-year terms, with elections held every two years for one-third of the seats. Members of the House of Representatives are elected through a mixed electoral system: 165 of its 275 members are elected from single-member constituencies through a first-past-the-post system, while the remaining 110 are elected via proportional representation from a closed party list, with the entire country considered one constituency. For the House of Representatives, the Electoral Law requires parties to elect at least 33 percent women in the Federal Parliament. Elections for the House of Representatives occur every five years.

The election of the seven provincial assemblies is also based on a mixed system, with the same 60/40 divide between first-past-the-post and proportional representation. Women must account for one-third of total members elected from each party; if that proportion is not elected, the party must elect women as one-third of its total number through party-list proportional representation.¹⁵¹

For local-level elections, voters choose seven representatives as part of a first-past-the-post system, including the mayor of the municipality (or the chair of a rural municipality), the deputy mayor (or vice chair of a rural municipality),

¹⁴⁹ The 2015 Constitution of Nepal ensures that women, Dalits, Aadijati, Madhesi, Tharu, Muslims, backward classes, minorities, marginalized communities, persons with disabilities, gender and sexual minorities, farmers, laborers, oppressed or citizens of backward regions, and indigent Khas Arya shall have the right to participate in the State bodies on the basis of principle of proportional inclusion. The Constitution further states that at least one-third of the total number of members elected from each political party seated in the Federal Parliament and Provincial Assembly shall be women; this is further ensured by provisions in the federal and provincial laws.

¹⁵⁰ The Dalit community represent the bottom of Nepal's ancient caste-based system, in which they were formerly known as "untouchables." Dalits constitute about 13 percent of Nepal's population.

¹⁵¹ Article 176, Section 14 of the [Constitution of Nepal](#) (2015, September 20).

the ward chairperson, a woman ward member, a Dalit woman ward member (the two reserved seats for women are required as part of the Constitution of Nepal, and the Dalit requirement is included in the Local Elections Act of 2017), and two additional ward members. According to the Local Elections Act, if parties put forward candidates for the positions of both the mayor and deputy mayor (or the chair and vice chair, in the case of rural municipalities), one of those candidates must be a woman. These elections occur every five years. There is no quota specific to women with disabilities, and, in both 2017 and 2022, only a few women with disabilities¹⁵² were elected to local government and none were elected at the provincial or national level.

Despite these quotas, there is still a lack of meaningful representation for women in Nepali politics. A party is only required to run a woman candidate for the post of mayor or deputy mayor position (or the chair or vice chair position) if it runs candidates for *both* positions; two parties that join together to form a political party coalition may be able to avoid that requirement, as occurred in the 2022 local elections.¹⁵³ Instead of running candidates for both positions, one party in the coalition would run a man for mayor and the other party would run a man for deputy mayor. This is one reason why there were fewer women candidates in the 2022 local elections than in 2017. Five ruling parties fielded candidates under an alliance during the May 2022 local elections.¹⁵⁴ While the gender quota is intended to ensure that local governments have at least one woman in leadership, it is also meant to incentivize political parties to invest in women gaining experience in politics so they can continue to rise through the ranks. In 2017, in elections for 753 deputy mayor (or vice chair) positions, 700 women (93 percent) were elected, while 18 women were elected as mayors. Given the large number of women who have gained experience serving on local bodies, it is notable that political parties did not choose more women candidates to run as mayors from this pool of women in the 2022 local election.

However, many interviewees noted that parties' attitudes towards women in deputy mayor or vice chair positions is that they were "given" these positions because of election quotas (that is, they didn't "deserve" them) and that they had their turn in leadership, so the time has come for another woman to have her turn. Thus, rather than building political experience, political parties seem unconcerned with meaningfully engaging qualified women as candidates or elected officials. Multiple interviewees noted that the women who are put on ballots are often the relatives or wives of party leaders rather than women who are genuinely interested in and qualified to run for these positions. Women who are elected to the roles sometimes bring their husbands to meetings, and attendees will address the husbands instead of the elected women. In addition, despite the reserved seats for Dalit women in local councils, parties left 123 of those seats open, with some interviewees claiming this vacancies were due to a lack of qualified Dalit women.¹⁵⁵ While this excuse is often used to leave gender quotas unfulfilled (i.e., parties often say there aren't enough qualified or interested women to nominate), the population of Dalit women is not evenly distributed throughout Nepal, so there may be areas where the few Dalit women may not be interested in running for those seats.

¹⁵² IFES is aware of six women with disabilities elected in local government, but it is possible that there are others who have not self-identified and about which IFES is not aware.

¹⁵³ "Section 17 (4) of the Local Level Election Act-2017 says a political party must field a woman as candidate for either chief or deputy chief, it says this provision does not need to be followed if parties are fielding candidates under an alliance—if a party is fielding candidate for just one of the two top posts." See: [Section 17 \(4\) of the Local Level Election Act-2017](#) (Nepal). ACE: The Electoral Knowledge Network; and Pradhan, T. R. (2022, May 28). [How women candidates fared in local polls](#). Kathmandu Post.

¹⁵⁴ Ibid.

¹⁵⁵ Pradhan, T. R. (2022, May 10). [Despite law, Nepal fails to achieve Dalit women representation in wards](#). Kathmandu Post.

