IFES Rule of Law Conference Paper Series

The Resolution of Disputes Related to "Election Results":

A Snapshot of Court Practice in Selected Countries Around the World

Prepared for the Indonesian Constitutional Court Workshop on "The Role of the Constitutional Court in Resolving Election Result Disputes Through a Transparent Adjudication Process", Indonesia, February 2004

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Contributors

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This is an IFES publication produced with generous support from USAID.

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THE RESOLUTION OF DISPUTES RELATED TO "ELECTION RESULTS": A SNAPSHOT OF COURT PRACTICE IN SELECTED COUNTRIES AROUND THE WORLD

1. Introduction and Scope of the Paper

One of the main characteristics of a functioning democracy is the peaceful, periodic transition in office through free and fair elections, which are perceived as legitimate by the public. The consolidation of democracy requires a functioning election process, which, in turn, depends upon an adequate institutional Rule of Law framework, transparent regulations, court rules and procedures and, perhaps more importantly, fully trained, competent judges and personnel with integrity. A proper election requires full attention to be given to the five core aspects of the process: (i) preparatory activities; (ii) campaigning and information dissemination; (iii) voting; (iv) counting and (v) dispute resolution.

Dispute resolution is the climax of the election process. The legitimacy of the election process depends in part on the objectivity and impartiality of dispute resolution mechanisms. This objectivity and impartiality is key to building public confidence in democratic institutions and in the election process. It is only when citizens view the election process as legitimate and sound that they will participate in it. One of the on-going challenges for emerging and established democracies, such as Indonesia, Mexico and United States, is to master the election process and ensure that any dispute challenging "election results" is resolved in a timely, fair and effective manner.

The purpose of this paper is to provide the new Indonesian Constitutional Court with guidance for the resolution of disputes related to election results, by providing baseline information to fuel the debates in a workshop organized by IFES for the Indonesian Constitutional Court judges and staff on issues of election result disputes and court administration. We were specifically tasked with a survey of existing case law on how courts in Asia and globally have resolved disputes related to "election results."

For purposes of this analysis, we have defined the term "election results" quite narrowly, placing primary emphasis on cases that relate to technical vote counting issues rather than those involving broader fraud or access issues. However, we should note at the outset that the notion of "election result" has an extremely flexible definition and that we have observed significant variations around the world. Moreover, litigation related to "election results" is often closely related to other election issues that seemingly do not relate to the numerical results of elections yet are intrinsically linked to them, such as irregularities in the registration process, fraud, or the lack of access during the voting and counting phases.

This paper is intended to provide a snapshot of the various ways high-level courts have resolved disputes related to "election results" in different regions of the world. A cursory survey of the existing research and case law did not provide us with significant guidance as to the specific means or procedures utilized by the courts to resolve disputes related to technical vote-counting claims. Two likely reasons for this are (i) that most of these kinds of claims are resolved at either the election tribunal or lower court level, and (ii) that most cases, whether from lower or higher courts, are not published or accessible. Our research survey, however, did provide some guidance as to the kinds of "election result" cases that have been decided by Constitutional Courts and Supreme Courts in selected countries around the world.

In general, it should be noted that there is a paucity of readily accessible judicial and scholarly research on technical issues related to "election results", especially if research covering allegations of electoral fraud or access claims is excluded. However, considerably more research is available on other kinds of disputes affecting the democratic process and elections, as well as on those related to political parties. The research undertaken

* Edited by Keith Henderson, IFES Senior Rule of Law Advisor. This paper was made possible thanks to the invaluable research and writing contributions of Adrian Kocerha. The author also wishes to thank Jeff Fischer and Tom Bayer at IFES for their commentaries on earlier versions of this paper.

for this assignment clearly needs to be supplemented in order to have a full picture of exactly what kinds of issues have arisen and how they were resolved at both the lower court and election tribunal levels. Much of this would necessarily require interviews and in-country research at the local level.

Our research was primarily focused on identifying decisions rendered by Constitutional Courts and Supreme Courts in response to challenges of election results in the past five to ten years. The identification process proved difficult, but we were able to gather significant secondary reports of such cases. Media and news reports were an invaluable source of information that enabled us to identify potentially relevant court cases. One important obstacle to comprehensive case law research is that even when the highest courts publish their decisions on disputes related to election results, these decisions are often available only in the local language and/or by request in hard copy.

Another component of our research methodology was the identification of academic and applied research articles on the topic of election dispute resolution. A cursory review of available literature did not yield the results we had anticipated. We then interviewed election law experts at IFES and contacted many election dispute resolution specialists around the world. While these interviews and exchanges of information did not always provide us with pertinent materials, they did provide significant guidance as to what kind of information on this specific topic might be available and where. Most of these experts and specialists broadly interpreted the term "election result" disputes, and this interpretation was likewise affirmed through our case law research.

During the course of our current research and interviews with election law experts, a number of important questions and issues have arisen that need to be more closely examined and debated, such as the impact of irregularities in the registration process, widespread fraud, and lack of access on election results; how to properly identify invalid ballots; and whether the proper court rules, procedures and regulations are in place to resolve disputes within a specified, transparent timeframe.

For the reasons noted above, this paper will focus primarily on a narrow interpretation of the notion of "election result" dispute (section 3), as derived from the guidance we have received relative to the laws that concern the concurrent jurisdiction of the Indonesian Constitutional Court and the Supreme Court (section 2) over election disputes. Having outlined the general boundaries of rapid response mechanisms for election dispute resolution (section 4), the paper will then attempt to provide an analytical overview of selected case law from countries around the world, with a focus on developing and transition countries (section 5).

2. Jurisdiction of the Indonesian Constitutional Court

Based on a summary review and analysis of the laws regulating legislative general elections and presidential general elections in Indonesia, it appears that several dispute resolution entities have concurrent and potentially overlapping jurisdiction when it comes to disputes arising from the election process.[1]

There are three bodies entrusted with responsibilities in the settlement of disputes arising from the election process:

(i) The Election Supervisory Committees;
(ii) The courts of general jurisdiction, i.e., District Courts and Supreme Court; and
(iii) The Constitutional Court.

1 Information and analyses in this section are primarily drawn from Indonesian Law no. 23 of 2003 on the General Election of the President and Vice President (July 2003) articles 68 and 77 through 85, and Indonesian Law no. 12 of 2003 on General Elections for the Members of the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council (March 2003) articles 104 and 127 through 134. Both laws are available in English on the IFES website at http://www.ifes.org/reg_activities/indonesia_political_laws.html

In both legislative general elections and presidential elections, the Election Supervisory Committees have the primary responsibility for resolving disputes related to the conduct of the election, provided the allegations do not pertain to violations of a criminal nature. The complaint must be brought before the territorially competent Committee within seven days of the violation. Once the decision to process is made and if an attempt at conciliation fails, the Committee renders a final and binding decision within fourteen days.

