Promoting Electoral Justice (EJ)

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Lessons learnt in area of EDR:
Electoral dispute resolution (EDR) systems, especially in emerging democracies, are moribund, weak, and poorly resourced:
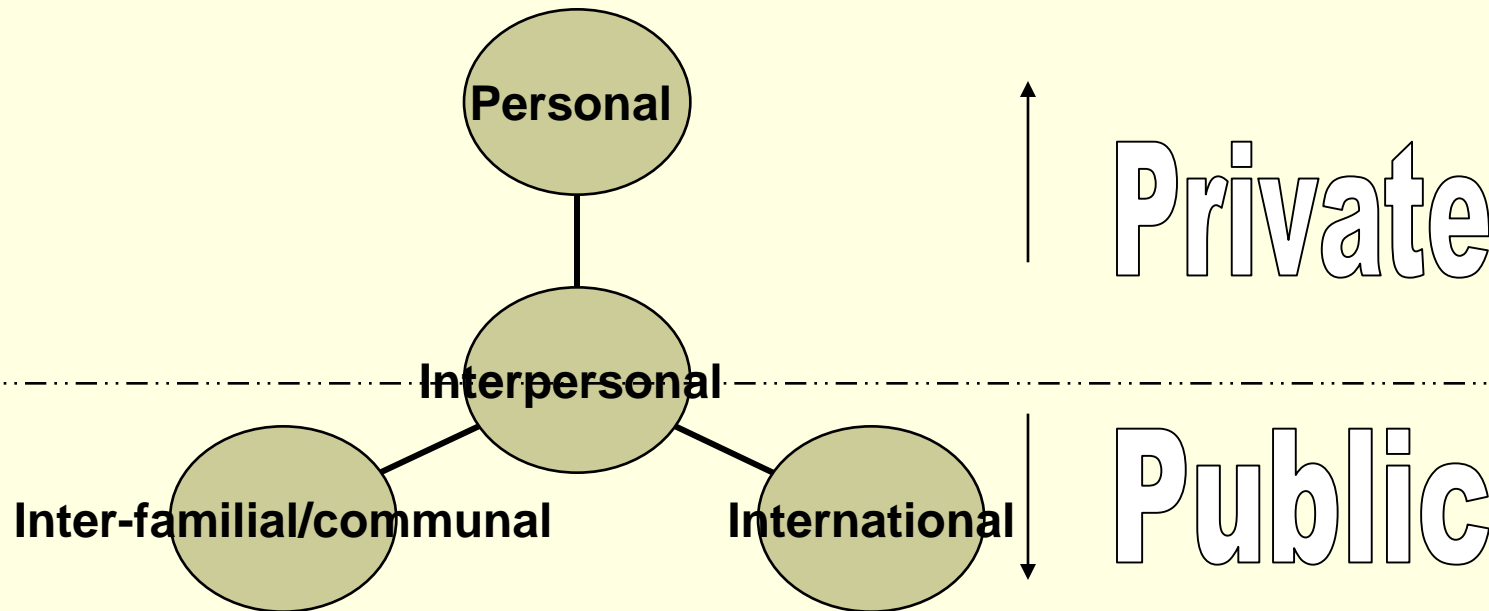
Justice delayed = Justice denied

