

**THE ROLE OF INTERNAL POLITICAL PARTY MECHANISMS IN
RESOLVING DISPUTES FROM ELECTION PRIMARIES IN KENYA, A CASE
STUDY OF THE 2013 POLITICAL PARTY PRIMARIES.**

**BY
MAKOKHA SHADRACK OMWEBA
C50/75265/2014**

**RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENT FOR THE AWARD OF A DEGREE OF MASTERS OF ARTS
IN POLITICAL SCIENCE AND PUBLIC ADMINISTRATION**

UNIVERSITY OF NAIROBI

JULY, 2019

DECLARATION

I declare that this research project is my original work and has not been submitted to any other university for an academic credit. No part of this project may be reproduced without prior permission of the author and/or the University of Nairobi.

Signature.....

Date.....

Makokha Shadrack Omweba

Reg. C50/75265/2014

(Candidate)

This research project has been submitted for examination with my approval as University supervisor:

Signature.....

Date.....

Dr. Joseph O. Obosi

DEDICATION

I dedicate this project to my dear wife, Cecilia, daughter, Aileen, and my parents, Joseph, Elizabeth and Gladys for the encouragement and support they gave me during my research for this study.

ACKNOWLEDGEMENT

I wish to acknowledge with sincere gratitude my supervisor, Dr. Joseph O. Obosi for his invaluable guidance during various stages of this research project. His wise counsel, encouragement and various suggestions made this study possible.

I am indebted to all my classmates at the University of Nairobi 2014 class for the teamwork and moral support. I wish to appreciate all my lecturers at the University of Nairobi, Department of Political Science and Public Administration for their advice and patience to impart knowledge in me.

I also thank my family, friends and colleagues who encouraged me and gave me suggestions which made me improve constantly.

TABLE OF CONTENTS

DECLARATION	ii
DEDICATION	iii
ACKNOWLEDGEMENT	iv
ABBREVIATIONS AND ACRONYMS	vii
LIST OF TABLES	viii
ABSTRACT	ix
CHAPTER ONE: INTRODUCTION	1
1.1. Background of the study	1
1.2. Statement of the problem	3
1.3. Research questions	4
1.4. Objectives of the study.....	5
1.4.1. General Objective	5
1.4.2. Specific Objectives	5
1.5. Justification of the study	5
1.5.1. Academic Justification.....	5
1.5.2. Policy justification	6
1.6. Scope of the Study.....	6
1.7. Limitation of the study	6
1.8. Definition and Operationalization of Concepts.....	7
CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAMEWORK	9
2.0. Introduction	9
2.1. Capacity of political parties internal mechanisms to resolve disputes in Kenya	9
2.3. The impact of political party disputes on electoral performance	12
2.4. Relationship between political parties and state electoral institutions in resolving political party primaries disputes.	13
2.5. Theoretical framework	18
2.6. Research Hypotheses.....	21
CHAPTER THREE: RESEARCH METHODOLOGY	22
3.0. Introduction	22

3.1. Research design.....	22
3.2. Target population	22
3.3. Sample size and sampling procedures.....	22
3.4. Methods of Data Collection	23
3.5. Validity of research instruments	23
3.5.1. Reliability of research instruments.....	24
3.6. Data analysis and presentation	24
CHAPTER FOUR: DATA ANALYSIS, PRESENTATION, AND INTERPRETATION	25
4.0. Introduction	25
4.1. The capacity of Political Parties internal mechanisms to resolve electoral disputes.....	25
4.1.1. Political Party Organs/entities responsible for dispute resolution	25
4.1.3. Performance of the political parties’ dispute resolution entities.....	28
4.1.4. The role of Political Party Leaders	31
4.2. Effects of nomination disputes.....	32
4.2.1. Performance of the political party at the presidential level	36
4.3. State institutions responsible for resolution of political party disputes	39
CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSION, AND RECOMMENDATIONS.....	46
5.0. Summary of Findings	46
6.0. Conclusion.....	48
7.0. Recommendations	49
REFERENCES.....	52
APPENDICES	55
APPENDIX A: TRANSMITTAL LETTER.....	55
APPENDIX B: QUESTIONNAIRE FOR POLITICAL PARTY CEOs OR THEIR REPRESENTATIVES.....	56
APPENDIX C: QUESTIONNAIRE FOR MEMBERS OF THE IEBC SECRETARIAT DEALING DIRECTLY WITH THE IEBC DISPUTE RESOLUTION COMMITTEE.....	58

ABBREVIATIONS AND ACRONYMS

CEO	-	Chief Executive Officer
CORD	-	Coalition for Reform and Democracy
EAC	-	Election Assistance Commission
ELOG	-	Elections Observer Group
EU	-	European Union
FORD	-	Forum for the Restoration of Democracy
IEBC	-	Independent Electoral and Boundaries Commission
KADU	-	Kenya African Democratic Union
KANU	-	Kenya African National Union
NEB	-	National Election Board
NEC	-	National Executive Committee
NVP	-	National Vision Party
ODM	-	Orange Democratic Movement
ORPP	-	Office of the Registrar of Political Parties
PEC	-	Provincial Executive Committee
PPK	-	Peoples Party of Kenya
PPDT	-	Political Parties Disputes Tribunal
PPLC	-	Political Parties Liaison Committee
REC	-	Regional Executive Committee
TNA	-	The National Alliance
URP	-	United Republican Party
UDF	-	United Democratic Front
UPK	-	United Party of Kenya
WDM	-	Wiper Democratic Movement