The Centre for Gender and Politics conducted a gender analysis of the May 2022 local elections, including sex-disaggregated data. According to its report, 36 percent of the candidates were women, with the Nepali Communist Party – United Marxist Leninists fielding the highest proportion of women candidates with 42 percent, followed closely by the Nepali Congress (41 percent), the Nepal Communist Party – Maoist Centre (40 percent) and the Nepal Communist Party – Unified Socialist (38 percent). An overwhelming majority of those candidates (87 percent) were contesting for seats as women ward members and Dalit women ward members – two types of reserved for women.¹⁵⁶ Despite these relatively significant proportions, fewer women candidates contested in the 2022 elections than in the 2017 elections.¹⁵⁷ While women were 36 percent of all candidates, they were elected to only 4 percent of mayor posts, 3 percent of chairs of rural municipalities and 1 percent of ward chairs. Most women were elected as deputy mayors or vice chairpersons, who are 78 percent women.

“There is representation, but not meaningful representation.”

–Election observer, Kathmandu

Elections Management

“Before an election, the Election Commission of Nepal (ECN) forms an election dispute resolution (EDR) committee composed of eight members, including five members of the ECN; the secretary of the Ministry of Law, Justice and Parliamentary Affairs; the secretary of the Ministry of Home Affairs; and the attorney general. Complaints regarding election disputes, violations or irregularities must be made in writing or electronic form to Returning officers or Name registering officers or polling officers or monitoring officers, or directly to the EDR committee as soon as the alleged violation is known. Any member of the EDR committee has the authority to determine the validity of the complaint and impose remedies and sanctions.”

- [IFES Election FAQs: Nepal 2022 House of Representatives and Provincial Assembly Elections](#)

The Election Commission of Nepal (ECN) administers elections in the country. The ECN is headquartered in Kathmandu and has offices in each of the 77 districts, including seven that also function as provincial election offices for each of Nepal’s seven provinces.¹⁵⁸ Part 24 of Nepal’s 2015 Constitution details the functions, duties, and powers of the ECN, which include “conduct[ing], supervis[ing], direct[ing] and control[ing]” any elections or national referenda. The law also explicitly gives the ECN authority to make a final decision on the legitimacy of a candidate before the completion of the election. A slate of other electoral laws, including the Electoral Roll Act, the Election Offense and

Punishment Act, the Political Party Act, and the Local Level Election Act, were passed in 2017. The Political Party Act gives the ECN the responsibility for resolving disputes between political parties related to party names; party seals, statutes, flags or symbols; or the authenticity of party officials. It also gives the ECN authority to fine a party or prohibit it from participating in an election if it violates the law. The Political Party Act also mandates that party committees at all levels should include at least 33 percent women.

¹⁵⁶ Neelam, Shrestha, and Giri. (2022).

¹⁵⁷ “There were altogether 17,733,723 voters including 8,741,530 women, 8,992,010 men and 183 others. In terms of women representation, this time there were lesser number of women candidates for positions of deputy mayor or vice chairperson compared to previous election. There were more women candidates for positions of mayor or chairperson. Similarly, at ward level, the number of women candidates were comparatively more in ward level. Out of the total 35,221 positions, there were 145,013 candidates in the field. The people elected 14,445 women including 25 as mayor/chairperson, 567 as deputy mayor/vice chairperson, 69 as ward chairperson, 442 as members, as well as 6,732 elected in reserved positions for women members and 6,610 elected in reserved positions for Dalit women members. Apart from the results in the Budhiganga municipality, 41 percent of the elected representatives were women. In 6,733 wards, a total of 6,610 Dalit women members were elected. In 123 wards, there were no Dalit woman candidate.” See: Asian Network for Free Elections. (2022, July 20). [General Election Observation Committee - GEOC/Nepal Law Society](#).

¹⁵⁸ There are 77 districts in Nepal; in seven, the district ECN offices serve also as the provincial ECN office. Therefore, there are 77 ECN offices across all 77 districts. Technically, seven of those offices are referred to as provincial election offices; and the remaining 70 are called district election offices.

The ECN's legal department oversees the adjudication of disputes at the decentralized level, provides support to the board of commissioners in the adjudication of cases, and collects data and information related to electoral disputes. There is no dedicated department and no additional dedicated staff focused specifically on EDR. The lack of a "complaint unit" and resources may create some obstacles for election officials in building capacity and retaining knowledge in investigating and adjudicating election disputes from one cycle to the next. However, chief returning officers, who play important roles in adjudicating pre-election and counting-related disputes at the constituency level, are judges and legal officers for the House of Representatives and provincial elections, and judges, legal officers, and administrative officers for the local level elections.

The law authorizes the election officer or returning officers to receive and address objections to voter lists or candidate nomination. As part of its general mandate to administer the elections, the ECN set up an electoral dispute resolution (EDR) committee and monitoring teams to address disputes related to breaches of the codes of conduct or campaign finance during the pre-election and election periods. In 2019, the ECN adopted a directive on EDR to clarify its mandate over election disputes throughout the election process. The ECN provides for a highly decentralized system with presiding officers, monitoring officers, returning officers, EDR (central) committees, and a board of commissioners all playing roles in the investigation or adjudication of disputes. For the 2022 elections, the ECN reduced the number of monitoring committees to streamline reporting and investigation of code of conduct breaches. It also further decentralized the monitoring process by appointing monitoring officers from their local districts rather than deploying them from Kathmandu.