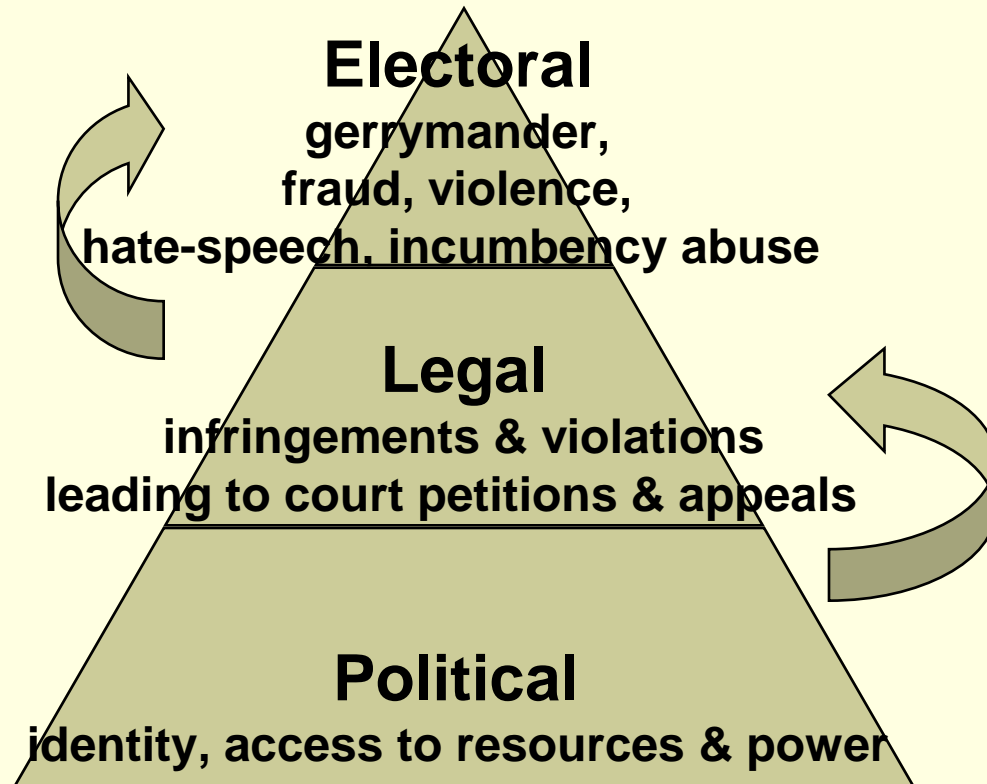International electoral assistance has not reached EDR area:

Donors are conspicuously absent here

Typology of Public Conflicts

Electoral
**gerrymander,
fraud, violence,
hate-speech, incumbency abuse**

Legal
**infringements & violations
leading to court petitions & appeals**
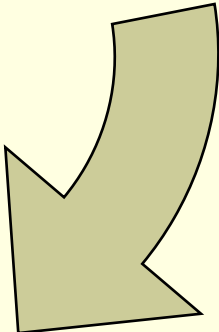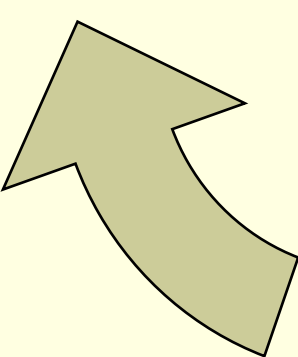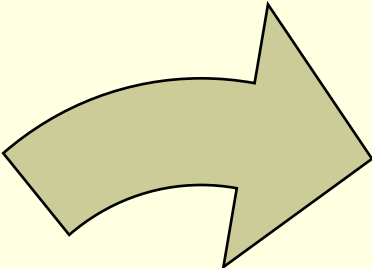
Political
identity, access to resources & power

