



Party Primaries and Party Lists **Election Laws**

General summary of the Elections (Party Primaries and Party Lists)
Regulations, 2017

Ong'anya Ombo Advocates, 2021

Preliminaries

Party Primary refers to the process undertaken by a political party to **elect or select** its candidates for an election. **Essentially, a political party has the liberty to elect or select a candidate who will run for a particular public office.** Also, during the party nomination of party lists, a political party elects or selects its candidate for party lists.

Party primaries and nominations of party list must be conducted in a democratic, free, and fair; provide equal opportunities for all eligible candidates; not discriminate against any qualified candidate; inclusive and participatory; open, transparent and accountable; credible; and peaceful. **It is important to remember that Regulation 2 provides that a political party may opt to select its candidate for an election or party lists.**

A member of the political party needs to exercise his right to Access to Information as per Regulation 5 to understand the party nomination rules and procedures, know the party's Election Board members, criteria used to nominate party-list members, registration of members of the party, and party's constitution or other documents.

The Regulations require political parties to submit the nomination rules and procedures to IEBC to verify compliance with the laws, regulations, and political party's constitution. If the documents pass the verification process, the political party will make the documents available to members while also factoring in members with disabilities, have the copies at the head office and branch offices, and publish it on the party's website. However, if the documents are not compliant, the political party will be advised to revise or amend them.

The nomination rules and procedures need to capture clear procedures that lead to identifying the candidate to vie and that those aspirants meet the law's bare minimum requirements. Further, the documents need to clearly indicate how competitive, direct, and consensus-based nominations are done by the political party and the party's Election Board's structure and duty.

A political party must provide the Nomination Code of Conduct at least 30 days before the party primaries or nomination of the party-list – whichever comes first. Further, it is a requirement that all aspirants must sign and ascribe to the party's nomination code of conduct.

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Party Primary and Nomination of the Party List Conducted by the Political Party

The Party Primary may be conducted by the Political Party through the Election Board or through IEBC.

Party Primary & Nomination

A political party will appoint a national Election Board and county Election Board in every county the political party offers a candidate. The Election Board will have a maximum of seven or a minimum of three members. The members of the Election Board must comprise a person representing special interest groups. To be a member of the Election Board, one must be a member of the political party, eligible to vote at an election, not convicted of an election offence, and in compliance with the leadership and integrity as per Chapter Six of the Constitution.

The Election Board is responsible for conducting or supervising candidates' election, selection processes, and related activities, will have rules that guide its formation and term and ensure compliance with the two-thirds gender rule. It is a requirement that the Election Board must inform members and provide clear timelines of making applications and venue; it will appoint nomination officials to conduct party primaries tally the votes and present results; the declaration of results is through Form 2 in the presence of the candidates or their agents who will then sign the Form to signify acceptance of the process and results. If a candidate or agent refuses to sign Form 2, it will not affect the validity of the outcome; however, s/he will be allowed to state reasons in Form 1 for refusal to sign Form 2.

Removal from Party's Election Board

A member of the party's Election Board may be removed from the Election Board if the person resigns or defects from the party; violates party's constitution, nomination rules, or code of conduct; declared interest in a particular nomination; incapacitated mentally or physically; convicted of an election offence or a criminal offence that carries a sentence of at least six months with no fine; or the court finds the person to have violated provisions of Chapter Six of the Constitution. Further, other than the aforementioned, a vacancy may arise upon a member tendering a written resignation or dies.

It is a requirement for the political party to indicate the applicable fees at least two weeks before the party primaries or nomination of the party lists. Further, the fee may be graduated or waived in consideration of special interest group, and different for the party primaries and nomination of party lists.

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The notices must be given at least seven days before the exercise and be published on its website.

Application for Nominations

The application for nomination will be as per Form 3. It will entail a signed commitment to the political party, a self-declaration form as per the Leadership and Integrity Act, copies of ID or passport, copies of academic qualifications, evidence of membership to the party, and evidence of payment of nomination fees. However, where it is a person with a disability, other than providing the mentioned documents, will be required to fill Form 4 and certified by the National Council for Persons with Disability. A person interested in representing the youth must be at least 18 years and not above 34 years.

The party primaries will be conducted as per the approved rules by the Commission. In the event there is only one aspirant, no party primary will be conducted. The Election Board will proceed to certify and declare the aspirant as the party nominee. The certified list of nominees will then be submitted to the Commission. The political party must provide a statutory declaration to confirm that the party primaries were conducted in compliance with the set rules and procedures.

A political party is required to issue notices on exercises it intends to carry out. The notices must be given at least seven days before the exercise and be published on its website. The notice must have date and venue, persons eligible, party official responsible, duration, grievances reporting section or channels, persons who will hear and determine any appeal, if any fee is applicable, timelines, and any other important information.

An aspirant may appoint an agent during the party primaries or nomination to a party list to represent his interests. To be considered an agent, the aspirant must appoint the agent in writing. The agent must be a member of the political party and will have access to information about the party primaries. Also, while one agent represents one candidate, the candidates can agree to have one agent if the candidates are not seeking the same seat.

The party list will entail all persons who would stand elected if the party was entitled to all the seats available, alternate between male and female candidates, and ensure fair representation. The political party is required to provide a statutory declaration to confirm that the party primaries were conducted in compliance with the set rules and procedures; if not, IEBC will require the party to conform to the law.

IEBC, upon being requested by a political party, will conduct and supervise the party primary in accordance with the Constitution. However, the political party is required to handle all matters on preparatory work.

About Us

Ong'anya Ombo Advocates is a full-service law firm proffering Strategic Legal Services to both natural and juristic persons in the Republic of Kenya, and beyond.

Our Contacts

Ong'anya Ombo Advocates
Windsor House, 4th Floor,
University Way/ Muindi Mbingu Street,
P.O. Box 15598 – 00400
Nairobi

e: hello@onganyaombo.com
w: www.onganyaombo.com
m: +254 703 672 515

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ONG'ANYA OMBO
ADVOCATES

4th, Windsor House,
The junction at University Way and Muindi Mbingu Street,
P.O. Box 15598 – 00400
Nairobi, KENYA.
Office: +254 703 672 515

e: hello@onganyaombo.com
w: www.onganyaombo.com