Complaints regarding election disputes, violations, or irregularities must be submitted in written or electronic form to returning officers, name registering officers, polling officers, or monitoring officers, or directly to the EDR committee as soon as the alleged violation is known. Any member of the EDR committee has the authority to determine the validity of the complaint and impose remedies and sanctions. Certain offenses, such as forging ballots, buying votes, requesting recounts of votes, or acts of violence must be referred directly to the relevant high court to issue rulings and impose sanctions. The Election Offences and Punishment Act defines physical or sexual violence during the election period as an election offense, which will be handled by the police and the court as criminal cases.

Candidates must file election results petitions within 15 days of the announcement of results. All appeals to decisions made by the adjudicating authority must be made within 35 days of the announcement of results to the relevant High Court of the province (local elections) or constitutional bench of the Supreme Court (for federal and Provincial Assembly elections). The district courts also hear appeals related to election offenses. As noted in the [2018 EU EOM election final report](#), "The Constitution establishes a very broad jurisdiction for the Supreme Court to address any matter of fundamental rights which is brought before it by way of public interest litigation." In the 2017 and 2022 elections, the Supreme Court received many petitions regarding "various aspects of electoral law and the operations of the ECN during the campaign period, as well as some cases filed in relation to the allocation of seats prior to the final declaration of election results" (2017) and on candidacy eligibility criteria and social media campaign (2022).

Data Collection Methodology

The current electoral laws, regulations, directive, code of conduct, policies of the ECN, election observer reports, research from international and local organizations, and literature on women's access to justice in Nepal were reviewed as part of background research for this case study. The case study was also informed by the knowledge, resources, and expertise of the IFES Nepal country team, which has worked with and supported election management bodies and civil society organization partners in the country since 1999.

Field research was conducted from August 29 to September 9, 2022, primarily in Kathmandu, through key informant interviews. One interview was conducted in Pokhara, the capital city of Gandaki Province. IFES conducted 21 interviews with 33 representatives (19 women and 14 men) from government institutions, election observer groups, current and former ECN officials, international organizations, and civil society. Most interviews were conducted in English; several were conducted in Nepali with English translation. Because of resource limitations, almost all interviews were held in the capital city, but IFES endeavored to interview individuals from other areas of Nepal who are based in Kathmandu and who represent ethnic minority groups from other regions.

Because the interviews were conducted just a few months before the general elections on November 20, 2022, IFES determined that meeting with political party representatives and candidates was politically sensitive and could imply that IFES was acting in a partisan way ahead of the elections, during a when political parties were focusing on their campaigns. To preserve IFES' reputation for independence and neutrality, researchers did not meet with political party leaders or candidates but sought feedback from previous candidates and elected officials, and reviewed earlier research, to understand the perspectives of these individuals.

Key Findings

Challenges

Citizens are not aware of their rights or the procedures for filing electoral complaints.

While electoral stakeholders stated that the laws are publicly available, many interviewees noted that voters are not aware of their legal rights around election processes or the process for filing electoral complaints. During the 2022 local, House of Representatives, and Provincial Assembly elections, the ECN designed and printed a poster that described how to file complaints during the election process. But additional voter outreach is needed to inform the public in general, and women and marginalized groups in particular, what constitutes a violation or breach of code of conduct and where, when, and how to file. Interviewees commented that the lack of knowledge about how to file complaints was not unique to women voters but that even women candidates and prominent women in party committees were not aware of how to file complaints before the ECN. In addition, women may not fully understand their rights or know whether the law is being violated because they do not know what is prohibited by law, the election code of conduct, or policy.

Due to the process for appointing ECN commissioners, interviewees noted potential concerns over the ECN's impartiality in adjudicating election cases.

In Nepal, the president appoints election commissioners based on a recommendation from the Constitutional Council, which comprises the prime minister (chairperson), chief justice (member), speaker of the House of Representatives, chairperson of the National Assembly, leader of the opposition party in the House of Representatives, and deputy speaker of the House of Representatives. This composition reflects an important power exercised by the executive

and the ruling party, is not in line with the principles of independence and impartiality, and is contrary to best practice. Several interviewees mentioned that the composition of the ECN does not guarantee that the commissioners are free of political party ties. Moreover, the EDR committee and monitoring teams (which have roles in detecting and investigating cases) also include members of the government.

Though ECN officials expressed that they try to resolve cases quickly, they often receive cases referred by returning officers or monitoring officers that could have been resolved at the constituency level. This increases the caseload burden on the ECN. Interlocutors outside the ECN noted that it likely does not have the funding, expertise, and other resources to handle all electoral complaints in a timely manner. However, interlocutors also pointed to the suspected political biases of the commissioners in addressing or resolving complaints (or not) – notably during the campaign period. Some believe the ECN delays resolving complaints to avoid appearing partisan by making rulings that would favor one party over the other; others reported that this lack of transparency and delays in resolving violations is actually the result of the ECN being partisan. The thinking is that, in not resolving certain complaints, the ECN already favors one party (the one in violation) over another.