Similarly, under both laws, the courts of general jurisdiction are responsible for the adjudication of electoral criminal violations occurring during the election process. For offenses punishable by no more than an 18-month imprisonment, the District Courts have final jurisdiction. For all other offenses, an appeal to the relevant High Court is possible and shall be final and binding. Therefore, appeals to the Supreme Court are not possible for criminal sentences of less than 18 months, as a way to prevent an electoral criminal offense case from taking months or even years before a decision is rendered. District Courts have 21 days to render their decisions, while the High Courts have 14 days.

Finally, while the Constitutional Court has exclusive jurisdiction over disputes related to "election results", and the law on presidential general elections explicitly defines the scope of the Constitutional Court's jurisdiction, limiting it to objections against "vote count results", it should be noted that the law on legislative general elections is silent on the meaning of "election results". Similarly, the law on presidential general elections gives 14 days to the Constitutional Court to resolve disputes, but the law on legislative general elections does not provide any specific timeframe.

As described above, the Constitutional Court's jurisdiction is not as restrictively defined in the context of parliamentary, provincial and municipal elections as it is in the context of presidential general elections. While this situation arguably may give the Constitutional Court some flexibility in interpreting the notion of "election results", some caution is necessary in order to avoid potential conflicts in the case law arising from election disputes. It also opens the door to undue delays or public confusion.

Indeed, discrepancies between the two laws may lead to potential overlapping or even conflicting decisions from several dispute resolution bodies. In any case, the lack of definition of the notion of "election results" in the legislative general election law may pose serious jurisdictional issues for the Court in the future. At the same time, it also may mean that the Constitutional Court, as a guarantor of fundamental democratic principles and civil liberties under the Indonesian Constitution, may want to be prepared to confront this jurisdictional and timing issue for purposes of future decision-making. This could be done through an amendment to the current law, a regulation or perhaps through a future court decision.

3. Notion of "Election Result" Disputes and their Resolution

a. Narrow and Broad Interpretations

Based on our preliminary research and on discussions with jurists and election specialists from a variety of countries, the notion of "election result" disputes appears to cover a wide array of cases and complaints, but broad and narrow interpretations of the scope of these disputes vary greatly depending on the country, the court or even over time. While "election result" disputes could be broadly understood to cover all claims brought to court following an election provided that these claims call into question the validity of the outcome of the election, the starting point for this paper is a narrower interpretation of the notion. Based upon informal guidance from Indonesian jurists, we have interpreted "election result" disputes to cover challenges related to the count of ballots following the vote. However, we would encourage a more scholarly analysis of this issue by a wider range of Indonesian jurists before any definitive interpretation of this term is made.

As a general matter, it is possible to highlight two diverging approaches to the notion of "election result". The first is a process-oriented approach and the second an outcome-oriented approach. Process-oriented approaches of "election result" disputes do not dissociate ballot counting from broader fraud and access issues. Outcome-oriented approaches build looser ties between disputes over ballot counting and more general challenges to the election process based on fraud or access.

This distinction does not mean, however, that ballot counting is a stand-alone issue. Rather, there might be three categories of claims related to ballot counting:

(i) Claims exclusively targeting the mathematical count of ballots;
(ii) Claims which inherently raise issues of fraud in the counting process; and
(iii) Claims which inherently raise access issues.

The 1996 Armenian presidential election provides a good example of the linkages between counting, fraud and access. Indeed, complaints calling for the nullification of the election relied on inconsistencies in the final numerical results provided by precincts, noting that the universal, equal, direct suffrage and secret voting had been violated during the vote, and that there were fraudulent inconsistencies in the counting of ballots, both of which had had a direct effect on the election results.

There is, however, an important caveat to this narrow interpretation of the scope of "election result" disputes. Indeed, it appears from our research that claims related to vote counting often constitute only one aspect of broader fraud or access claims. Indeed, most of the cases surveyed covered a wide range of often overlapping issues, and, while the core claim was not vote counting as such, the sought outcome of the challenge was always a modification or an annulment of the final count.

b. Elements of "Election Result" Disputes

Based on our cursory survey of existing literature and case law from Constitutional Courts and Supreme Courts, the notion of "election result" disputes appears to cover a wide range of issues which are often inextricably linked in the challenges brought to court and fall under two broad categories: fraud and access. The specific issue of ballot counting falls under fraud or access challenges depending on the case. The following table may provide some guidance concerning the types of claims identified under each category.

Challenges of Election Results	
Challenges Related to Fraud	**Challenges Related to Access**
Fraud affecting the report of election results	Obstacles related to polling stations
Fraud directly linked to voting	Obstacles related to voting materials
Bribery	Party representation during vote and count
	Announcement of the results

c. Systems of Dispute Resolution

A cursory review of the literature analyzing jurisdictional mechanisms to resolve disputes in connection with electoral processes enables us to identify four main systems of dispute resolution, depending on which court has the primary responsibility to adjudicate cases challenging election results. First, some countries have entrusted the resolution of electoral conflicts to Constitutional Courts or bodies of constitutional justice. Second, in other countries, the judiciary is responsible for the resolution of these conflicts with the possibility of appeal all the way to the Supreme Court. Third, some countries have chosen to create special electoral tribunals to

adjudicate cases arising of elections, as an element of their democratic transition. Fourth, some countries have mixed systems of dispute resolution. Mixed systems are characterized by a significant role given to the political branches of government, such as Parliament, in the resolution of disputes, but the responsibility is shared with either the ordinary courts or administrative entities.

Dispute Resolution System	Countries
Constitutional Court	Most European countries, Cambodia
Supreme Court	England, Canada, South Korea, India, the Philippines
Electoral Tribunal	Most Latin American countries
Mixed System	United States; some countries in Latin America and Europe such as Argentina, Italy and Hungary

Regardless of the specificities of the institutional system established to resolve disputes related to election results, there is a global consensus that these systems are fundamental to the legitimacy and integrity of the election process. The key to legitimacy and integrity is to ensure the independence and impartiality of dispute resolution bodies. This is the approach that was taken by the international community when setting up *ad hoc* dispute resolution bodies in post-conflict countries such as Bosnia-Herzegovina or East Timor.

The independence and impartiality of dispute resolution bodies can be guaranteed best by providing them with sufficient administrative and budgetary resources and by ensuring that they are staffed with competent and impartial judges. The transparency of dispute resolution procedures will also help strengthen the independence of and public trust in these bodies, and it will promote a Rule of Law culture. Building public trust in dispute resolution bodies and in transparent adjudication procedures is a fundamental first step in consolidating democracy and the legitimacy of the election process.

