



Independent Electoral and  
Boundaries Commission

## Election Dispute Resolution Booklet

FREQUENTLY ASKED QUESTIONS

# 2022

# Vision

A credible electoral management body that meets the democratic aspirations of the people of Kenya.

# Mission

To conduct transparent, efficient, and impartial elections; and to undertake boundary delimitation for equitable representation and sustainable democracy.

# Our Values

The Commission subscribes to the following values:

- i. **Adherence to the rule of law:** We conduct our businesses within the law
- ii. **Inclusivity:** We respect gender, race, class and disability in the conduct of electoral activities
- iii. **Integrity:** We conduct our affairs with utmost honesty
- iv. **Accountability:** We endeavour to be responsible for our actions
- v. **Teamwork:** We uphold teamwork to achieve Commission goals
- vi. **Innovativeness:** We transform the electoral process to exceed the expectations of Kenyans

## What is election dispute resolution?

Election dispute resolution (EDR) is the process of resolving all complaints, challenges, objections, violations, offences and petitions relating to all stages of the electoral process. Depending on the type of issue, different institutions have a role to play in this process, including the Independent Electoral and Boundaries Commission (IEBC), Political Parties Disputes tribunal (PPDT), the Office of the Director of Public Prosecutions (ODPP) and the Judiciary. This booklet provides general information on common questions about election dispute resolution (EDR), focusing in particular on the IEBC's mandate and role in EDR.

## What are the rules governing election dispute resolution?

Internationally, Kenya has signed or agreed to implement regional and international instruments relevant to the conduct of elections. Domestically, the legal framework primarily resides in the Constitution, which guarantees fundamental rights and freedoms of assembly, association, expression, and movement, outlines the electoral system, and establishes the IEBC. Additional laws that make up the legal framework governing elections are listed in the table at right. The IEBC also supplements the legal framework with regulations, procedures or guidelines. New election laws were adopted by Parliament in 2016, therefore the IEBC amended its regulations for the 2017 elections.

### Legal Framework for Elections in Kenya

#### International Conventions

- United Nations, Universal Declaration of Human Rights
- International Covenant for Political and Civil Rights (ICCPR)
- Convention on the Elimination of all forms of Discrimination Against Women (CEDAW);
- Convention on Rights of Persons with Disabilities (CRPD)

#### Constitution of Kenya (2010)

##### Election Laws

- Election Act (2011) and amendments and 2019)
- Political Parties Act (2011) and amendments (2022)
- The Independent Electoral and Boundaries Commission Act (2011)
- Evidence Offences Act (2016)
- Other relevant laws: Evidence Act, Penal Code, Access to Information Act, Criminal Procedure Code.

##### Regulations and Guidelines

- IEBC Elections (Registration of Voters) Regulations (2017)
- IEBC Elections (General) Regulations (2017)
- IEBC Rules of Procedure on Settlement of Disputes
- IEBC Guidelines for Dispute Resolution Mechanisms

##### Code of Conduct

- IEBC Code of Conduct

## Who can make a complaint?

Any person may file a complaint before the relevant officer of the Commission relating to registration of voter, candidate nomination, or any other complaint. A registered voter or a political party in the electoral area where the dispute arose, a candidate or his/her authorized representative, or a person aggrieved by an electoral activity, have the right to file. Legal standing may vary for filing a complaint before the Political Parties Disputes Tribunal (PPDT) or the Courts.

## Where can I make a complaint?

Depending on the type of complaint, a complainant may file at the IEBC Headquarters, County Office, Constituency Office, or at the polling station on Election Day.

## When can I make a complaint?

The Acts, regulations, and procedures provide for different filing deadlines for complaints depending on the type of complaints. Unless otherwise provided by law or rule, a complaint shall be filed within as soon as possible. The faster the complaint is submitted, the faster the violation can be stopped. Specific Deadlines in the laws or rules are as follows:

- ➔ For complaints relating to nomination of candidates: within 24 hours of the occurrence of a dispute
- ➔ For complaints relating to results before the Courts: within 28 days after the date of declaration of the results of the election (County, Governor, and Parliament), 7 days (President), 21 days (Referendum). (See competent court's rules of procedure)
- ➔ For complaints relating to party disputes and party primaries before PPDT: not more than fourteen days from the date of the decision complained of, and in any case, at least one day before the day set aside by the Commission for submission of names of the party candidates who have been selected to participate in the general elections pursuant to section 31 (2A) of the Elections Act. (See PPDT's rules of procedure)
- ➔ For any other types of complaints: as soon as possible after the occurrence of the alleged violation.