LIST OF TABLES

Table 4. 1: Showing Internal Political Party Dispute Resolution Organs.....	26
Table 4. 2: Showing the number of internal political party disputes that were not solved within the party ranks by Political party	27
Table 4. 3: Showing the nature of the political party dispute resolution mechanisms	28
Table 4. 4: Performance of the political party in the disputed constituency.....	33
Table 4. 5: Difference between the votes garnered by the presidential candidate and the voter turn-out	36
Table 4. 6: Performance of the party's preferred presidential candidate compared to MNA candidate in the disputed constituency.	38
Table 4. 7: Showing the decisions of the IEBC Dispute Resolution Committee and the Judiciary.....	40

ABSTRACT

The study sought to evaluate the effectiveness of internal mechanisms by political parties in resolving disputes from their nominations in Kenya. It was guided by three objectives, namely: to examine the capacity of Political Parties internal mechanisms to resolve electoral disputes arising from their nominations, to establish the nature and impact of intra party electoral disputes on the performance of the political parties in the general elections and to investigate the relationship between political party and state electoral institutions in resolving disputes arising from political party primaries.

The study used both primary and secondary sources of data by conducting Key Informant Interviews and relevant literature review available online from the Political Parties, IEBC Dispute resolution Committee, IEBC website and the electronic and print media. The researcher adopted institutionalism theory as the theoretical framework that guided the research process. A cross sectional research design was employed with the sample frame comprising of political parties which participated in the 2013 general elections, had disputes during their primaries for the positions of Member of National Assembly (MNA) and had representation in the eleventh parliament. In addition state agencies responsible for resolution of party nomination disputes also formed part of the sample frame.

It was found out that all political parties in Kenya had internal dispute resolution mechanisms with different names in compliance with the requirements of the law. However, all of them lack the requisite capacity to resolve party disputes. It was also found out that disputes emanating from party primaries impact negatively on the performance of the party either in the disputed position or other electoral positions the party contests. Similarly, the disputes weaken the party especially when one of the disputants defect to an opposing party. As regards to the relationship of state institutions and party institutions, it was found out that their decisions affected the performance of the party institutions.

The study recommended that internal political party dispute resolution mechanisms be strengthened and institutionalized in order to be able to resolve the disputes for the benefit of the parties and also to advance democratic ideals.

CHAPTER ONE: INTRODUCTION

1.1. Background of the study

In modern democracies, political party primaries have become an essential part of an electoral process. Party primaries refer to the process by which political parties use to identify candidates to vie using their tickets during election for political offices (Ichino & Nathan, 2012). Primaries are vital in determining the persons to carry the flag of various political parties in an election be it for local or national offices. In states where there exists dominant political parties or in party strongholds, leaders may even be predetermined by a party's choice of candidates (Sefakor, 2008). The candidates whom parties select constitute the options available to voters to elect leaders from.

In conducting party primaries, there are various institutions involved depending on the political system of a particular state. Institutions are the systems of established and prevalent social rules that structure social interactions (Aoki, 2001). March & Olsen (1989) describe institutions as collections of interrelated rules and routines that define appropriate actions in terms of relations between roles and situations. Institutions both constrain and enable behaviour. Regarding party primaries, responsible institutions empowered to conduct the exercise could be either state institutions or institutions established by respective political parties as defined by the legal framework of the state in question. In developed democracies such as in the United States of America (USA), party primaries are an affair of the political parties. According to the U.S. Department of State, the major political parties i.e. the Democratic Party and the Republican Party establishes caucuses or conventions as mechanisms through which they conduct the primaries. The conventions and caucuses also provide avenues for resolving disagreements that might arise during the nomination process (Musila, 2013).

In Kenya, party primaries is largely a function of the respective political parties although state agencies such as the Independent Electoral and Boundaries Commission (IEBC) have a considerable role. The political parties through their party structures such as the National Election Board (NEB) conduct the nominations and resolve the disputes that may arise. The Political Parties Act, 2012, allows party members who may be aggrieved

by the party process to appeal to the IEBC Dispute Resolution Committee and the Political Parties Disputes Tribunal (PPDT) but only after exhausting internal party mechanisms. Similarly, the judiciary plays a key role in adjudicating disputes that may arise and other matters of criminal and civil in nature.

Since primaries are held in high regard, especially in the party strongholds, they are prone to disputes inherent of any electoral process. In Africa, and Kenya to be specific, political power means a lot to the economic and social prospects of individuals and communities. Those who acquire political power control how resources are shared. In an electoral context, the stakes are therefore always high. The competition for power is always a fierce encounter with candidates and political parties alike employing all manner of methods to attain political power. This competition is manifested during party nominations as candidates jostle to win tickets of popular parties(Hofmeister, W & Grabow, 2011)The responsible institutions are therefore faced with an uphill task of not only conducting the nominations but resolving the disputes that may arise.