Our research focused primarily on decisions rendered by Constitutional Courts or Supreme Courts around the world. Based on the cases surveyed, it is clear that many of the purely technical cases related to vote counting most likely never reach the highest levels of the judiciary; rather, these cases are dealt with directly at the local or regional level by election commissions or district courts. It is also clear that in a number of countries, the Constitutional Court or Supreme Court does not have original jurisdiction over election result disputes. Indeed, in Cambodia, cases are heard by the Constitutional Court only upon appeal against decisions rendered by the National Election Commission. Similarly, in the United States, the US Supreme Court hears cases only upon appeal against decisions from the highest State jurisdictions.

In yet other countries, several courts or bodies may have concurrent jurisdiction over disputes arising from the election process. Indeed, in Indonesia, the Supervisory Committee, the Supreme Court and the Constitutional Court all have jurisdiction over some aspects of disputes arising from the election process. These kinds of jurisdictional issues make it all the more important for all courts and resolution bodies to promote uniform case law and the speedy resolution of cases through clear and adequate laws, procedures, rules and regulations, in order to prevent or minimize conflicts between the courts. In the absence of such guidelines, conflicting interpretations and solutions may be given by different courts on similar factual situations, and litigants will have an incentive to go court shopping for the most favorable decision, thereby undermining the legitimacy of the dispute resolution mechanism and of the election itself. These conflicts may also be used to delay final decisions and to cast doubt in the public's eye as to which decision should prevail. Overall, these kinds of jurisdictional disputes may call into question the legitimacy or importance of new democratic institutions such as the Constitutional Court in Indonesia.

The best source of information on the resolution of disputes related to ballot counts might, therefore, be at the election commission or first instance tribunal level. More information on the purely mathematical and

technical issue of the accurate ballot count could be obtained by undertaking research at the level of these bodies. Similarly, working with election officials around the world might provide guidance with regard to the means of resolution of technical ballot counting disputes.

4. Rapid Response to "Election Result" Disputes

a. Speedy, Fair and Legitimate Dispute Resolution Process

There is now a universal consensus that litigants are entitled to a swift resolution of their disputes by an independent and impartial tribunal. The reasonable time for dispute resolution in civil, commercial, administrative and criminal cases is a hotly debated issue which depends, *inter alia*, on the circumstances of the case, its complexity, the conduct of the parties and the conduct of the authorities. The speed of dispute resolution is all the more important when it comes to challenges related to the results of elections as lingering contests and disputes may bring the democratic process to a halt and threaten the stability of government, local or national.

Like any other aspect of the election process, dispute resolution mechanisms and bodies must be fair and perceived as fair by the parties and the public. The credibility of the election process as a whole requires that disputes arising from the election, and especially challenges to the results of the election, be dealt with by non-partisan bodies applying fair rules and procedures.

Another key element of a legitimate and effective dispute resolution process is the adequacy of the administrative and technical resources, whether institutional or human. Detailed procedures for investigation and resolution must be set prior to the election, and those entrusted with the responsibility to resolve these disputes must be adequately trained.

b. Rules, Procedures and Timing for Dispute Resolution

For election disputes to be adequately and effectively resolved, the proper formal court rules, regulations and procedures must be in place. Apart from the attribution of jurisdiction, which should be done through the highest norms of the land, there does not seem to be any preference for setting rules, regulations and procedures by law or through secondary rule-making. It might even be more convenient and efficient to set the mechanisms for resolving "election result" disputes directly through court rules than having to rely on Parliament to adopt laws on the topic.

The adoption of uniform standards, prior to the election, at all levels of the election process will strengthen its legitimacy. It is irrelevant whether these rules are set by law, secondary legislation or internal rules. What matters most is that they predate the election and set clear guidelines and standards for voting, counting and dispute resolution. Uniform rules will provide the necessary stability and predictability to the mechanisms designed to resolve disputes arising from elections, especially those challenging ballot counts or calling for recounts.

Preventing delays in the resolution of disputes challenging "election results" may, however, be strengthened through clear, transparent laws and regulations that underscore the importance of speedy decisions. Disputes related to election results are extremely time-sensitive, and their resolution is therefore an extremely time-intensive exercise.

By way of example, the 1997 Cambodian election law provides for short time periods both for the submission of complaints (72 hours) and appeals (48 hours) and for the resolution of cases (72 hours). However, a cursory

analysis of the Cambodian case law leads us to believe that extremely short decision-making timeframes may sometimes place an excessive or unrealistic constraint upon the Court. In the 1998 parliamentary elections, the Cambodian Court was faced with the challenge of resolving over 800 cases within the legally mandated timeframe noted above. Of course, the timeframe proved to be unrealistic which resulted in the Court summarily dismissing all but about 17 cases. It was noted that the Court did not have the resources, staff or sufficient time to properly adjudicate what might have been legitimate claims.

Time Periods for Claim Submission and Adjudication in Indonesia

The results of a presidential or legislative election must be proclaimed within 30 days of the vote, as mandated under the Indonesian laws governing the conduct of general elections.

Supervisory Committees – Disputes arising of the conduct of the election

- Submission of the claim to the territorially competent Supervisory Committee within 7 days
- Decision to process or not within 7 days (extended to 14 days if additional information is needed by the Supervisory Committee), transmitted to investigators in case of criminal violations
- For non-criminal violations: attempt at conciliation and decision within 14 days

Courts of general jurisdiction – Criminal violations

- Investigation within 30 days; then submission to the prosecution within 7 days
- Transmission to the territorially competent District Court within 14 days
- Decision of the District Court within 21 days
- Decision of the Supreme Court within 14 days (appeal only for offenses punishable by more than 18-month imprisonment)

Litigants must be provided with sufficient time to present their complaints. If the time periods for filing complaints are too short, these complaints will not be properly prepared and the court will need to spend more time examining the evidence and resolving the case that it should have to normally. These situations may lead to significant backlog and delays in the resolution of disputes related to "election results". Similarly, adequate guidelines on the submission and disposition of cases should be made available both to the relevant authorities and judges, stakeholders such as political parties and the general public.

The following table attempts to draw some lessons from disputes that arose from voting and vote counting in Florida during the United States 2000 presidential election. The dispute on which the US Supreme Court ultimately ruled highlights: (i) rapid response mechanisms; and (ii) the dangers of loopholes in the formal legal framework as evidenced by the lack of uniform standards for counting and recounting.