For example, the Political Party Act requires that one-third of all members of committees – at all levels in the party – be women. If parties do not respect this quota, the ECN has the power to refuse to register a new party or to decline to have the party participate in elections. Stakeholders reported, however, that major parties have failed to meet the 33 percent threshold but are still able to participate in the election. One interviewee gave an example of a party that was able to register without the required proportion of women. The ECN did not raise this issue at a hearing because of political pressure on commissioners to leave the party alone. Another interviewee cited “a lack of political will to go the extra mile to resolve complaints.” Because of these issues, some people do not file complaints because they may not believe their issues will be resolved. This may be particularly true for women. Multiple interviewees noted that women – who face more scrutiny in filing cases – do not want to risk the negative attention they will receive if their cases are not resolved. Therefore, they don't file.

The ECN addressed around 130 complaints in the 2022 elections, although it is not clear how many were filed by women. The lack of transparency on the number of complaints filed and resolved remains a concern at the ECN. It contributes to a lack of understanding about its decisions to act on reports of violations (based on complaints or its own initiative) and leads to perceived bias in its actions or inactions on election disputes. Through its newly designed case management system (CMS), the ECN will attempt to remedy the lack of data by registering all disputes filed in 2022, including gender disaggregated data on filing complaints and the respondents or plaintiffs; roles of lawyers; and nature of disputes affecting women.

Political parties may violate laws or policies in an effort to exclude women from nominations and the political process generally, but women complainants have nowhere to go to file disputes on intraparty issues.

All of Nepal's major political parties are headed by men despite the requirement in the Political Parties Act that 33 percent of party leadership be women. Party leadership decides on candidate nominations in closed-door meetings. According to an interviewee, they reportedly do not believe women can win elections due to a “deep-rooted patriarchal mindset.” Nepal's mixed electoral system for Provincial Assembly and House of Representatives elections decides some seats via proportional representation and others by the first-past-the-post process. IFES's research surfaced a belief that parties do not want to run women in first-past-the-post seats because they do not think women can win them. This may be in part because many women have fewer resources spend on their campaigns, and women have

indeed reported challenges raising and accessing campaign funds.¹⁵⁹ This line of thinking limits the number of positions for which women can run. Candidates who win proportional representation seats are considered “less valid” or less respected because they won their seats based on the closed list rather than having “earned” them in first-past-the-post contests.¹⁶⁰ In one example of this dynamic from the 2022 local elections, a current member of Parliament who is a Dalit woman and had served two terms wanted to run for a first-past-the-post seat rather than on a party list. Her own party told her it would not run her for that seat despite her years of experience. When such issues arise, there is nowhere for women to go outside their party structures to dispute how candidates are chosen to run in different races.

In addition, when the ECN communicates with political parties, election officials most often deal with party leaders. The ECN sometimes provides information to party leaders to share with candidates rather than delivering the information directly. But one interviewee mentioned a woman candidate who missed a financial information filing deadline with the ECN. The leaders of her party had intentionally withheld the information so she would miss the deadline and be deemed ineligible. Because party leaders control nominations and information, it is easy for them to control who represents the party.

While there aren't necessarily legal barriers that keep women from filing electoral complaints, there is pressure – from parties, male family members, and others – for women not to file.

One reason that women in Nepal choose not to file grievances is because doing so would draw the attention of party leaders, their opponents, and the media. Media coverage of prominent women focuses on their appearance, asks what their male relatives think, and calls their morality into question. Women may not want the additional media attention that comes with pursuing an electoral complaint. This is a culture that blames women for reporting rather than blaming those who commit electoral violations.¹⁶¹

One interlocuter gave an example of a woman who was competing for a ward chair position in a close election. She believed there was an error in the result tabulation but missed the deadline to challenge the results before the relevant court. She had asked how to challenge the elections results, but many people told her she should accept the results and move on. One interviewee commented that, even when women file cases, they face pressure not to substantiate their claims in their testimony. Women with disabilities have an even more challenging time filing claims; not only is it more difficult for them to gain access to electoral justice processes, but they are even more susceptible to pressure as they may need support from family members to file complaints.

Parties also may pressure women not to file complaints because of potential negative attention on the party and the need to invest time in an issue that the party does not think is important. Without support from families or parties – and with increased media attention – women are deterred from filing electoral complaints.

Women have fewer resources (especially time and money) to pursue electoral complaints.

¹⁵⁹ For an extensive discussion on the gendered aspects of political finance in Nepal, see: [The Cost of Representation: A Study of Women's Representation and Political Finance in Nepal](#). (2020, January 27). IFES – The International Foundation for Electoral Systems.

¹⁶⁰ A recent study confirmed this phenomenon: “Proportional representation has enhanced parliamentary diversity, but members who have been elected as a result of proportional representation (including most female members) are often looked down on, while members who have been directly elected tend to control parliamentary resources.” See: Subden, E. [Women and Gender Norms in Nepal's Parliament](#). (2021, July 12). Align.

¹⁶¹ Online Khabar. (2022, April 1). [Social media are full of misogynistic content against women in politics in Nepal: Report](#); THT Online. (2023, March 10). The Himalayan Times; Dahal, Joshi, and Swahnberg. (2022). National Institutes of Health.