Criminal offences must be brought to the attention of the police as soon as possible, and following any arrest, under section 36(A) of the Criminal Procedure Code a police officer shall present a person who has been arrested in court within twenty-four hours of the arrest. The IEBC will also refer any criminal offences to the Director of Public Prosecutions.

## What types of complaints can be made?

Here is a list of examples of areas where complaints may arise:

- Insertion of a name in the voter list more than once, citizenship, or residency issue
- Eligibility of candidate to run for election, including residency, age, convicted of a crime, or insufficient signatures of supporters (for independent candidate).
- Illegal campaigning, including abuse of public resources, defamation/false statements
- Voting irregularities, including impersonation, undermining the secrecy of the vote, and illegal campaigning inside a polling station
- Violence, threats, intimidation on polling day or during the campaign
- Counting irregularities
- Restriction of access for media, observers or agents on polling day
- Interference by security personnel
- Failure to submit an election expenses report, or exceeding allowable

## What is a complaint?

A written claim that is formally submitted to the IEBC by an individual who alleges that a breach of the law, or rules has occurred as provided in the laws and rules. The IEBC will review the allegation and decide whether to take action or dismiss the complaint. A complaint should be formally filed in writing with the IEBC, not raised in the media or submitted by other informal means such as social media.

## Who has the authority to address complaints and violations?

Category of Allegation	Authority
Voter Registration	Registration Officer, IEBC
Candidate nomination, including qualifications of candidates	Returning Officer, IEBC's Dispute Resolution Committee (DRC)
Political Party disputes and disputes regarding the conduct of party primaries	Political Parties Disputes Tribunal (PPDT)
Breach of Code of Conduct	Returning Officer, IEBC's Code of Conduct Enforcement Committee
Pre-election and Election Day irregularities or violations	Returning Officer, IEBC's Code of Conduct Enforcement Committee, IEBC's Dispute Resolution Committee
Polling and Counting	Presiding Officer, Returning Officer, IEBC's Dispute Resolution Committee
Violations by election officials	IEBC's Dispute Resolution Committee
Election Results	Competent Court (depending on the type of election): Supreme Court, High Court, Resident Magistrate's Court
Criminal Offences	Director of Public Prosecutions, Magistrate's Courts (Special Magistrates)
Boundary Delimitation	High Court, Court of Appeal

## Is there a filing fee for complaints?

No, there is no filing fee or other charges for filing a complaint before the Commission, or its relevant election officers. For election petitions before the courts, there is a fee that varies between 100 000 to 1 Million KES to file a complaint – depending on the type of elections (See Table on Petitions).

## What are the requirements to file a valid complaint?

A complaint shall:

- ➔ be submitted within the deadline prescribed by law or rules;
- ➔ be submitted in the prescribed location; and
- ➔ allege a violation or irregularities per the applicable laws, rules, procedure codes of conduct,

It shall include the following:

- ☑ A complaint in writing, in duplicate, using an IEBC prescribed format when available
- ☑ Contact information of the complainant, and full names and address of service of the respondent or respondents.
- ☑ Description of the Allegation, including specifics relating to the alleged violation, such as date, time, location and information on the perpetrators of the violation (if known)
- ☑ All evidence the complainant intends to rely on, including information as to the identity and contacts of witnesses
- ☑ Relief or redress sought.
- ☑ Concise statement under oath of the ultimate facts constituting his cause or causes of action, and a declaration by the complainant that the representations are true
- ☑ Statement that there is no other complaint pending, and that this case has not already been heard by another jurisdiction

The claim should include the contact information of the person filing the complaint. *Rumors or unverified claims* from unidentified individuals would not meet the threshold to investigate a case. Claims solely reported in the media do not constitute an official complaint.

Complaint Forms will be available at the IEBC Headquarters, County Offices, Constituency Offices, or at the polling station on Election Day, and can be downloaded from the IEBC website. If no form is available, the complaint can be filed on a blank paper with the required information. An individual may request assistance from election officials to fill out the forms.