US 2000 Presidential Elections: Overview of Challenges to the "Election Results" in Florida	
Nov. 7, 2000	Vote
Nov. 8, 2000	Bush declared winner by the Florida Board of Elections by a margin of 1,784 votes, which triggers an automatic machine recount. The machine recount confirms Bush's victory but reduces the margin.
Nov. 9, 2000	Gore seeks manual recount in four counties: Palm Beach, Broward, Miami-Dade and Volusia.
Nov 12, 2000	Palm Beach County manual recount begins.
Nov. 19, 2000	Miami-Dade County manual recount begins.
Nov. 21, 2000	Florida Supreme Court sets Nov. 26 deadline for the manual recounts and orders that the results be included in the final election results.
Nov. 22, 2000	Bush appeals to the US Supreme Court.
Nov 23, 2000	Miami-Dade County suspends its manual recount.
Nov. 24, 2000	US Supreme Court agrees to hear Bush's appeal against the Florida Supreme Court decision authorizing the recounts and extending the deadline for vote certification.
Nov. 26, 2000	Election results certified with a 537-vote victory of Bush over Gore.
Nov. 27, 2000	Gore challenges vote counts in Palm Beach, Miami-Dade and Nassau counties.
Dec. 4, 2000	US Supreme Court rules on the appeal against Florida Supreme Court decision of Nov. 21, vacating the order and remanding for clarification the decision on recount deadlines.
Dec. 8, 2000	Florida Supreme Court rules on the appeal of the trial court decision rejecting Gore's Nov. 27 challenge, ordering a statewide manual recount of "under-votes". Bush appeals to the US Supreme Court.
Dec. 9, 2000	US Supreme Court issues a stay to stop the manual recounts.
Dec. 11, 2000	Florida Supreme Court clarifies the recount deadline.
Dec. 12, 2000	US Supreme Court issues 5-4 Bush v. Gore decision, reversing the Florida Supreme Court Decision of Dec. 8 and halting the recounts for lack of remedy.

The resolution of disputes arising from the contested count of ballots in some Florida districts during the American 2002 presidential election provides a good example of rapid response mechanisms used by courts to settle all disputes in the aftermath of an election. Indeed, it took just a month for the US Supreme Court to provide a final resolution to cases which had been initiated in a number of Florida district courts and had made their way up the appeals chain, through the Florida Supreme Court, to the US Supreme Court. In adjudicating the disputes contesting the election results in Florida, the Florida courts and the US Supreme Court applied a comprehensive but separate set of internal and external rules of procedure, which provided them with the legal and procedural framework necessary for speedy case resolution.

A few issues are worth highlighting here as they directly relate to the count and recount processes.

First, the law mandated an automatic recount in some districts given the extremely narrow margin between the two candidates.

Second, the recount further reduced the margin but did not change the result of the election as shown by the November 26, 2000 certification of the results.

Third, a series of contests were brought to court following this certification seeking orders for new manual recounts on the grounds that some ballots had been miscounted as invalid. The Florida courts thereafter ordered a number of manual recounts.

Fourth, the US Supreme Court was asked to halt the recounts, which it ultimately did in its December 12, 2000 decision, putting an end to challenges against the election results.

The decision of the US Supreme Court was motivated primarily by the absence of remedy in this specific case. Indeed, the Court held that since the manual recounts could not be conducted in a constitutional manner in the time remaining before the results of the election had to be officially proclaimed (December 18, 2000), the recounts should not be allowed to continue. In ruling on purely technical grounds, the Court did not decide the underlying claims which argued that the Florida counting and recounting processes violated the due process and equal protection clauses of the American Constitution due to the lack of uniform standards to conduct recounts, especially with regard to "under-votes" which were counted as valid or invalid depending on the district.

5. Analysis of Selected Case Law

Our research was an attempt to survey accessible judgments rendered by Constitutional Courts and Supreme Courts around the world related to "election result" challenges. Surprisingly, we found virtually no academic or applied research articles written on the issue of the resolution of disputes arising of "election results" that would attempt to draw lessons from local and national experiences in a comparative manner. Similarly, we identified very little published case law on the topic. Moreover, the decisions of most of the Constitutional Court and Supreme Court judgments identified were very summary in nature, and did not shed a lot of light on either the grounds for the rulings or the decision-making process of the court.

Our research focused on claims raised before highest courts in different regions around the world. This global survey led us to cases in Armenia, Azerbaijan, Benin, Cambodia, Cameroon, France, Georgia, Mali, Peru, Russia, the United States and Zimbabwe. While many of the cases presented here arose in the aftermath of elections which were questionably free and fair, the same comment cannot be made of the dispute resolution systems highlighted. Indeed, to a large extent, the resolution by these Constitutional Courts and Supreme Courts of the disputes challenging election results appear to have been rendered with a large degree of fairness and competence, leading to many annulments and reformations of the vote.

We tried to focus on a cross section of countries representing all regions of the world and different stages of economic, democratic and electoral development. While we had hoped to identify a wide range of cases across Asia, especially from the Philippines and South Korea, we were unsuccessful in the end for a variety of reasons, including the lack of accessible decisions and language barriers. In a second stage of research, a specific focus could be put on a more in-depth study of Asian approaches to the resolution of disputes related to "election results".

For purposes of our analysis, remarks on the cases identified will be divided into four categories: (i) claims challenging the technical count of ballots; (ii) claims challenging "election results" intrinsically linked to fraud issues; (iii) claims challenging "election results" intrinsically linked to access issues; and (iv) elements of solution provided by the courts.

a. Claims Challenging the Technical Count of Ballots

Based on the Constitutional Court and Supreme Court cases identified and on complementary research, several types of claims challenging the technical count of ballots have been identified, ranging from the deliberate miscounting of ballots to requests for recounts. Issues related to irregular or falsified reports of the electoral results will be discussed under the section on claims challenging "election results" intrinsically linked to fraud

i. Counting Discrepancies

Discrepancies affecting the final count of votes, either at the precinct level or at any other level, may derive from purely technical problems or be triggered by elements of fraud. In Cambodia, results of the 1998 parliamentary

election were contested on the grounds that ballots had been deliberately miscounted, hinting at possible fraud. Similarly, in Cameroon, the Constitutional Council found that several districts had annulled perfectly valid ballots in the count of the 2002 parliamentary election.

A slightly different issue was raised in Mali in the aftermath of the 2002 parliamentary election. The Constitutional Court was presented with claims that the number of registered voters, the number of actual voters in the election and the number of votes could not be reconciled. These challenges to the proper count of votes were often reinforced by allegations that some people had been allowed to vote without the proper identification or had voted multiple times.