Traditional gender roles, dictating that women remain at home to carry out domestic responsibilities and men serve as breadwinners, mean they have fewer resources (time and money) to pursue electoral complaints. Men still control family resources, and, in some areas, do not want their female relatives to leaving home at all. And they are the primary decision-makers in families, even on electoral matters. One interviewee commented that party leaders will ask a woman's husband if he supports her candidacy and will help her raise money and fund her campaign rather than addressing the candidate herself. An interviewee noted that such restrictive gender roles are related to a Hindu culture that puts women second and encourages patriarchal thinking. However, patriarchy transcends religion and is a much broader issue in Nepal and beyond.

Many interviewees noted that cases take a long time to resolve. One interviewee spoke of a disputed election result that was not resolved before the next election for the seat in question. Respondents cited lack of political will, resources, and capacity for the ECN or the courts to settle electoral disputes in a timely manner. In addition to women's lack of control over finances and lack of time due to domestic and other responsibilities, there is a barrier for those who speak languages other than Nepali. The lack of resources is even more acute for women with disabilities, whose movement is further restricted by their disabilities and by family members who might be overprotective or seek to conceal their disability status. In addition, literacy in Nepal is low especially among older populations.

Justice system actors are not sufficiently prepared to handle cases related to violence against women in elections.

Women may not feel comfortable reporting gender-based violence or harassment to police officers, most of whom are men. In addition, those tasked with handling and receiving complaints related to gender-based violence often have not received sufficient training on how to handle these cases sensitively. Lack of sensitivity creates an additional barrier for women interested in pursuing cases related to electoral violence. While there have been a number of efforts to increase gender-sensitive police practices in Nepal, including training police to handle gender-based violence and establishing Women, Children and Senior Citizen Service Centers,¹⁶² interviews conducted for this assessment indicate that additional work is needed.

"Judges should take concrete steps to break barriers that women are still facing in accessing justice and should play key roles to ensure that courts are more gender-responsive and women are able to access justice equally and without discrimination." – ICJ

Cases of violence against women, including election-related violence, are usually handled by the courts rather than the ECN in spaces that may be intimidating for women because most judicial lawyers, judges, and prosecutors are men.¹⁶³ However, several interlocutors noted a positive trend of more women becoming involved in the legal field – women than men attend law school, and women lawyers are more willing to push back on sexist colleagues than in previous years.¹⁶⁴ In addition, more than a decade of

¹⁶² For example, with support from the Asian Development Bank, the police established a network of service centers in 20 districts across the country for women and children to help women feel more comfortable reporting gender-based violence. See: Asian Development Bank. (2019, March 18). [Police and Community Partnership in Nepal Tackling Violence Against Women](#). In the fall of 2021, 210 police officials working in Kathmandu, Lalitpur, and Bhaktapur District participated in a three-day workshop on gender-responsive investigation and communication skills in cases of gender-based violence. See: Forum on Women, Law, and Development. (2022, January 11). [Training on Gender Responsive Service and Communication Skill to Nepal Police in the Cases of GBV](#).

¹⁶³ Koirala, D., and Mahaseth, H. (2020, January 18). [Why Does Nepal Still Have So Few Women Lawyers?](#) The Diplomat; Mellows, S. (2017, October 1). [Scaling mountains of prejudice in Nepal](#). LSJ Online.

¹⁶⁴ In addition, the National Judicial Academy published its Gender Equality and Social Inclusion Strategy for the Judiciary, which covers the period from 2021 to 2026. See: National Judicial Academy, Nepal. (n.d.). [Gender Inclusion and Social Inclusion \(GESI\) Strategy for the Judiciary](#).

investment by UN Women and other entities, in partnership with the National Judicial Academy, have led to significant and ongoing efforts to increase women's access to justice. For example, a 2022 judicial dialogue sponsored by the International Commission of Jurists (ICJ) focused on the elimination of discrimination against women and enhancing women's access to justice.¹⁶⁵ Notwithstanding this progress, one interviewee called the judicial system "hostile" to women, citing instances where people in the court system have made fun of women survivors of violence. Another respondent noted that court officials often ask women insensitive questions. Multiple interviewees stated that women do not want to file these types of cases for fear of being "re-traumatized" throughout the judicial process.

Gender disaggregated data is not collected on filed and adjudicated complaints.

While gender disaggregated data on voter registration, candidate nomination, and voter turnout are collected, gender disaggregated data on the gender of the complainants and respondents are not. These data could be used to determine how many cases women file compared to men, if women file different types of complaints, and if women's cases are resolved at higher or lower rates. It is also important to collect data on women as respondents to analyze the types of cases filed against them, the types of remedies and sanctions imposed, whether the women respondents were present at a hearing (if there was one), and whether the party provided adequate defense. In the 2022 elections, the ECN collected data on pre-election disputes and shared with IFES that, in a total of 164 pre-election cases related to hate speech, candidate eligibility, abuse of office, campaign-related violations, and other issues, only nine (5.48 percent) were filed against women candidates. The ECN developed an electronic CMS in 2019. It could capture these data, but it has not yet been used as a live tracking and recording mechanism.