The nomination begins at the formulation and adoption of nomination rules, determination nomination officials, campaigns, the actual voting, tallying and announcement of results, and presentation of certificates to eventual winners (NDI, 2013). All these processes are expected to be free, credible, peaceful and fair, however, they always breed disputes. The political party structures especially the electoral boards are the institutions responsible for conducting the entire nomination exercise while the party dispute resolution tribunals are expected to resolve disputes that arise. The state institutions such as the IEBC and PPDT acting as arbiters. The state agencies role is limited to considering appeals lodged by aggrieved candidates after having exhausted party internal mechanisms.

In most cases, disputes that occur include; perceived biasness of party officials, perceived or real unfair electoral rules, violation of party/nomination rules, disagreements over vote counting, tallying and result announcement, issuing of certificates to 'obvious losers', hooliganism/use of violence to intimidate opponents, bribery of voters, allegations of

corrupt party officials, rivalry over the use of available resources, and propaganda (Hofmeister, W & Grabow, 2011).

Since disputes within political parties are inevitable, the parties should provide internal mechanisms of resolving them before they escalate and threaten the very existence of the party(Hofmeister, W & Grabow, 2011). In Kenya, major political parties create mechanisms to resolve disputes internally. For instance, in 2013, The National Alliance (TNA) party established the dispute resolution committee with the responsibility of resolving disputes arising from nominations. On the other hand, the Orange Democratic Movement (ODM) has created the Appeals Tribunal both at the County and National levels in order to listen and resolve disputes emanating from its primaries. However, the organs performance has been dismal leading to major fall-outs with the parties during and after the nominations.

1.2. Statement of the problem

Political parties in Kenya have a poor record of resolving disputes arising from selection of candidates during party primaries. This was the case during the single party rule era and even after the advent of multipartyism in 1992. The enactment of the 2010 Constitution and the election sector laws provided for a new life in the electoral process. The new legal framework was expected to ensure that Political Parties embraced democratic culture. Specifically, the Elections Act, 2012 and the Political Parties Act, 2012 emphasized on internal party dispute resolution before aggrieved candidates could appeal to the state agencies such as the IEBC Dispute Resolution Committee (DRC).

However, despite the emphasis on the need for internal resolution of disputes by political parties and each political party establishing internal structures for dispute resolutions, during the political party primaries of 2013, two hundred and seven (207) disputes ranging from challenge to the authority of party officials, party membership of candidates, breach of internal party rules, and time frame for nominations from both the Coalition for Reform and Democracy (CORD) and the Jubilee Coalitions were appealed to IEBC Dispute Resolution Committee. This occurred despite the short period between the nomination exercise and the dead line for submission of appeals. Due to time constraints only Sixty (60) cases distributed as follows were heard and determined:

ODM-22;TNA-14; United Republican Party(URP)-5; Wiper Democratic Movement (WDP)-Kenya-4; United Democratic Front (UDF)-3; and 1 each for FORD People, Kenya African Union (KANU), FORD Kenya, KADU, Peoples Party of Kenya, New-FORD Kenya, National Vision Party and Democratic Party (DP), and United Party of Kenya (UPK)(IEBC, 2013).

Notably, the IEBC dispute resolution Committee overruled 25 decisions of the political parties out of the 60 cases considered. In instances where the IEBC upheld the party decisions, it was merely on technicalities rather than on the merit of the cases. Further, according to the election observer groups, there were cases in major political parties i.e. ODM, TNA and URP which were never appealed to the IEBC Dispute Resolution Committee (Commonwealth, 2013). This was majorly due to the time constrains and the centralization of the Committee in Nairobi. Due to the delays resulting from the inability by political parties to internally resolve the disputes adequately, only six out of fifty nine (59) political parties managed to deliver their final lists of the nominated candidates to the IEBC on time as prescribed under the Elections Act¹.

It is against the stated background that the study sought to investigate how political parties have attempted to resolve intra-political party electoral disputes in Kenya and with what results. How effective are the internal political party resolution mechanisms in resolving the disputes.

1.3. Research questions

Research questions answered in this study were;

- i) What internal mechanisms do political parties in Kenya have to resolve disputes related to their primaries?
- ii) What is the nature of disputes that occur during political parties' primaries and their impact on the performance of the political parties in the general elections?
- iii) How does political parties relate with state agencies in resolving disputes that arise during primaries?

¹ <http://www.iebc.or.ke/index.php/2015-01-15-11-10-24/downloads/category/provisional-list-of-political-parties-nominee>

1.4. Objectives of the study

1.4.1. General Objective

The general objective of the study was to investigate the ability of political parties' internal mechanisms in resolving disputes that arise during party nominations/primaries in Kenya.