International IDEA & Electoral Justice Promotion

GLOBAL HANDBOOK
& DATABASE ON EJ

AU PANEL OF THE WISE
PREVENTATIVE STRATEGY
ON EJ PROMOTION

MOBILISING IDEA & PARTNER OTHER
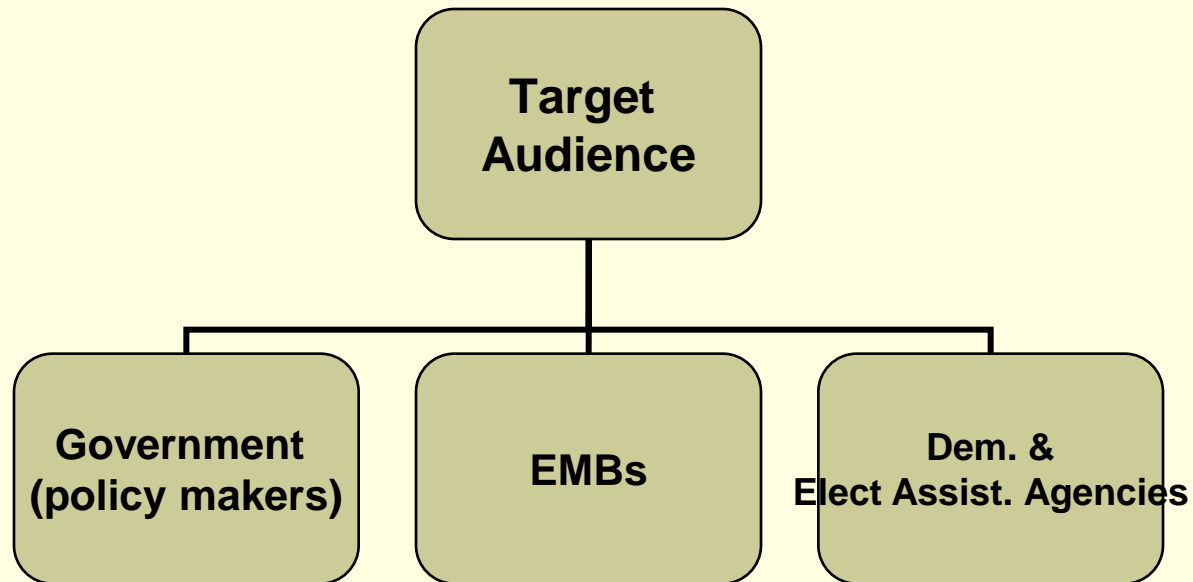RESOURCES/TOOLS
TO PROMOTE EJ

Global EJ Handbook & Database

Objectives:

- Mainstreaming EJ promotion as critical element in efforts to improve and consolidate electoral democracy and good governance
- Increasing knowledge and learning about EJ models, systems, mechanisms, and procedures
- Crystallize universal principles, best practices and innovations in EJ

Global EJ Handbook & Database

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          │  Audience    │
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│ makers)   │ │      │ │ Agencies        │
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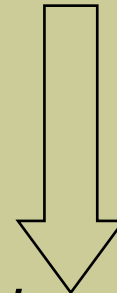
Means of Safeguarding Electoral Justice

- *Structural/institutional Safeguards*

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- *Constitutional & Legal frameworks*

- *Procedural/functional Safeguards*

  ↓

- *Principles, Norms and Values guiding EJ systems and institutions*

Structural/Institutional Safeguards

- *Constitutions, laws & regulations*
  - *How do these instruments structure rules of electoral engagement:*
    - *Electoral systems and processes: EMB design, powers, and mandate (functions)*

Operational/functional/normative safeguards

- *How does EMB function – what values, principles and norm guide it:*
  - *Autonomy & independence*
  - *Impartiality & non-partisanship*
  - *Permanency & accessibility*
  - *Sustainability and effectiveness*
  - *Professionalism and Transparency*

Typology of EJ systems around the globe

■ **_Criteria_**_: which branch of government has the final say in solving_ _legislative elections__?_

- _Judiciary_ – _UK & Commonwealth countries_
- _Legislative_ – _US & Italy_
- _Independent electoral tribunals_ – _Costa Rica, Uruguay and many Latin American countries_
- _International ad hoc bodies_ _under the UN_ – _Cambodia (1993) Bosnia Herzegovina (1996)_

"Extra-juridical" arrangements

- **Key feature**: *resolving electoral disputes outside the country's normal judicial processes/structures, and using an external negotiation team, either under UN or others, such as supra-national powers (Regional Economic Communities (RECs) in the context of Africa:*
  - **Angola (1996)**
  - **Kenya and Zimbabwe (2008)**
- *Even where such negotiations take place outside the country's normal EDR structures, the outcome is normally domesticated through an act of parliament or decision of the cabinet*

Alternative Dispute Resolution

- ***Key feature****: Like the extra-juridical resolution of conflicts, ADR takes place outside the normal court structures and may take a political shape*
- *ADR uses the following mechanisms and approaches*
  - *Conciliation;*
  - *Mediation; and*
  - *Arbitration*
- *ADR was widely used during the first-ever democratic elections in South Africa in 1994*
- *Various resources, including community-based and civil society organizations, even political parties, were mobilized to play a quintessential role in managing electoral conflicts*