Opportunities

During elections, citizens can file complaints with the ECN at the polling station level on Election Day, at the constituency level with returning officers, with floating monitoring teams, or at ECN headquarters.

Citizens can file complaints at any level of electoral body, even down to the polling station level with the head of the polling station on Election Day. ECN headquarters officials noted that poll workers, returning officers, provincial and district officers, and other ECN staff are empowered to resolve electoral complaints at the local level. However, some local election officials apparently do not feel empowered to make these decisions. A more localized approach to electoral justice is a positive step for access to justice, including for women, who might have less time and mobility and fewer resources to pursue electoral complaints. If violations can be adjudicated and resolved at the local level in a timely, transparent manner, access to electoral justice will certainly improve. But there is little reporting on cases handled at the decentralized level that would support understanding of the efficiency of the dispute resolution process on Election Day or during the campaign period. Moreover, the EDR training curriculum for officials is limited and does not include modules on disputes that affect or involve women. However, IFES's support to ECN on the design of EDR training modules included scenarios featuring disputes affecting women voters or candidates.

There is no fee for filing complaints with the ECN, and legal representation is not necessary to bring a case before the ECN.

In Nepal, there is no filing fee for filing disputes with the ECN, and citizens do not need legal representation to do so. These stipulations reduce the resources required for complainants to pursue electoral violations. To file complaints, citizens can fill out paper forms, including copies that they can find (but not submit) online. Citizens with low or no

¹⁶⁵ International Commission of Jurists. (2022, October 6). [Nepal: ICJ hosts a national judicial dialogue to promote women's access to justice with trial court judges.](#)

literacy can also meet with an election official who can help file a complaint. While progress is still needed in the resolution of complaints, a less resource-intensive process improves access to electoral justice. In practice, legal representation is not required during the adjudication of pre-election disputes; generally, the candidate-applicant or objectors represent themselves, limiting litigation costs.

Enforcement of the Election Code of Conduct is lax.

Nepal has an Election Code of Conduct, which it generally revises before each election. Chapter 4 of the Election Commission Act authorizes the ECN to adopt the code. The ECN Election Code of Conduct includes a clause that prohibits attacks on the characters of women as part of electoral campaigns: “No election campaign shall be carried out or cause to be carried out by undermining the feelings or character of women.”¹⁶⁶ While the media has reported clear violations of the code against women candidates, grievances related to violations of the Code of Conduct are unknown. Some cases may have been filed or raised at the local level, to a returning officer or presiding officer; however, absent comprehensive data on electoral disputes, it is impossible to know whether any complaints have been filed under the Code of Conduct. Women candidates may not be familiar with the code (or know it exists) and how to bring forward violations. There is a need for political parties to train their candidates and supporters on the code of conduct.

Candidates must provide self-declarations that they commit to complying fully with the Election Code of Conduct. The ECN may fine a candidate 200,000 rupees (about \$1,500) or cancel a candidacy for violating the code, but did not do so during the May 2022 local elections. The Code of Conduct presents an opportunity to limit character assassination against women candidates based on an official policy. However, lack of knowledge and lax enforcement mean that the code is not effective in governing the conduct of electoral processes.

In the 2022 local and general elections, the ECN began to track and address disputes. It issued warnings or fined candidates for failure to report their campaign expenses in the local elections; it also initiated actions against violators of the code in the general elections.¹⁶⁷ The ECN recorded 175 disputes related to violations in the general elections, and approximately 130 cases were adjudicated. The consequences included warnings, fines, and referrals for prosecution. These actions by the ECN are welcome, if still insufficient. Moreover, clear guidelines to ensure consistency in the adjudication of complaints is needed to avoid perceptions of bias. Trainings on EDR for all election officials could ensure enforcement of the code of conduct and a more impartial adjudication of disputes.

A strong culture of mediation in Nepal should be encouraged for pre-election disputes – but may not be appropriate for all political or electoral disputes.

In 2011, Nepal adopted the Mediation Act, which details what cases can be resolved through mediation and how the process should be conducted. The act encourages women’s representation as mediators, and the Asia Foundation has been involved in long-running efforts to increase the role of women and other traditionally marginalized people

¹⁶⁶ Election Commission of Nepal. (2016).

¹⁶⁷ MyRepublica. (2022, September 17). [EC demands mayors of various metropolises pay Rs 700,000 each in fine for not submitting election expense details on time](#). In total, 123,624 candidates were fined for failing to submit election expenses. Sex-disaggregated data is not available.

as community mediators. However, the process is still dominated by men. Several interviewees noted that one goal of mediation is to “keep families together,” which is not always best for women involved in conflicts.¹⁶⁸

While Nepal has a strong culture of mediation, the ECN does not use it formally to handle electoral disputes. One interviewee observed that egos are involved in politics and that, for electoral issues, a punishment often needs to be assessed. However, this is not part of mediation processes in Nepal. IFES's research on ADR in practice found that monitoring committees, returning officers, and presiding officers use informal modes of resolution to resolve disputes related to campaigns, for instance. These cases are not necessarily reported, as they are settled before a formal dispute can be filed. The absence of reporting in such cases contributes to broader data gaps on the formal or informal resolution of electoral disputes. While the EDR directive on dispute resolution does not explicitly provide for these mechanisms, they present an opportunity to ensure a quick and decentralized way to hear disputes related to women, and to include women in community-level mediation. But mediation is not appropriate for all types of disputes. For example, formal adjudication proceedings that guarantee the right of defense is crucial for issues such as candidate eligibility to stand for election or election results petitions, with an appeal to a court of law.¹⁶⁹