1.4.2. Specific Objectives

The specific objectives of the study were:

- i) To examine the capacity of Political Parties internal mechanisms to resolve electoral disputes arising from their nominations.
- ii) To understand the nature of disputes that arises during party primaries and their impact on the performance of the political parties in the general elections.
- iii) To investigate the relationship between political party and state electoral institutions in resolving disputes arising from political party primaries.

1.5. Justification of the study

This research was justified on the basis that many studies done on political party primaries neglected the fundamental aspect of the disputes that arise during the party primaries and how to resolve them. Coleman (2015) and Oonagh (2009) who studied party primaries only concentrated on the process. With the emergence of multiparty democracy in most African countries, the idea of party nominations has become an integral part of the electoral process. However, the confrontational nature of the exercise has led to conflicts that threaten the existence of the political parties and sometimes stability of the state. This study went beyond the individual analysis of the party primary process and addressed the fundamental question of the disputes that arise, the institutions/mechanisms that resolve them and the impact they have on the party's performance during the actual elections.

1.5.1. Academic Justification

Findings of this study are expected to help build on the literature available and add knowledge on party primaries more so in Kenya. The study aimed at to filling the gaps in the contemporary literature by specifically focusing on disputes that arise during the

primaries and how best to resolve them. The study inquired into how political parties can create effective internal mechanisms to solve disputes from their primaries.

1.5.2. Policy justification

The study has significance to a number of stakeholders both in Kenya and other countries whose political parties conduct nominations. First, the findings will inform political parties on the impact and how to address nomination disputes in order to strengthen the parties and increase their prospects during the actual elections. Secondly, entities involved in strengthening of political party democracy will find the study useful since the findings will inform on areas that need capacity building with respect to party primaries. Third, state agencies such as the IEBC, Judiciary and the Political Parties Dispute Tribunal (PPDT) will also benefit from the findings of the study with respect to their mandate in party primaries nominations. Parliament will also benefit from the study especially on areas that require policy and legislative intervention.

1.6.Scope of the Study

The study sought to assess the role of internal political party mechanisms in resolving disputes from Election primaries in Kenya. The study involved political parties which held primaries during the 2013 general elections and had disputes with respect to the nominations for Member of National Assembly positions. The political parties were further limited to those which had parliamentary representation in the 11th Parliament of Kenya. The study also involved state agencies involved in resolving political party disputes.

1.7. Limitation of the study

The study encountered two limitations. First, there was a challenge of lack of sufficient data available with both the Political Parties and the IEBC on the disputes that occurred during the 2013 general elections. To address this challenge, the researcher conducted desktop research for reports by entities that were involved in the 2013 general elections. Authenticated media reports were also used to fill the information gap. Second, some of

the political parties under study had been dissolved hence studying them proved a challenge. The researcher addressed this challenge by reviewing the parties' websites.

1.8. Definition and Operationalization of Concepts

Political Party: A political party refers to organized group of people with at least similar political objectives and opinions that pursue to influence public policy by getting its candidates elected to public office (Downs, 1957) For the purposes of this study, political party will mean political parties which participated in the 2013 general elections in Kenya and conducted primaries as part of their candidate selection process.

Political Party Primaries: The process by which political parties decide who will be on the ballot paper as their recommended candidate(s) (Ichino & Nathan, 2013) For purposes of this study political party primaries shall refer to the nominations carried out by political parties which contested in the 2013 Kenya's elections for Gubernatorial and MP positions.

Political party structures: A political party structure is the institutional setup of a party. The party management institutions include committees and management boards. For the purposes of this study, political parties structures emphasized were structures responsible for dispute resolution such as the appeals tribunal.

Dispute: A dispute refers to a disagreement among people. In this study, disputes referred to the disputes that arise during political party nominations namely: - disagreements over perceived biasness of party officials, perceived or real unfair electoral rules, violation of party/nomination rules, vote counting, tallying and result announcement, issuing of certificates to 'obvious losers', hooliganism/use of violence to intimidate opponents, bribery of voters, allegations of corrupt party officials, rivalry over the use of available resources, and propaganda.

Dispute resolution: Refers to all processes that are used to resolve disputes, whether within or outside court proceedings. If a dispute resolution process is out of the normal court proceedings then it's referred to as Alternative Dispute Resolution (ADR). In this study, dispute resolution shall refer to mechanisms available for resolution of disputes that arise during party primaries.

Internal mechanisms: - Refers to all established processes or structures within an organization responsible for a particular function. In this study, internal mechanisms refer

to internal party structures and institutions responsible for resolution of disputes among party members.

State institutions: Institutions refer to the formal and informal rules and norms that organise social, political and economic relations. In this study, state institutions referred to institutions that are external to the political party and are responsible for conducting elections and resolving disputes that arise from party primaries in Kenya namely; the IEBC Dispute Resolution Committee, Political Parties Disputes Tribunal (PPDT), and the High Court.

CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.0. Introduction

This chapter provides an overview and a critical evaluation of relevant literature. It also offers theoretical and conceptual foundation on the role of political party mechanisms in resolving disputes from their primaries as well as identifies gaps which need further investigation, therefore forming a basis for the study.