A similar claim was raised in the aftermath of the 1996 presidential election in Armenia. Appellants contested the vote count on the grounds that there were significant numerical discrepancies between the number of voters and the available ballots and stubs in a number of precincts. Following an intensive in-depth investigation, the Constitutional Court dismissed the case because it found that the elected candidate would have prevailed regardless of the proven inconsistencies.

ii. Counting Process

One of the underlying election principles is that the validity of the final result of an election depends greatly upon the legitimacy and integrity of the ballot counting process. Equally if not more important is the public's perception of this process. Our research revealed that most challenges to the counting process mainly raised concerns about access of political party representatives (especially opposition representatives) to either voting or counting or both. These challenges will be discussed in a later subsection on claims challenging "election results" intrinsically linked to access.

Multiple complaints against the results of the Cameroonian 2002 parliamentary election were raised based on evidence that counting had been performed after dark without lights in a number of precincts. In this case the Court annulled some of the local elections, based in part on the rationale that the counting process did not sufficiently meet the integrity and legitimacy standards required of a free and fair election.

The Cambodian National Election Commission was seized of an interesting claim challenging the legally mandated counting process that was used in preparing for the 1998 parliamentary election. While the election law provided for counting at the polling station level, the opposition argued that counting should be undertaken at the commune or provincial level in order to diffuse opportunities of violence or intimidation and facilitate independent monitoring. The National Election Commission did not feel that it had the authority to change the location of counting, but this issue was ultimately addressed by the government which amended the law to transfer counting to the commune level.

iii. Recount

Often, losing parties appeal to the courts for a vote recount based upon challenges to the accuracy and integrity of the voting and counting processes. Challenges against the 2002 mayoral election in Nizhny Novgorod (Russia) provide interesting insight into possible claims and counterclaims. While one candidate appealed to a court to suspend the recount of the results in his favor, his opponent appealed to the Regional Election Commission to annul these results. While it is not clear how this recount issue was ultimately resolved, the case illustrates the kinds of jurisdictional issues that can arise between and among courts and/or election tribunals when there is overlapping or an unclear jurisdictional mandate.

Recounts can be ordered upon request to the court or be mandated by law. Indeed, in the United States, as in many other countries, the electoral law provides for automatic recounts if the margin of victory is too narrow.

This legal provision was applied in some districts of the State of Florida in the 2002 presidential election. As in the Russian case mentioned above, the two candidates entered claims and counterclaims to order recounts and to suspend these recounts. The United States Supreme Court eventually halted the recount, reversing a decision of the Florida Supreme Court, on the grounds that the deadlines to proclaim the results of the election would not be met if the recount proceeded.

Similarly, in Cambodia, challenges to the validity of the 1998 parliamentary elections led to an order for recounts of results in some districts. The recount was abruptly halted by the National Election Commission, and the Constitutional Court rejected all appeals without explanation. Opposition parties voiced strong disagreement with the Court's decision and noted that halting the recount called into question the legitimacy of the whole process – especially since the Court did not explain the rationale for its decision..

b. Claims Challenging "Election Results" Intrinsically Linked to Fraud

As previously mentioned, our research reveals that many claims that challenge the validity of election results are intrinsically linked to broader fraud claims. Beyond allegations of widespread bribery, we found specific complaints calling into question the final result based on a number of misconducts affecting reports of election results or even the vote itself.

i. Fraud Affecting the Report of Election Results

Election results are traditionally tabulated by precinct and then integrated regionally and nationally. Miscounting or alterations may occur at any stage of the collection of the results. The proper tabulation of results and the completion of an accurate report are essential to guarantee the validity and integrity of the electoral process.

Cases challenging the results of the Cameroonian and Malian 2002 parliamentary elections highlight the variety of complaints that may arise as to the validity of reports of election results. These cases led to the annulment of the election in a number of districts based on claims that these reports had been falsified, modified without justification or even destroyed at the local or regional level. In both Cameroon and Mali, there was evidence of tampering with the tabulation of results in the final reports of a number of precincts, including scratching, irregular corrections and inconsistencies in the reports transmitted to the regional electoral authorities.

ii. Fraud Directly Linked to the Votes

Many of the cases surveyed also incorporated challenges to the results of the election into broader claims that ballots were marred with irregularities and fraud. For example, in a recent election in the Russian province of Chuvashia, several heads of precincts were seen openly adding votes in favor of the incumbent. Irregularities of this kind directly affect the election results. Similarly, the results of the 1998 French regional elections were affected by claims of fraud as the irregularities were identified on over a thousand ballots cast in the Corsica region.

In Cameroon, the results of the 2002 parliamentary election were annulled in a number of districts as evidence of ballot stuffing and multiple votes came to light. One issue linked to multiple voting is that of the falsification of identification documents and of voters' lists. Such irregularities were sanctioned by the Constitutional Courts of Cameroon and Mali as results of their 2002 parliamentary elections were called into question and annulled.

In Georgia, a general claim that the vote had been falsified led to the annulment of the 2003 parliamentary election by the Supreme Court. This general annulment of the election led to the resignation of the President, Eduard Shevarnadze, and a new presidential election was held in January 2004. A similar claim was made in the 2000 mayoral election in Vladivostok (Russia) but never brought to court; the results of the election were upheld.

Another interesting case of widespread fraud affecting the results of an election arose in the 2000 mayoral election in Vladivostok (Russia) during which party representatives exercised pressure on voters and officials to have voters cast their ballots before election day. While we do not have access to the final resolution of this case, it illustrates the need to have clear, transparent electoral laws and procedures that provide for pre-election voting only under very specific circumstances – such as absentee voting by members of the armed services who may be serving abroad. Otherwise, it is virtually impossible to have independent oversight and certification of the votes cast prior to election day.

iii. Bribery

Allegations of widespread bribery or election fraud were found in most regions surveyed, from Azerbaijan to Peru. However, as evidenced by the 2002 gubernatorial election in Krasnoyarsk (Russia), these allegations did not always lead to successful challenges of the election results even though both candidates were suspected of widespread fraud. After the election was annulled by the Regional Election Commission, the results were later reinstated by the National Election Commission.

Significant annulments were ordered by the Council of State, the highest French administrative court, in the Corsican districts during the 1998 French regional elections. Similarly, the Peruvian National Electoral Tribunals annulled the results of the 1998 municipal election in Vinchos district because of widespread vote buying by one of the political parties which had set up a tent on the access route to the polling stations where representatives distributed food, alcohol and documents to the voters.

In the 2000 parliamentary elections, the Constitutional Court declared that the Election Commission of Thailand (ECT) was the court of ultimate appeal for contests challenging "election results". Prior jurisdiction had been granted to the civil and criminal courts, and the new laws and procedures made it unclear what the extent of the jurisdiction of the ECT was, especially whether the ECT had the power to annul election results or to order recounts.

