

## COMMUNIQUE ON EDR: THE E-FILING PROCESS, TIMELINES, AND PROCEDURES.

AUGUST 22, 2022

- I. The Kenyan Section of the International Commission of Jurist (ICJ Kenya) held a webinar on August 22, 2022, to discuss Electoral Dispute Resolution (EDR), specifically focusing on the e-filing process, timelines, and procedures following the recently concluded 2022 general elections.
- II. ICJ Kenya sincerely appreciates the distinguished panellist and participants, including jurists, scholars, litigants, and the general public, for joining the webinar through the ICJ Kenya social media platforms and online streaming services.
- III. The discussions centered on the EDR e-filing system and guidelines recently launched by the Judiciary that seeks to ensure litigants file matters digitally and ensure smooth coordination across the country.
- IV. ICJ Kenya notes that EDR has become an intrinsic part of Kenya's elections process, and the credibility of the process is determined to a large extent by the capacity of the State to resolve these disputes effectively.
- V. In the 2017 general elections, 388 election petitions were filed in the high court and magistrate courts, while in 2013, a total of 188 petitions were filed. We note that the increase in the number of election petitions filed is evidence of Kenya's judicial system's strength, capability, vitality, and openness, partly attributable to an increase in public understanding of seeking redress through the Judiciary.
- VI. The objectives of the webinar were guided by the need for an in-depth discussion of the requirements of filing election disputes in a court of law.

### **In the deliberations, the panellist and the participants acknowledged that:**

- I. Elections stakeholders increasingly turn to dispute resolution mechanisms to resolve contests for political power. This is a positive trend as contestants use legal means to redress grievances rather than resort to violence. The effective resolution of election complaints is integral to the integrity and legitimacy of elections.
- II. The Constitution of Kenya 2010 provides when and how to conduct elections. In an electoral dispute, the Constitution mandates the Judiciary to resolve the disputes. The Constitution provides for set timelines within which the disputes should be determined and the rules and procedures to be followed.

- III. The specific rules of the court prescribe the Jurisdiction of election petitions. The panellists directed the participants to internalize and unpack the Supreme Court Presidential Elections Petition Rules, Court of Appeal Elections Petitions Rules, and Parliament and County Elections Petition Rules.
- IV. The content and form of an election petition, including the grounds of the petition, reliefs including electoral malpractice, payment of costs, and security for costs, are prescribed in the rules of the elections court.
- V. The Constitution and the Elections Act 2011 establishes a fair, efficient, and modern legal framework for the conduct of elections and the resolution of disputes.
- VI. To deliver on those mandates, the Judiciary has a standing committee, the Judiciary Committee on Elections (JCE), which spearheads administrative arrangements and capacity building of judges and judicial officers and generally prepares the Judiciary to expeditiously determine electoral disputes that arise from general elections in Kenya.
- VII. The JCE has established mechanisms for resolving electoral disputes arising from the recently concluded general elections. Specifically, in partnership with the ICT directorate to integrate the case management system ICMS, the committee has been customized to facilitate the online filing of election disputes.
- VIII. The e-filing system will also allow JCE to monitor the progress of petitions across the country in real-time.
- IX. One hundred eighty-eight disputes from party primaries were filed and processed successfully through the platform.
- X. The e-filing platform will ensure greater transparency and efficiency in how courts manage petitions filed. JCE informed the participants that the record of proceedings would be made available to the parties upon request.

**Therefore, and given the foregoing, the partners commit and undertake to do the following:**

**The Judiciary to:**

- I. Promote free and fair elections as the ultimate custodian of the Constitution.
- II. Update the e-filing system on EDR to include a section for filing an amicus brief on presidential election petitions.
- III. Consistently engage stakeholders on the e-filing system and its functions.
- IV. Support litigants who may experience technical challenges in filing their matters.

### **The Law Society of Kenya**

- I. Ensure access to justice for petitioners in election dispute resolution.
- II. Hold continuous professional development training for advocates on the prosecution of election petitions, including the structure of election petitions, timeliness, and the necessary documentation, among others.
- III. Hold consultative forums with the Judiciary to ensure access to justice for all persons, even as election petitions take precedence.

Signed:



Mr. Protas Saende.

ICJ Kenya Chairman