2.1. Capacity of political parties internal mechanisms to resolve disputes in Kenya

Strong and sustainable political parties are a critical component of a vibrant democracy. To be able to fulfil their mandate, all political parties create structures that govern their operations. Political Parties are guided by the country's legal framework when establishing their structures and how they function (Norris, 2005). Although political party structures vary, they generally include party management committees with branches from the local to the national level (National Democratic Institute, 2011).

Schonfeld (1983) argues that the composition, roles and responsibilities of each party structure or organ is defined by the political parties' constitution. For instance, the constitution of the Canadian Liberal Party creates party organs such as the electoral district associations, provincial and territorial associations, council of presidents, national board of directors, committees and commissions. In South Africa, the ANC constitution establishes organs such as the Regional Executive Committee (REC), the Provincial Executive Committee (PEC), the National Executive Committee (NEC), and the National Conference (National Democratic Institute, 2011).

According to Hofmeister (2011), the hierarchy of a political party usually resemble the administrative set-up of that country. He further observes that political parties usually have the national, regional/provincial, district/municipal and local levels. Hofmeister (2011) thus contended that the leadership structure of a party assumes levels such as: -the national leadership committee (national convention/conference), local and regional party branches, auxiliary groups, and affiliated groups.

The national leadership committee of a political party is usually the organ responsible for daily decision making and implementation. Decision making is always vested in the national congress which comprises of delegates from regional, local branches and auxiliary groups (Hofmeister, W & Grabow, 2011). Local and regional party branches are responsible for grassroots mobilization, nominating candidates and carrying out local election campaigns (Hofmeister, W & Grabow, 2011). The auxiliary groups comprise of youth and women wings. They are usually part of the party organization and usually push for issues that affect their members (Hofmeister, W & Grabow, 2011)

With regard to intraparty conflicts, Scarrow (2005) observes that settlement of intra-party conflicts and disputes is usually done during party meetings and conventions. The divergent opinion is always discussed and resolved in a democratic way. Other mechanisms may include party courts which ensure that disputes are settled internally before proceeding to the mainstream judiciary. Apart from the formal forms of conflict resolution and mediation, Scarrow (2005) further notes that parties often also apply “soft” forms of dispute resolution (mediation) such as use of power sharing. In the end, however, she suggests that internal disputes must be resolved in a democratic and transparent way. In her analysis, Scarrow, S (2005) however fails to explain the most effective way of resolving disputes especially disputes from party primaries. She does not clearly point out the real structures responsible for the resolution of the disputes and the process they follow. This study was therefore interested in addressing some of the effective ways of resolving the disputes.

Regarding party primaries, political parties establish organs such as the election management boards to carry-out the primaries. In addition, the organs resolve disputes that may arise during primaries (Schlagar, 2014). For instance, the constitution of the New Patriotic Party of Ghana, establishes the disciplinary committees at different levels, their jurisdictions, how the disciplinary proceedings may be initiated and procedures for appeal. Kenya’s political parties also possess similar structures to manage their affairs. As a standard practice they have a party constitution or similar document which establishes various organs of the party. Such structures include the national executive

committee, the national convention, the election management board, and the dispute resolution committee, amongst others (Jonjo, 2013).

In Kenya, with respect to dispute resolution, the Political Parties Act enacts that all political parties must provide for internal dispute resolution mechanism. However, the law doesn't clearly state the content of the contemplated internal mechanism. However, Article 91 and 92 of the Constitution and the provisions of the Elections Act suggest that such mechanisms should abide by democratic principles of good governance, namely political participation by all people, promotes human rights and promotes the objectives of the constitution and the rule of law².

The existing legal framework and literature fails to provide the actual and the ideal composition of these dispute resolution organs. Thus, political parties have established various mechanisms to fit their own interests which may explain the seeming inability for them to effectively resolve the disputes that occur during nominations. For instance, in Kenya, the performance of the organs so established for purposes of dispute resolution has not been promising as witnessed during the 2013 party nominations. The dispute resolution committees of the major political parties in both Jubilee and Cord coalitions failed to effectively address disputes that arose during nominations going by the numerous appeals that were lodged to the IEBC Dispute Resolution Committee. For instance, despite the National Alliance (TNA) party having established the dispute resolution board with the responsibility of resolving disputes arising from nominations while the Orange Democratic Movement (ODM) having created the appeals tribunal, performance of these structures fell short of the expectations. The available literature thus fails to explain the ideal organs parties should establish to resolve their disputes and whether the existing structures have the capacity. It will therefore be of interest for this study to find out whether political parties in Kenya have the structures with the capacity to resolve disputes especially disputes arising from their primaries.

²<http://kenyalaw.org/kenyalawblog/pre-election-dispute-management-between-judicial-and-administrative-dispute-management-mechanisms/>

2.3.The impact of political party disputes on electoral performance

Within political parties, conflicts/disputes are inevitable due to different opinions and perceptions of party members as well as struggle for positions and influence. However, Shin (2009) observes that the conflicts within political parties must be amicably resolved to avoid fall-out. Chukwuemerie (2009) contends that disputes that confronts political parties especially in Africa include; disagreements over election into party offices, nominations for persons interested to vie for political seats/offices, sharing of positions/offices, conflict over party resources, personal egos, and tribal differences among others. He further rightly argues that these disputes may escalate and lead to formation of factions, members defecting to other parties and in some cases the actual dissolution of the party in question.

