

INSIGHT BRIEF

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Political Parties Dispute Resolution Framework in Kenya

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Background

A Specialized Agency of the African Union (AU), the African Peer Review Mechanism (APRM), was initiated in 2002 and established in 2003 by the African Union within the framework of implementing the New Partnership for Africa's Development (NEPAD). The APRM was adopted by African Heads of State and Government as a systematic peer learning and self-assessment mechanism originating from the NEPAD foundational document, the "Declaration on Democracy, Political, Economic and Corporate Governance," adopted in Durban, South Africa, in July 2002. The APRM is a voluntarily and mutually agreed upon instrument by AU member states as an African self-monitoring mechanism. The APRM is often described as "Africa's unique and innovative approach to governance" to improve local, national, and continental governance dynamics (African Union, 2023). It aims to ensure that national constitutions reflect democratic ethos, provide for demonstrably accountable governance, and promote political representation, thus enabling all citizens to participate in the political process in a free and fair political environment.

Political Parties Dispute Tribunal

The Political Parties Dispute Tribunal (PPDT) is established under Article 1(3)(c) of the Constitution of Kenya. The

Highlights

The African Peer Review Mechanism (APRM) is a self-monitoring mechanism adopted by AU member states to enhance governance through peer learning and self-assessment.

The Political Parties Dispute Tribunal (PPDT) has the authority to resolve disputes related to political parties, including nominations, party lists, and appeals from the Registrar's decisions.

The PPDT operates at the level of a Magistrate's Court, with appeals directed to the High Court and the Court of Appeal as the final authority.

The Tribunal has fully digitized case registration, tracking, and virtual court access, improving efficiency and transparency.

Key challenges include conflicts between the PPDT and IEBC jurisdictions, capacity building for temporary Tribunal members, legal and regulatory reforms, and budgetary constraints.

sovereign power under the Constitution is delegated to the Judiciary and independent tribunals. Art. 169 (1)(d) of the Constitution on subordinate courts states that any other court or local tribunal may be established by an Act of Parliament, provided under Section 40 of the Political Parties Act, 2011 (The Constitution of Kenya, 2010).

The PPDT vision is “A Kenyan political environment that promotes rule of law and democracy,” and its mission is “to resolve disputes arising from political parties’ activities in Kenya in a fair, just and expeditious manner and to contribute to minimizing disputes in the conduct of political party affairs.” PPDT upholds Independence, professionalism, integrity, and respect for diversity as its core values (The Political Parties Act, 2022).

Jurisdiction/Mandate of PPDT

Section 40 of the Political Parties Act 2011 grants jurisdiction and mandates the resolution of disputes arising from activities of political parties in Kenya, including hearing and determining:

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- Disputes between members of a political party
- Disputes between a member of a political party and the political party (PPA amendment in 2022)
- Disputes between political parties
- Disputes between an independent candidate and a political party
- Disputes between coalition partners
- Appeals from decisions of the Registrar under this Act
- Disputes arising out of party nominations (PPA amendment in 2022).

The Tribunal’s Guiding Principles

The PPDT has embraced the principles outlined below as a foundation for resolving political parties’ disputes. They include:

- **Timeliness:** Adherence to timelines and efficiency of processes, including the use of ICT. The Tribunal should hear and determine matters filed within three months as per the law.

- **Fairness:** Ensuring fairness in processes, hearings and determination, with the right of appeal to the High Court and Court of Appeal as the final authority.
- **Accessibility:** Consideration of location, accessibility of information, and processes, such as the registry.
- **Transparency:** Transparency in proceedings, rules of procedure, information availability, etc.
- **Independence:** Decision-making based on hearing disputes, the facts, and the law, ensuring institutional space, recruitment of own staff, financial allocation, etc.
- **Enforcement:** Implementation of judgments, rulings, and orders. The Tribunal has the powers of the High Court to punish any acts or omissions amounting to contempt.
- **Responsiveness:** Acceptance of complaint letters as evidence of IDRM, and MoU with the Independent Electoral and Boundaries Commission (IEBC) where necessary to ensure justice is served.

Management of Electoral Disputes by the Judiciary

The Tribunal has played a key role in the electoral process

by resolving disputes. During an electoral year, most cases handled arise from the nomination of political party candidates in various leadership positions. If these disputes are not resolved through IDRM, the aggrieved party or parties move

to the Tribunal. Also, disputes over political party lists are subjected to the Tribunal. The Tribunal operates at the level of a Magistrate’s Court, and a party not satisfied with the Tribunal’s decision can appeal to the High Court. The Court of Appeal has the final say on cases that went through the Tribunal (The Constitution of Kenya, 2010). The Tribunal has the powers of the High Court to punish any acts or omissions amounting to contempt of the Tribunal.

The Tribunal’s Achievements

Expanded Doorways on Access to Justice

The Tribunal handled only 33 cases in 2013 but dealt with over 540 matters in 2017. In 2022, the Tribunal expeditiously and efficiently resolved 314 cases, including 196 party nomination cases and 118 party list cases, all within very stringent timelines. These cases highlighted key themes in the pre-election dispute resolution. However, challenges remain in

several areas, including the functional and administrative arrangements between the PPDT and the IEBC in exercising pre-election dispute resolution (Pre-EDR) jurisdiction, substantive issues related to the choice of nomination methods and processes in political parties, the enforcement powers of the Tribunal, and the discretionary powers of the High Court and the Court of Appeal, which are beyond the Tribunal's control. Most decisions and appeals from the Tribunal highlight issues of jurisdiction and attempts of the Internal Disputes Resolutions Mechanisms (IDRM).

Improved Access to Court Services

In an effort to address challenges faced by litigants in accessing justice, the Tribunal devolved its services to eight regions in 2022.

Leveraging and Deployment of Versatile Technology

The Tribunal has implemented an Integrated Case Tracking and Management System, embracing online court services for case registration, date issuance, case allocation, court orders, payments, order extraction, and tracking of all filed matters. The Case Tracking System (CTS) has enhanced accountability and transparency for all Tribunal users. The filing of cases, tracking of dates and case activities, and access to virtual courts are now 100% digitized.

4. Developing and implementing a strategy for communication, institutional liaison and public education. This can be done by formulating a structured framework for planning and coordination of stakeholders' engagement.
5. Budgetary constraints; Enhance the PPDT budget for the effective running of programs.

References

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Proposed Intervention to enhance the Dispute Resolution Process

1. Conflicts between the Electoral Management Board, IEBC and the Tribunal's jurisdiction can be resolved by the implementation of the MoU entered between the Tribunal and IEBC to clearly state the concurrent jurisdiction of both parties.
2. Capacity building and Institutional Memory. The members who serve the Tribunal on temporarily basis need to take rapid initiatives to upgrade their skills.
3. Review of laws and regulations: various sections of the Political Parties Act and PPDT procedures and regulations should be amended and aligned to enhance service delivery in the Tribunal.

EDITORIAL INFORMATION

About the Author:

This insight brief was developed by Mwaura Kamwati as part of the assessment for the School of Modern Diplomacy, with insights drawn from lectures, discussions, and research. The views expressed herein do not necessarily reflect the positions of the School of Modern Diplomacy.

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