The Constitutional Court held that the ECT had full jurisdiction over any cases challenging the electoral process and "election results". This gave the ECT the opportunity to tackle widespread fraud and vote buying practices, disqualifying 42% of the provincial winners on the grounds of vote buying or electoral irregularities. It took four subsequent by-elections, over a period of four months, to elect all senators, as the ECT repeatedly annulled the results in some provinces.

c. Claims Challenging "Election Results" Intrinsically Linked to Access

Apart from the numerous fraud claims, the bulk of the cases identified through our cursory review of selected cases are related to the lack of validity of results based on obstacles to free and fair access to the vote. These access claims cover a wide range of issues including obstacles related to polling stations or voting materials, the lack of party representation during the vote and count, and the announcement of the results.

i. Obstacles Related to Polling Stations

Polling stations must be accessible to voters registered to vote in the district, and their hours of operation must respect the schedule set by the electoral laws and procedures. Claims in a number of countries surveyed relied on the late opening, early closing or even cancellation of a number of polling stations. The opening and closing of polling stations on schedule may not appear to be directly related to "election results". It may, however, affect these results indirectly for several reasons.

First, the cancellation of voting in some polling stations will make it impossible for certain voters to have their

votes taken into account which will affect the results as balance between each candidate varies in each polling station, precinct or district.

Second, in cases in which voting is not mandatory by law, voters who present themselves at the polling station to find it closed are not likely to come back later. In both cases, irregularities in the opening and closing of polling stations may enable officials to manipulate the results of the election.

There were a number of complaints related to the opening and closing of polling stations in the Cotonou (Benin) 2002 municipal election, the Cameroonian 2002 parliamentary election and the Malian 2002 parliamentary election. In both Cameroon and Mali the Constitutional Courts annulled the results of the vote in a number of districts based on these allegations and other related claims such as the lack of notice of the schedule of itinerant polling stations in Mali or the establishment of polling stations in private houses.

Discrepancies related to polling stations were also raised in the aftermath of the 2002 presidential election in Zimbabwe as some polling stations were opened for an unplanned third day of voting. In November 2003, the High Court of Justice reserved judgment on complaints to have the results of the election annulled, based on this issue and others.

In an interesting case in the Peruvian 1998 municipal election, the National Election Commission annulled the results of the election in the Vinchos district based on interferences by one political party with the free access of voters to polling stations. This political party had set up a tent on the already-difficulty access road leading to the polling stations, and prospective voters had to go through this tent to reach the polling stations. In the tent, prospective voters were handed food, alcohol and propaganda materials as well as bribes.

ii. Obstacles Related to Voting Materials

The delayed arrival of ballots and other voting materials, as well as their absence or insufficiency, may affect the result of the election by making it impossible for voters to cast their votes. Challenges of election results were successfully made on these grounds in the Cameroonian 2002 parliamentarian election.

Another issue raised in the complaints against the results of the Cameroonian 2002 parliamentarian election related to the color of ballots. Indeed, ballots for the representatives of certain parties had been printed on colored paper—the color representing another political party—thereby misleading voters and affecting the final results of the election. The Constitutional Council ruled that this issue, as well as many other allegations, affected the results of the election and annulled the results in a number of districts. Complaints of a similar nature were raised in Florida (United States) against the results of the 2002 presidential elections. Florida courts, however, rejected contests that the "butterfly" ballots had misled voters in a manner sufficient to constitute a violation of guarantees of due process and equality under the law.

iii. Party Representation during the Vote and Count

The presence of different party representatives during the vote and count helps ensure a certain degree of independent oversight. This procedure operates as a safeguard against charges of, and actual, technical irregularities and fraud during the voting and counting phases. The lack of access of these representatives to voting and the counting of ballots opens the door to counting irregularities or even the fraudulent addition of votes in favor of a candidate. Challenges against the results based on this lack of access were often presented in connection with claims that the results had been falsified or fraudulently modified during the counting.

In Cambodia, results in the 1998 parliamentary election were challenged based on both the lack of access of party representatives during the counting of the ballots and the deliberate miscounting of the votes. All claims

were ultimately rejected on appeal to the Constitutional Court, but the Court did not state a full explanation for its decision. Conversely, the Constitutional Council in Cameroon annulled some of the results of the 2002 parliamentary election on similar grounds.

iv. Announcement of the Results

Another issue which may affect the results of an election is that of the announcement or publication of the results before the final certification of the vote counting process. This may discourage voter turnout or call into question whether citizens should vote at all. This may have an impact in a closely contested election, as evidenced in the United States 2002 presidential election in the State of Florida. While no specific court ruling was made on this issue, there were many allegations, relayed by the press, that the announcement of a preliminary result prior to the closing of all polling stations in the State of Florida had affected the results. Indeed, many voters, thinking that their candidate had been defeated, did not go to vote.

d. Additional Issues Affecting Election Results

There is a wide range of other issues which may affect "election results" and be brought to the courts as grounds for the annulment of elections nationwide or locally. Some of these issues include:

(i) Changes to election rules immediately prior or during the electoral process;
(ii) Irregularities in the registration process, which affect the proper count of voters versus votes; and
(iii) The voluntary or involuntary late transmission of results from the local to the regional or national level.

The issue of the timely transmission of results may be of particular relevance to a country like Indonesia where polling stations are located over thousands of islands. The system for the transmission of results should be carefully designed in order to avoid glitches during the election or certification process and the invalidation of results on the purely technical issue of timely transmission. The establishment of electronic or automated transmission systems for "election results" is clearly an improvement in this area. However, there are risks related to a computerized process and these risks or drawbacks may relate to both the integrity of "election results" and the legitimacy of the process as a whole. Without the proper safeguards, transparent rules and procedures in place, any deficiencies created may not outweigh the potential losses in integrity and legitimacy.

Another important issue which we were not able to analyze in depth relates to violence, intimidation or pressures which may be exercised on voters, candidates or officials during various stages of the electoral process, including campaigning, voting, counting or dispute resolution stages. Evidence of violence or undue pressure was found in many of the cases reviewed for this paper, but we did not examine these issues closely for purposes of developing this paper.

However, in order to illustrate the scope and nature of this issue, we cite below a few examples of violence and intimidation cases for further reference..

In Benin, during the Cotonou 2002 municipal election, the chairman of the Autonomous National Election Commission was stoned by a crowd at one of the polling stations.

In Cambodia, the National Election Commission was largely unsuccessful in responding to complaints about intimidation and violence by government officials in the 1998 parliamentary election, primarily because it lacked enforcement powers and resources to do so.

In Peru, in the Vinchos district, the 1998 municipal elections were marked by organized meetings of citizens called by militiamen and the presence of army officials at the polling stations.