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### **What should I expect after I file a complaint?**

The relevant officer or committee will open a file and examine the objection alleging a violation as well as the evidence submitted. The election officer in charge will record the case in the case management system. Investigators will conduct the investigation promptly, efficiently and impartially. The IEBC may summon any person to appear before it, administer an oath to receive testimony; and order the production of any document relevant to any dispute arising from nomination of a candidate. The relevant officer or committee can request investigation support from local officers in the County or Constituency if needed. Parties, candidates, and supporters are required to co-operate in the official investigation of issues and allegations arising during an election period.

### **When will the IEBC decline to hear my complaint?**

The IEBC will dismiss a complaint or decline to accept and hear a dispute in the following circumstances:

- ➔ If a complaint does not allege a violation of Constitution, Election Acts, regulations, or does not follow IEBC rules of procedure
- ➔ If a complaint is filed by an individual who does not have legal standing
- ➔ If a complaint is not a subject matter within the jurisdiction of the Commission
- ➔ If a complaint has already been filed with, heard and decided by the Political Parties Disputes Tribunal
- ➔ If a complaint is trivial, frivolous or vexatious

### **What type of evidence can I present?**

The types of evidence will depend on the allegation. For instance, a copy of the voter list, copies of candidate nomination papers, any public statements from candidates, affidavits/testimonies from witnesses with personal knowledge of events, copies of court orders, bank account statements, copies of results sheets or campaign posters, pictures or videos, and observer reports could all be presented as evidence. The Commission or relevant IEBC officers are not bound by the provisions of the Civil or Criminal Procedure Code or the Evidence Act in its proceedings.

### **Who has the responsibility to prove the allegation?**

The complainant has the duty to prove his or her allegation. However, the Commission may request additional evidence or collect evidence on their own during an investigation if needed, for example by collecting interviews from Presiding Officers or Returning Officers at the County or Constituency level.

## What is the standard of evidence?

The Commission will seek to substantiate facts and evidence, without relying on hearsay, assumptions, or suppositions. An issue before the Commission shall be proved on the balance of probabilities.

## What cases should be referred to other institutions?

The Returning Officer, the Committee, or the Commission may receive complaints that do not fall within its jurisdiction, and will refer those cases to other institutions with appropriate legal jurisdiction. Examples of cases to be referred are in the table below.

Type of Dispute		IEBC Action
Where a complaint falls above the jurisdiction of the Returning Officer (RO)	➔	RO will forward to the Dispute Resolution Committee or Code of Conduct Enforcement Committee, as applicable.
If a complaint alleges a criminal violation of Penal Code of Kenya.	➔	IEBC may forward case to the State Prosecutor
If a complaint alleges violations with respect to the process or conduct of party primaries*	➔	IEBC may forward the case to the Political Parties Disputes Tribunal (PPDT).
If the complaint alleges both an electoral offense and a criminal offense pursuant to the Penal Code of Kenya.	➔	IEBC shall consider the complaint for any administrative liability under the legislation, and may decide to forward to the State Prosecutor

## What is the difference between fraud and malpractice?

*Electoral Fraud* is defined as deliberate wrong-doing by electoral stakeholders or election officials, which distorts the individual or collective will of the voters.

*Electoral Negligence/Malpractice* is defined as the breach by a professional of his or her relevant duty of care, resulting from carelessness or neglect.

## What is the distinction between IEBC and PPDT jurisdiction?

Following the adoption of amendments to the Election Act and Political Parties Act, where disputes arise with respect to the process or conduct of party primaries, or disputes between candidates and their parties, these will be heard by the Political Parties Disputes Tribunal. OFOF The Commission will hear all other disputes relating to candidate nomination. The Commission will not hear complaints that have already been heard and decided by the Political Parties Disputes Tribunal.

## What if IEBC officials commit violations or malpractice?

The Commission has the power to take action against its own staff for violations or malpractice, including warnings, remedial action, disciplinary measures, or additional training.