Political party disputes especially disputes from primaries threatens the performance of the political party during elections. A candidate's legitimacy is always questionable whenever that candidate is perceived to have been nominated through irregularities. Voter turnout especially by party supports diminishes hence the party's candidate chance of winning is low (Ichino & Nathan, 2013). Similarly disputes can have a negative impact on the party's vote share. If party members' feud publicly may give an impression that the party is dysfunctional and lacks the ability to focus on the important problem of winning elections and running government. This is usually the case when high-ranking officials are involved in the feuds.

Similarly political parties which don't resolve disputes in an amicable manner may lose their strong candidates to rival political parties through defections thus dealing a blow to their success during the actual elections (Ichino & Nathan, 2013). This assertion is supported by the happenings in Europe in the period 1970's through 2002 where lack of unity within political parties led to a loss in votes for the political parties in question³.

During the 2013 general elections, failure by political parties in Kenya to resolve their disputes internally had several negative consequences. First, it was a blow to the political party itself since candidates who felt cheated by a party defected to a competitor political

³<http://blogs.lse.ac.uk/europpblog/2013/08/15/a-lack-of-party-unity-can-have-a-significant-negative-effect-on-the-electoral-success-of-european-parties/>

party and went ahead to win the elections. This was witnessed with the case of Hon. Omar Hassan in the nominations for the senatorial seat for Mombasa County. Hon. Omar Hassan, having been aggrieved with the ODM nomination process defected to WDP-Kenya and went ahead to win the Senatorial seat for Mombasa County. In other instances, Hon. Victor Munyaka and Hon. Itwiku Mbai vying for parliamentary seats for Machakos town and Masinga constituencies respectively defected to Chama Cha Uzalendo party having felt cheated by the WDM-Kenya's nomination process. They both won the elections. In the same regard, weak candidates who were nominated by the parties irrespective of the complaints raised against their candidature went ahead and lost in the general elections.

Since disputes are inevitable and they will always occur, it is therefore important for political parties to contain the disputes especially during the electioneering period in order to improve their performance during elections. The available literature while confirming that generally disputes have an impact on the performance of the political parties in actual elections, there is no adequate information on the impact of disputes that arise from the primaries on the performance of the political party in the actual election. This study shall therefore sought to answer the missing information on the disputes from party primaries and how best the political parties can address such disputes that occur.

2.4. Relationship between political parties and state electoral institutions in resolving political party primaries disputes.

In the conduct of an election, there are several actors who play a role and whose conduct impacts on the outcome of an election. The interaction of electoral actors is guided by an electoral process that links actors and defines their relevance within that cycle so that electoral management is steered towards its outcome (Kopecký, 2006). The relationship between state electoral institutions and political parties is crucial in a democracy and the electoral process. State institutions refer to the formal institutions established by the State's constitution or legal framework to govern certain aspects of the state. This study focused on the state organs responsible for managing elections and resolving disputes that arise.

Electoral institutions perform the role of a referee in the electoral process. This role can only be achieved when the main players i.e. the political parties, abide by the rules of the game while the institutions remaining non-partisan, impartial and transparent. Electoral institutions are in charge of monitoring the behaviour of the political parties and their candidates; in addition to that, they are also responsible for mediating conflicts and sanctioning players who breach the law and the set rules. The manner in which the electoral institutions are composed especially the Electoral Management Body (EMB) is largely responsible for its ability to carry out these functions that create a level playing field (Vianello, 2009). Vianello (2009) argues that the extent to which the authorities have control over the candidates and the political parties depends on the legal framework of that Country.

Vianello(2009) goes ahead to state the three major functions of electoral institutions in a polity which then determines the kind of relationship between the institutions and the political parties. The first one is electoral management, this includes the creation and maintenance of voter registration lists, recruiting election officials, installation of voting centres, calculating electoral results and announcing winners. He notes that political parties have a significant role in this function. This include, marshalling of its members to register as voters, verifying the voter register, and observing the voting process and tabulation of results. It is in the political parties' interest that elections are carried out smoothly, transparently and legally. That way there is no chance that the elections will be questioned on the basis of technical problems, which could render the results illegitimate and sometimes resulting into disputed results and post-election violence. Onus is upon the electoral institutions to create a mechanism through which political parties can be involved in the processes. The Political Parties Liaison Committee (PPLC) has been established in Kenya as a mechanism through which state electoral institutions engage political parties⁴. As to whether the PPLC has achieved its objective shall be a subject of this study.

A second function of some of the electoral authorities according to Vianello (2009) is to oversight the work of political parties. This may include their registration and ensuring

⁴ Section 38(3) of the Political Parties Act, 2012

that they adhere to the existing legal requirements. As indicated, the relationship between an electoral authority and a political party is either collaborative or not, however, when electoral authorities exercises the oversight role their relationship with political parties ceases to be collaborative. It always becomes a confrontational relationship. Similarly, the state law enforcement agencies such as the police and courts also play a key role in ensuring that political parties comply with the law.