In Russia, in the Krasnoyarsk 2002 gubernatorial election, pressures were exercised on voters with a view to keeping them away from polling stations on voting day. Officials used two main arguments: the threat of terrorist attacks during the election and the claim that voters would have to pay to cast their votes.

e. Court Resolution

Courts have adopted different rulings depending on the nature of the violations and their impact on the election locally, regionally and nationally. In most cases, the results of the election are annulled at the precinct or district level, regardless of whether the election is local or national in nature. There are cases, however, where the widespread nature of the violations or irregularities mandates the national annulment of the vote, as evidenced by the decision of the Supreme Court of Georgia to annul the 2003 presidential election. In some cases, the impact of the violations or irregularities are not considered as sufficient to affect the final election result, and the Court may decide to dismiss complaints, as did the Constitutional Court of Armenia with regard to the 1996 presidential election.

In yet other cases, courts have chosen to modify the count of the results or order a recount based on allegations against the results submitted by local, regional or national authorities. In its judgment regarding the district of Haut-Nkam, the Cameroon Constitutional Council adjusted the results of the 2002 parliamentary election, holding that 867 ballots in favor of one of the parties had been wrongly counted as void and needed to be recounted as valid. In Cambodia, the National Election Commission was seized of demands to reconcile ballot counts and order recounts in about half of the counting centers. While the recount did not greatly affect the original results, it was abruptly stopped by the National Election Commission, and appeals to restart it were dismissed summarily by the Constitutional Court.

6. Summary Conclusions

One of the primary conclusions from our research relates to the breadth of issues that are often inextricably linked to "election results", even when the notion is understood to cover only the counting of ballots. Indeed, the process of voter registration itself could impact election results in that it is against this baseline that discrepancies between voters and votes will be assessed. Similarly, guidelines and uniform standards regarding what exactly constitutes an invalid ballot and how ballots should physically appear are issues that could affect the results of the election if not the counting process itself. More generally, we believe that a number of broader fraud and access issues, such as some of those raised in this paper, may directly impact "election results". This reality may make it difficult, in some cases, for the Court to fully and finally resolve some election disputes that might otherwise appear to relate merely to vote counting.

Another significant conclusion is that virtually no paper of a comparative nature or review of all the key issues affecting "election results" is readily available. While election law experts have been working for decades to craft democratic electoral processes around the world, relatively little has been done to draw lessons from these efforts, especially on the all important topic of the adjudication of election disputes.

It seems necessary, therefore, to undertake more comprehensive research both globally and regionally in order to define the proper borders of the notion of "election results" and identify the range of claims that may arise against "election results". This research would lead to the presentation, in a concrete and comparative manner, of lessons learned and best practices from election dispute resolution bodies which could be used by reformers, donors and other stakeholders trying to implement or reform election dispute resolution mechanisms. Research related to election dispute resolution at the local levels and by election commissions is also very much needed before we can fully understand the breadth and nature of the problems and issues in this important field of study.

An issue which was not discussed here but deserves more attention and research is how to resolve disputes related to the allocation of seats among political parties in parliamentary elections. Issues of seat allocation may arise even though the numerical results of the election are not called into question. Proper response mechanisms to these claims must be in place in order to avoid delays and contests.

Yet another important conclusion is the need for comprehensive, transparent laws, as well as internal court rules and external regulations and procedures. Without such laws and procedures, the fair and effective resolution of disputes challenging the validity, legitimacy or integrity of "election results" will not only be extremely difficult to achieve; their absence may also call into question the legitimacy of the election and dispute adjudication process. It is clear from our research that many disputes could be avoided if an adequate, transparent formal legal and procedural framework had been in place from the outset. A comprehensive analysis of electoral laws and procedures, as well as of the rules and standards for dispute resolution, will enable stakeholders to identify loopholes and potential areas of contest beforehand.

Finally, even though this issue was not examined for purposes of this paper, we want to highlight the volume and quality of work done by the European Court of Human Rights in the area of disputes related to political party dissolution. Significantly more literature and case law is available on this topic should the Court wish to delve into this important issue. Indeed, the European Court of Human Rights has rendered decisions on a number of cases related to rulings by the Turkish Constitutional Court. These varied cases of political party dissolution have given the European Court of Human Rights the opportunity to set boundaries and criteria for appropriate dissolution, balancing public order and national security interests against the freedom of association. Consequently, it has ruled that party dissolutions were valid or constituted breaches of the freedom of association depending on the circumstances of the case. Similarly, the Council of Europe has undertaken considerable work towards establishing regional norms in the general area of elections.

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WEB RESOURCES:

- European Commission for Democracy through Law or Venice Commission (contains a database on constitutional case law in Europe) http://venice.coe.int/
- International Constitutional Law (resources) http://www.oefre.unibe.ch/law/icl/
- Election World http://www.electionworld.org
- ACCPUF (Association of Constitutional Courts sharing the use of French, contains a constitutional case law database) http://accpuf.org/

ANNEX 2: OVERVIEW OF CASES FROM SELECTED COURTS

Country/Election	Technical Count	Results and Access	Results and Fraud	Outcome
Armenia: 1996 presidential election	discrepancies between the numbers of voters and ballots; discrepancies in the numerical data (vote count results) [argued as a fraud and access case]			Case dismissed because the discrepancies did not affect the overall results (intensive in-depth investigation by the Court)
Azerbaijan: 2003 presidential election		widespread violence	widespread fraud	No cases
Benin: 2002 municipal election		cancellation of voting in some precincts; late arrival or absence of voting materials; violence		
Cambodia: 1998 parliamentary election	deliberate miscounting of votes; recount (abruptly stopped)	denial of party representative access to the vote and count; violence		Appeals rejected by the Constitutional Court
Cameroon: 2002 parliamentary election	annulment of valid ballots; counting in the dark; modifications of result reports	color of ballots; denial of party representative access to the vote and count; late arrival or absence of voting materials; discrepancies related to polling stations; violence	falsification of documents; falsification and destruction of result reports; ballot stuffing and multiple votes; irregular reports of vote tabulation	Annulments and recounts by the Constitutional Council
France/Corsica: 1998 regional election			widespread fraud; irregularities on over 1,000 ballots	Annulments
Georgia: 2003 parliamentary election			Vote falsification	Annulment of the election by the Supreme Court
Mali: 2002 parliamentary election	discrepancies between the numbers of registered voters, voters and votes	discrepancies related to polling stations; undue influence	falsification of documents; lack or insufficiency of the electoral report; fraudulent manipulation of results and tabulation sheets	Annulments by the Constitutional Court
Myanmar: 1990 parliamentary election				Results of the election ignored by the military junta
Peru: 1998 municipal election		intimidation; interference of political parties with free access to polling stations	bribery	Annulments by the National Electoral Tribunal
Russia/Chuvashia			fraudulent addition of votes in favor of the incumbent by heads of precincts	
Russia/Krasnoyarsk: 2002 gubernatorial election		pressures on voters to keep them away from polling stations (claims that terrorist acts would occur and voters would have to pay to vote)	widespread fraud	Election annulled by the Regional Election Commission; decision reversed by the National Election Commission
Russia/Kursk: 2000 gubernatorial election	Under old law (in force at the time), a candidate could be declared ineligible one day before the vote. The Regional Election Commission barred the incumbent governor from running a day before. It has since been changed to 5 days.			
Russia/Nizhny Novgorod: 2002 mayoral election	appeal to local court to suspend the count; appeal to Election Commission to annul the results		widespread fraud	