Preventing Electoral Conflict based on the Electoral Cycle Approach (ECA)

- *ECA is important for effective prevention and management of electoral conflict.*

- *Efforts to manage electoral conflict must start during the <u>pre-voting</u> phases, continue into the <u>voting period</u>, and last until after elections have been concluded during the <u>post-voting</u> period.*

Preventing Electoral Conflict based on ECA

- *Pre-voting phase:*
  - *Design issues linked to the Legal framework:*
    - Electoral system: representation, participation, and inclusiveness;
      EMB design: independence and proper insulation from any external (including party-political pressure);
    - Voter education: is it provided for by law, and does it provide for relevance and accessibility, especially to women, youth, minorities and 'special voters'
  - Operational and functional issues:
    - Gerrymander in boundary delineation
    - Voter registration: accessibility, accuracy & transparence;
    - EMB professionalism and resource endowment

Preventing Electoral Conflict based on the ECA

- *Voting phase:*
  - Election campaign: 'level playing' field for all, media freedom and access, no violence;
  - *Voting process:* secrecy, transparency, accessibility, and efficiency

Preventing Electoral Conflict based on the ECA

- *Post-voting phase:*
  - *Vote count: accuracy, time-effectiveness, and stakeholder buy-in;*
  - *Electoral dispute resolution mechanisms, such as courts: are these adequately resourced, independent, effective, and accessible;*
  - *Are there provisions for transparent and participatory audits of EMB performance after elections?*

Issues outside the Electoral Framework, but bearing on EJ

■ *Government responsiveness to voter needs and aspirations:*

  ■ *Does government deliver on **democracy** (human rights & rule of law); **governance** (public service); development (poverty alleviation); **security** (socio-economic, environmental); and **diversity** (religious, ethnic, gender) **management**?*

Issues outside the Electoral framework with bearing on EJ

- Development partner responsiveness and accountability to aid recipient and to one another:
  - Are our interventions:
    - Timely;
    - Relevant and sensitive to local context;
    - Participative;
    - Value-adding and sustainable;
    - Coordinated and mutually re-enforcing
  - How can we, through our interventions, assist recipient countries to foil, not to fuel, electoral conflict;
  - Does our engagement with recipient countries help or hinder electoral justice?

AU responses to EJ issues

- During 2008, Panel of the Wise (PoW) commissioned study on AU responses to electoral conflict, in the aftermath of the Kenya 2008 post-election conflict
- Expert group meeting convened by the PoW & AUC Peace and Security Unit, in Nairobi, Kenya, 26 – 28 November 2008
- Expert meeting aimed to discuss and validate the study and craft recommendations for submission to the AU political leadership during February 2009

AU responses to EJ issues

- Workshop recommended that the AUC should develop a comprehensive (holistic) strategy and approach to the promotion, management, and resolution of electoral conflict on the continent:
    1. Cooperation and coordination with the PAP and the RECs
    2. Linking strategy to APRM, Early Warning Systems, Election Observation
    3. Preventative strategy based on Electoral Framework Audits (EFA) particularly in countries conducting elections in a given year

AU responses to EJ issues

- For 2009, the AU through the Electoral Assistance Unit (EAU) will seek to undertake such EFAs in countries identified as hot spots:
  - Sudan
  - Angola
  - Comoros
  - Equatorial Guinea
  - Guinea-Bissau
  - Malawi
- Resource availability to determine number and level of engagement with member states;
- IDEA may want to collaborate with the AUC to develop a strategic and methodological approach to the conduct of EFAs

In conclusion:

- Electoral conflict is, at times, a manifestation of deep-rooted and, perhaps, historical conflicts which for years have remained unaddressed or swept under the carpet

- Efforts to address electoral conflict should therefore be comprehensive, holistic, and, at the same time, context-focused to address specific 'triggers'

- Efforts to address electoral conflict should seek to mobilize all resources available: political and legal; formal (institution-based) and informal (alternative); local/national regional/international; governmental and non-governmental; and emphasizing both short-term and long-term goals

- Reform and capacity building