A third function of electoral authorities as argued by Vianello (2009) which is central to this study is conflict resolution between political parties and within political parties. Different conflicts emerge among political parties for instance dispute over campaign resources and misconduct by competing candidates of various political parties. He observes that as the referee, presiding over the dispute resolution process, this relationship with political parties would turn-out to be confrontational because the outcome of the resolution process always breeds an aggrieved party. Incidentally, political parties are likely to accuse the electoral authority of being biased irrespective of its decision.

In a nutshell, the nature of the relationship that exists between political parties and electoral institutions is varied from country to country. It's imperative for electoral authorities to always uphold transparency as a valued principle, in order to preclude allegations by the losing parties of unfair conduct or judgment. Transparency and fairness should also be applied when resolving disputes appealed to them. Vianello (2009) sums up by arguing that the need for clear legislation on electoral matters that specifies the roles of each actor in the system is vital. This will provide a clear framework on how all actors in the election cycle relate. Without clear rules, he opines that there is limited space for accountability by political parties and electoral authorities alike.

In Kenya, the legal provisions relating to election provide the framework of the relationship between state institutions and the political parties and state institutions in as far as election management and resolution of disputes that rise is concerned. Arising from the laws, the key institutions involved in election management and dispute resolution include; the Independent Electoral and Boundaries Commission(IEBC), the IEBC

Dispute Resolution Committee, the Registrar of Political Parties, the Political Parties Dispute Resolution Tribunal and the judiciary.

Regarding the IEBC, the commission which is established pursuant to Article 88 of the Constitution has a mandate of settling all electoral disputes a part from election petitions after the declaration of election results. In order to fulfil this mandate, the IEBC has created the Dispute Resolution Committee (DRC) to handle disputes that fall within its mandate. Section 74(2) of the Elections Act enacts that the IEBC has to resolve the disputes seven days after an application has been made. In discharging the functions, IEBCDRC has attempted to resolve disputes lodged by members of various political parties although it is on record that in the 2013 elections, due to time constraints not all disputes were resolved amicably. The concurrent jurisdiction of the IEBC and other state institutions particularly the judiciary affects the proper discharge of its mandate and also the political parties fails to understand which institution should be the final arbiter. Similarly, the complainants who are members of the political parties have challenged the impartiality of the DRC based on how it's established and lack of an appeal process within the setting of the Committee and the Commission.

The Political Parties Act, 2012 creates of the position of the Registrar of Political Parties whose functions include the registration and to regulate political parties' activities. However, despite the express legal provisions of the role of the registrar of political parties, there has been a lustre performance of the office since political parties' structures and processes are yet to be fully institutionalized. The office of the registrar has not been able to ensure that the political parties comply with the provisions of the Political Parties Act, 2012. Issues that have been singled out is the failure by the office to ensure that political parties to file annual returns on the sources of their funds and expenditure and noncompliance to the gender rule⁵.

The Political Parties Act further creates the Political Parties Disputes Tribunal (PPDT) whose role is to resolve disputes affecting political players. The law demands that the tribunal settles all disputes lodged within a period of three months. However, members of

⁵<http://www.theeastafican.co.ke/news/Kenya-political-parties-registrar-to-enforce-new-law-/2558-3368690-6lcuu/index.html>

a political party must utilize their own internal mechanisms before filing disputes with the tribunal. The tribunal's decisions can be appealed in the High Court and further in the Court of Appeal and the Supreme Court. However, there have been cases where members of political parties rush to the tribunal before exhausting their party internal mechanisms. In addition, there have been accusations of politicization of the tribunal's process and its decisions by parties hence jeopardizing its work.

In other jurisdictions, for instance the US, the states are responsible for elections under their jurisdiction. However, under the Help America Vote Act, 2002, the Election Assistance Commission (EAC) is established to set national standards and requirements for voting which may be adopted by the states. In most states, the county and city election boards conduct the elections. The EAC ensures that the voting system hardware and software is in place and encourages states to adopt voluntary guidance⁶. Apart from the EAC, there is established the Federal Election Commission (FEC) whose mandate is to administer and enforce the Federal Election Campaign Act which is the law that governs the financing of federal elections⁷.

In Nigeria, the Constitution establishes the Independent Electoral Commission (INEC). The Commission's main function is to organise all elections to the offices of the State and Assemblies. With regard to political party affairs, the law empowers the Commission to observe political campaigns and create rules and regulations that govern the parties. The Commission also has an oversight mandate over the political parties by ensuring that they adhere to the law⁸. However, there are no express provisions as to whether the commission is involved in the nominations of the political parties especially resolution of their disputes.