In addition to the Mediation Act, judicial committees in each municipality are headed by a deputy mayor or vice chairperson. Because an overwhelming majority (78 percent) of current deputy mayors and vice chairpersons are women, there is an opportunity to empower them to ensure that the committees operate in a gender-sensitive way. However, many respondents noted that the judicial committees – established by the 2015 Constitution – did not receive proper training or support to fulfill their roles. Still, interviewees agreed that the committees can be a useful structure, with the right support, even though they do not handle electoral cases.

Recommendations

All forms required to file an electoral complaint should require information about the “gender of the complainant and respondent. The ECN's electronic CMS should also collect this information.

Collecting information about the gender of complainants and respondents would provide the ECN with gender disaggregated data on this metric that it could analyze to understand how many women and men filed complaints and the nature of the complaints. The requested details should include these options: “woman,” “man,” and “not listed,” along with a blank space to add information. The electronic CMS should be revised post-election to capture this data for inclusion in reports and to draw lessons learned.

Enhance voter education to focus on what is in the law, what types of disputes may arise, and how citizens can file electoral complaints and appeals before the ECN or the courts.

Women – especially those who live in more rural areas, are from linguistic minorities, or have low or no literacy – do not have access to information on their rights and how to file disputes; what evidence they should collect; or what to expect from a returning officer, the ECN at all levels, or the courts. Voter education on these topics targeted to women

¹⁶⁸ Thapa, P., and Wagley, N. (2019, February 13). [Community Mediation in Nepal: “A Hospital That Stitches Broken Hearts”](#). The Asia Foundation.

¹⁶⁹ The ICJ noted in a recent publication on laws addressing online gender-based violence (OGBV) against women: “Criminalized forms of OGBV should not, mandatorily, or otherwise, be referred to alternative dispute resolution procedures, such as mediation or conciliation. Alternative dispute resolution procedures should not constitute an obstacle to women's access to formal justice.” See: International Commission of Jurists. (2023, May 19). [ICJ publishes guidance for laws to prevent and address online gender-based violence against women](#). This principle extends to all forms of gender-based violence, including incidents that take place in the electoral context.

would be a step forward. One way to make such education easily accessible to women would be through a door-to-door voter campaign. Although the 2022 initiative to design posters on filing complaints was a positive step, this outreach was not sufficient. The ECN could partner with a women's organization and train women throughout Nepal on relevant election information. The women could take the information to their communities via door-to-door campaigns to share voter information. Because men often answer the door at home but may not share information with women members of the household, voter educators should be trained to ask that all eligible voters be present to receive voter information. In addition, voter education should be conducted at times when women are likely to be at home or should be conducted in places that they often frequent, such as markets.

Many of the findings from this case study point to cultural barriers for women trying to access electoral justice and seeking fair resolution to electoral disputes. It is challenging to shift pervasive cultural norms. For this reason, it is important for educators and activists to advocate for school curricula, awareness-raising programs, and voter and broader civic education to address some of the cultural barriers that keep women from reporting violations or deprive them of resources to do so.

Ensure that ECN gender focal points in each district office are trained to respond sensitively to electoral complaints that women bring forward.

A decentralized structure within the ECN ensures that election officials are present and available to voters closer to their communities. However, the gender focal points in district offices have little training and support. They should receive relevant training to enable them to support women voters, candidates, and activists to file electoral complaints, especially on sensitive topics. These may include violence or harassment against women during the electoral process or because of their roles in the elections.

Provide better training and capacity building for ECN officials on resolving electoral complaints.

According to ECN headquarters staff, ECN officials at polling stations, provincial offices, and district offices are empowered to resolve complaints. However, those who work outside of headquarters are not well trained to do so and often forward the complaints to the headquarters office. This additional work can overwhelm ECN staff at the federal level. For ECN staff at the local level to resolve disputes, they need appropriate capacity building to enable them to do so in a fair and legal way. The trainings should include a significant gender component that prepares officials to handle electoral violations that affect women and to understand how gender norms and cultural considerations may affect the ways women report and talk about violations that affected them.

Enhance the ECN's role in monitoring violations of the Electoral Code of Conduct and take appropriate actions to protect women voters and candidates.

While the Electoral Code of Conduct is a positive step, no violations of the clause barring hate speech against women were reported during the 2022 elections. Because women may be reticent to bring forward formal charges against their own parties or political opponents for fear of backlash, the ECN could be empowered to monitor and address violations of the Code of Conduct more proactively. For example, ECN staff could monitor candidates' and parties' social media for hate speech against women candidates (or minority groups); they could also monitor the media for reports of this type of violation. Sufficient financial resources should be allocated to the ECN for these monitoring and enforcement effort.

Judges, prosecutors, and other judicial actors should receive training to handle sensitive cases appropriately, such as those related to violence against women in elections.