## **What is the difference between jurisdiction of the IEBC and criminal authorities?**

During the assessment of the allegation, the investigators will also clearly distinguish between election violation, irregularity, or a criminal offence per the Acts. Some alleged violations may come under the jurisdiction of both the Commission and the criminal authorities, such as multiple voting (impersonation) on election day, vote buying (bribery), or intimidation of voters to vote for specific candidate (threat or undue influence), but the remedies and elements to prove the allegation differ. The Commission will adjudicate a case of this type and, if the Commission believes the violation may amount to a crime, it can also refer the case to the criminal courts. If the violation only relates to criminal offences that are defined in the Election Offences Act, or included in the Penal Code, the Commission shall decline to hear the case, and can immediately refer the case to the criminal courts, or to the police.

## **Will there be a hearing?**

For the pre-election phase, in some cases the IEBC may consider that it has all the elements required to make a decision. Alternatively, the Commission will schedule a hearing to allow parties to present their arguments and evidence and defense. The Commission shall give the parties to a dispute reasonable notice of the date and timing of any hearing. Every party to a complaint may appear in person or be represented by an advocate. The Committee may, at any time during the proceedings, put questions to either party or to any witness for the purpose of clarifying points of law or facts involved in the case and may, in its discretion, call any additional evidence it considers necessary.

Hearings will be open to the public. Voters, observers, candidates can attend these sessions, but their absence shall not hinder or delay the proceedings. In its sole discretion and for the purpose ensuring the integrity of the proceeding, the IEBC may exclude any person or persons for disorderly behavior during the hearing. For election results complaints, the courts will hold hearings for each case in accordance with their rules of procedure.

## **When can I expect a decision?**

After the assessment or hearings are finalized, a decision will be made as soon as possible. The IEBC will issue a written decision stating the factual and legal basis for the decision, and the remedy, and will notify the parties involved within the specific deadlines set in the law or rules, or as soon as possible. The parties involved will also be informed of the right to file an appeal and the deadlines related to the appeal. Unless otherwise provided, an electoral dispute shall be determined within 10 days of

the lodging of the dispute with the Commission. For disputes affecting candidate nomination or the election, the decision shall be made before the date of the nomination or the election. Other specific deadlines are as follows:

- ➔ For candidate nomination, the Returning Officer shall issue a decision within 5 Days of receipt of the complaint.
- ➔ For post-election complaints, the courts shall finalize all complaints within 6 Months for County and Parliamentary elections, and within 14 days for President elections.
- ➔ For boundary delimitation, the High Court shall decide within 3 months of filing date

### Will the decision be published?

The decisions will be made available to the public on the IEBC website. Copies will be available at the Legal Registry of the IEBC Headquarters upon request.

### Can I appeal the decision if I am not satisfied?

Yes. A table of appeal authorities is set out below. In addition, The Commission may decide to review decisions of the Returning Officer on its own initiative, or decide to hear cases in the first instance based on its sole discretion.

Type of Decision	Appeal
Boundary delimitation	➔ To the Court of Appeal
Inclusion in the Voter List	➔ To Principal Magistrate Court (fact and law), High Court (law)
Objections to voter registration	➔ To the Commission
Candidate nomination decision by Returning Officer	➔ To the IEBC's Dispute Resolution Committee within 24 hours
Any other complaint against a decision of the Commission	➔ To the Competent Court. Appellate jurisdiction varies depending on the type of elections.
A complaint against the PPDT's decision on a political party dispute	➔ To the Competent Court. Appellate jurisdiction varies depending on the type of elections.

## What types of remedies are available?

After a decision on a complaint, the Returning Officer or the Commission can take a range of remedies based on the proven violation. There are two types of remedies: 1) Corrective: Restoring the ability to exercise electoral rights, or 2) Punitive: Punishing individuals who violate electoral laws. The Commission will impose remedies that are proportionate to the violation, adequate and timely. Below is a list of remedies available to the Commission:

- ➔ Sending a formal warning;
- ➔ Remedial actions (e.g., correct voter list, remove illegal posters on public building, or request someone to leave polling station);
- ➔ Impose a fine determined by the Commission;
- ➔ Prohibit a party / candidate from using any public media time for a specific period or permanently; from holding public meetings or marches.
- ➔ Take disciplinary sanctions against staff, or inform relevant authorities about violations by its staff;
- ➔ Revoke accreditation of observers, or party agent;
- ➔ Invalidate ballot, or an election, postpone or stop the poll;
- ➔ Order a recount;
- ➔ Disqualify a candidate;
- ➔ Prevent participation of a party or candidate in future or ongoing election.

# INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

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