ANNEX 2 continued

Russia/Vladivostok: 2000 mayoral election		voter intimidation (pressure to have voters cast their ballot before election day)	widespread fraud (vote before election day); attempts to falsify the election	
Russia/Yakutia		manipulation and denial of changes in residency	Bribery	No cases
United States: 2000 presidential election	appeal for recount; appeal to suspend the recount; deadlines for recount	calling the results before the end; disenfranchised voters; type of ballot		Florida Supreme Court ordered recount; recount halted by the US Supreme Court
Zimbabwe: 2002 presidential election		discrepancies related to polling stations	changes of the election rules during the election process	Decision in Nov. 2003 of the High Court, which reserved judgment on the petition for annulment

ANNEX 3: DISCUSSION OUTLINE OF FOUR CASES

CASE #1: France – 1998 Regional Elections, Corsica

Council of State, Judgment of December 18, 1998, ruling on claims no. 195,246; 195,446; and 195,447

1. Petitioner

Petition no. 195,246 presented by the Prefect of Corsica (civil servant acting as the representative of the executive in the region) to annul the election of M. Antoine Giorgi

Petition no. 195,446 presented by M. Edmond Siméoni to annul the elections as a whole

Petition no. 195,447 presented by M. Jean Musso to reform the results of the first round and annul the results of the second round of the elections

2. Defendant

Those elected in the March 1998 elections

3. Fact Situation

Petitioners alleged that a number of irregularities took place during the first round of the elections. Based on the investigation of the Council of State, the following took place:

- at least 12 electors did not go through the polling booth;
- at least twice, a vote by proxy was authorized while the mayor had not received the relevant proxy;
- at least 20 proxies were drawn up by the police without prior request of the persons interested;
- for 430 voters, the signature on the voters' registry for the first round did not match that for the second round;
- in some polling stations, the signature of the voters' registry was done by members of the polling station and not by the voters
- in at least 220 cases the signatures on the voters' registry are identical to that of other voters;
- at least 48 voters only signed with an "X";
- in one polling station, 9 signatures are replaced by a stamp reading "the voter cannot sign himself"

All in all, the Council of State ruled that 826 votes were illegally cast in the first round of the election.

4. Recommended Solution

Based on the findings that 826 votes were cast irregularly, the Court reduced the number of votes in favor of each of the lists presented at the election by that number. Following this rectification of the result, one of the lists that were authorized to run in the second round (a minimum of 5% of the votes is required to run in the second round) fell below the 5% threshold. The Court therefore annulled the first and second rounds of the election.

CASE #2: Georgia – 2003 Parliamentarian Election

Supreme Court, Judgment of November 25, 2003

1. Petitioner

N/A

2. Defendant

Those elected in the October 2003 parliamentary election

3. Fact Situation

The overall complaint was that the Georgian government had rigged the elections. Some examples of the alleged irregularities include:

- Fabricated protocols including inflated turnout figures
- Protocols not in compliance with formal requirements
- Unsealed election materials
- Interference with the work of District Election Commissions and intimidation
- Manipulation of turnout figure and number of votes in favor of candidates to avoid second round
- Acceptance of fraudulently completed ballots
- Negotiation of results
- Absence of ballot papers and voters lists (making any recount impossible)
- Systematic inflation of votes for certain parties

4. Recommended Solution

The Supreme Court annulled the proportional component of the parliamentary election (150) on the grounds that massive fraud made it impossible to determine the will of the people. The election of 85 parliamentarians in single-mandate districts was upheld.

CASE #3: Cameroon – 1998 Parliamentary Elections

Constitutional Council, Judgment no. 96/CE of July 17, 2002, ruling on claims no. 08/CE, 21/CE, 48/CE and 94/CE

1. Petitioner

Several political parties brought a claim to rectify the results of the election in the district of Haut-Nkam. These political parties are the PDS, the UFDC, the SDF and the UNDP.

2. Defendant

The State of Cameroon

3. Fact Situation

1) The plaintiffs alleged that a number of irregularities tainted the results of the election, including:

- exclusion of their party representatives from the polling stations;
- ballot stuffing;
- multiple voting;
- use of false documents.

2) The other claim related to the counting of votes in favor of the UNDP as void, on the grounds that while the UNDP had presented its candidacy it had not campaigned in the district.

4. Recommended Solution

1) The Constitutional Council held that the PDS and the UFDC did not have standing because they did not meet the legal requirements (i.e. only a candidate or political party having run in a given district may contest the election results before the Constitutional Council). It also rejected the claim of the UNDP that the elections had been tainted by irregularities justifying an annulment.

2) The Constitutional Council also held that the votes in favor of the UNDP had been irregularly counted as void. The rectification of the results reduces the percentage in favor of the RDPC, which now only has a relative majority.

General information on the vote in Haut-Nkam:

- registered voters 65,093
- voters 41,747
- void ballots 37
- valid votes 41,710

The new tabulation of the results shows the following percentages in favor of the various political parties represented in the election:

- RDPC 49.58%
- SDF 26.42%
- UFDC 19.12%
- UNDP 4.88%

Based on this new tabulation of the results, the RDPC gets two seats and the SDF 1.

CASE #4: Cambodia – 1998 Parliamentary Election

National Election Commission and Constitutional Council, 1998

1. Petitioner

Opposition parties

2. Defendant

Those elected in the 1998 elections

3. Fact Situation

The plaintiffs submitted about 800 complaints challenging the elections results on a variety of grounds (many of these allegations were not supported by international and domestic election observers):

- Denial of party representation at the voting and counting;
- Deliberate miscounting of votes;
- Intimidation of voters;
- Other forms of fraud

The plaintiffs asked the National Election Commission to reconcile the ballot count and order recounts in about 800 of the 1,600 counting centers. They also requested the annulment of the election in some districts.

4. Recommended Solution

The National Election Commission ordered recounts in 8 counting centers. The results of these recounts were not significantly different from the original count. It then abruptly stopped the recounts. The plaintiffs appealed to the Constitutional Court which dismissed all but 17 of the roughly 800 appeals. The results were upheld on the grounds that they had not been significantly altered by the proven irregularities in voting/counting.