Reporting instances of gender-based violence to police or judicial forces can re-traumatize survivors due to stigma around the issue. To handle sensitive cases of political violence against women safely and effectively, those involved in the criminal justice system must receive training on how to work with survivors and what is needed to bring these cases to justice. This training could be provided through the National Judicial Academy supported by ICJ and UN Women. A tailored module could enhance efforts to make the judiciary more gender-sensitive, with specific emphasis on addressing violence against women in elections.

Political parties should develop a formal, appealable internal dispute resolution mechanism that is institutionalized in their party statutes. Parties should train candidates, members, and supporters to file complaints through this mechanism.

Political parties should have formal, standard, and publicized processes for resolving internal party disputes and should train staff and members to use them through, for example, mediation, conciliation, or adjudication. The outcomes of these internal dispute resolution processes should be applicable to an internal process, within the party or to the ECN EDR unit, to mediate intra- and inter-party disputes. The ECN could collaborate with political parties, including the intraparty women's alliance and the Dalit women's alliance, as well as civil society organizations, to develop a set of common standards for resolving internal party disputes. Political parties could use the standards to guide the development of the internal dispute resolution and mediation process. If a resolution cannot be reached internally, or if one party seeks to appeal a decision, court-led mediation could be worth exploring.

Political parties should conduct gender sensitivity trainings and briefings for their candidates, supporters, and party leadership.

Political parties can utilize their committee structures (committees for women, youth, and leadership) and other mechanisms to ensure that members and leaders are aware of the gender-specific elements of the Election Law; receive information on EDR processes for all candidates, including internal dispute resolution mechanisms; and receive training on protecting and respecting the rights of all members and candidates.

The Government of Nepal should adopt regulatory and policy reforms to enhance women's access to electoral justice.

Post-election, the ECN and government should seize opportunities to propose amendments or adopt policies to enhance the rights of women to access justice during elections. For example, they could establish legal aid clinics or provide free counsel for women victims of election violence. In addition, the courts could consider lowering filing fees for women seeking electoral justice.

Civil society should establish legal clinics or initiatives to increase resources available to women seeking access to electoral justice.

Civil society and women's rights organizations should partner with legal organizations to advance an initiative for women's access to electoral justice. Activities could include establishing legal clinics to monitor electoral justice cases, track incidents of hate speech and other violations of the Code of Conduct, and provide pro bono counsel for women litigants. A concerted legal strategy could identify and advance public interest litigation cases to develop jurisprudence on issues of inclusion pursuant to the Constitution and advance enforcement of the Election Law.

Epilogue

On November 20, 2022, Nepal held elections for seats in the House of Representatives and provincial assemblies for the second time since the new Constitution came into effect in 2015. Members of the House of Representatives are elected through first-past-the-post (165 seats) and proportional representation (110 seats). The 2,412 candidates for the first-past-the-post seats included 225 women (9.3 percent); the 2,199 candidates for the proportional representation seats included 1,186 women (53.9 percent).¹⁷⁰ The higher proportion of women in the proportional representation seats is due to the fact that parties use those seats to fulfill the gender quota – the constitutional requirement that women comprise at least 50 percent of candidates in the closed lists. Because the first-past-the-post elections are seen as more competitive, parties are less likely to nominate women for those seats. The recent draft integrated law proposes an enhanced quota for women in the House of Representatives, provincial, and local elections, with political parties required to nominate 33 percent women for first-past-the-post elections.

The seven provincial assemblies (one for each province) have a similarly mixed electoral system with 60 percent of seats elected through first-past-the-post and 40 percent through a closed-list proportional representation system. Of 3,224 candidates, 280 women and one person who identified as gender non-binary (8.7 percent) ran for the first-past-the-post seats and, of 3,708 total candidates, 2,196 women (59.2 percent) ran on party lists. While the proportion of women candidates for the 2022 House of Representatives and provincial assemblies was slightly higher than in the 2017 elections, the number of women candidates for the first-past-the-post seats fell far below the ECN's recommended one-third of all candidates.¹⁷¹ With no enforcement mechanism for the one-third proportion, parties did not feel compelled to comply. In fact, according to IFES' analysis, 61 constituencies ran no women candidates for the first-past-the-post seats for either body. Among all candidates for House of Representative and Provincial Assembly seats, IFES' analysis showed that women won nine first-past-the-post seats (compared with six in 2017) and 76 proportional representation seats. The wins for women totaled 30.9 percent of all seats, lower than the 33 percent mandated by the constitution.

As of December 7, 2022, 175 complaints were filed regarding violations of the Election Code of Conduct and candidacy eligibility, with 20 resolved. Because Nepal does not disaggregate its electoral dispute data by sex, there is no information on how many of the complaints were filed by women. Eleven were filed against women candidates. Types of disputes included vote solicitation or buying, door-to-door campaigning with more people than designated by law (25), biased media broadcasting in favor of or against particular candidates or parties, and the involvement of government employees and teachers in political campaigning.

¹⁷⁰ [Elections in Nepal: 2022 Federal and Provincial Elections](#). (2022). IFES – the International Foundation for Electoral Systems.

¹⁷¹ *Ibid.*; Online Khabar. (2022, September 18). [Election Commission: Parties have to field women for at least 33% of the FPTP candidates](#).

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