In the case of Uganda, Articles 60, and 61 of the 1995 Constitution establishes the Electoral Commission whose mandate is to organize, conduct and supervise elections. In terms of managing the affairs of the political parties, the commission has powers to

⁶<http://aceproject.org/ace-en/topics/em/electoral-management-case-studies/the-united-states-decentralized-to-the-point-of>

⁷<http://www.fec.gov/info/mission.shtml>

⁸<http://www.inecnigeria.org/>

oversee the campaigns by the candidates to eliminate violence and other malpractices. The Constitution also requires the commission to be transparent and involve all stakeholders in its work. However, political parties in most cases make the work of the commission difficult by refusing to comply with the legal requirements such; declaration of assets/liabilities, declaration of their sources of funding, amongst others. Similarly, there is no legal provision on the role of the Commission in addressing disputes within the political parties (Burdi, 2011).

In view of the above, it's evident that in Kenya, the legal framework provides various mechanisms through which political parties can relate with state institutions regarding dispute resolution within parties. In other countries, there are no clear provisions as to the role of the election authorities in the nominations of political parties especially on the issue of dispute that arise from the exercise. As already stated, in Kenya, political parties have the original jurisdiction to resolve disputes internally, although aggrieved candidates have a right to appeal to the state institutions. This relationship has had its share of success and challenges. In the 2013 general elections, the IEBC Dispute Resolution Tribunal played an important role in resolving the disputes from nominations. However, due to time constraints and other factors, not all disputes were amicably resolved. On the other hand, the judiciary has been accused of being ineffective in resolving dispute due to the acrimonious and slow judicial process.

Similarly, the concurrent jurisdiction of the state institutions on the disputes characterized by forum shopping, overlapping jurisdiction and in certain instances duplications affects the seamless resolution of the disputes by the institutions so established. Further, from the literature, there seems to be no clear information on how best the state institutions can handle the disputes. This study therefore sought to answer the questions as to how the state institutions can relate with political parties and enable them discharge their mandate effectively in dispute resolution and advance democratic principles.

2.5. Theoretical framework

The study adopted the institutional theory in order to explain the importance of institutions in structuring processes. This theory emphasizes on the processes by which

structures, including schemes, rules, norms, and routines, become established as authoritative guidelines for social behaviour (Olsen, 1989). The key proponents of the theory include; Richard Scott and Guy Peters. The theory exists in various versions based on the assumptions therein, this includes; historical institutionalism, rational choice institutionalism and normative institutionalism (Peters, 2000). Historical institutionalism assumes that the historical growth of a particular organization is important in detecting the degree of institutionalization of the organization. That institutionalization is something that takes place to an organization over time. The rational choice institutionalism assumes that individuals are instrumentally persuaded to maximize their utility thus institutions are taken as systems of rules and incentives. On the other hand normative institutionalism underlines the role of values and logic appropriateness. That norms and formal rules of institutions shape the actions of those acting in them (Peters, 2000).

This study adopted the rational choice institutionalism approach of the institutionalism theory. The approach as argued by March and Olsen (1989) views an institution as a collection of norms, rules, understandings, and routines. The theory argues that institutions give meaning to interactions and provide the context within which interactions take place. The theory further propounds that individuals will make conscious choices, but those choices will remain within the parameters established by the dominant institutional values. In order to achieve this, there ought to be a way of monitoring behaviour and enforcing dominant views. As such March and Olsen (1989) point out that all organizations develop routines and then employ those routines as the means of monitoring and reacting to changes within their task environments. In addition, the theory expounds that institutions have structures which may be either formal or informal. The structures involve groups and individuals in some sort of patterned interactions that is predictable based upon specified relations. Other key attributes of institutions according to the theory include: -they exhibits stability over time, members share values, they constraint the behaviour of its members and gain legitimacy over time.

While applying this theory, the study demonstrated that since electoral processes are inherent of disputes, the need for structured institutions to resolve the disputes is

paramount. The study showed that having rules and institutions for the internal adjudication of disputes prevents conflicts from escalating and spilling over to external courts which is not good for the party in question. With the existence of institutions, members of a political party will already be aware of the established routines, norms and structures through which their grievances would be resolved. As structures are strengthened overtime, they gain legitimacy and all members of the political party will have to abide by their processes and outcomes. This is in sharp contrast to a situation where structures are either missing or are not well established. In such a case, there is no standard procedure of addressing the disputes, secondly, there is no means of enforcing sanctions on Members who go against the institutional set up of a party.

This study could have adopted the rational choice theory propounded by scholars such as Gary Becker. The theory's major assumption is that individuals, as actors in the society and everywhere, behave and act always as rational beings, self-centred and self-preserving and that these individual social actions are the ultimate source of larger social outcome(Ogututu, 2013). That when faced with several courses of action, people usually do what they believe is likely to have the best overall outcome. However, while it's true that individuals would always act in their best interest, their behaviour ought to be institutionalised since ones interest may be detrimental to the entire organization. Resolution of disputes ought to not only serve the interest of an individual in the party but should be of benefit to the very existence of the party. As such, institutions as argued by the institutional theory structure the actions of the individuals such that they pursue their interests within the established mechanisms which exist for the benefit of the party. The only weakness of the institutional theory in this case is the failure of the theory to explain on how to best establish institutions that can serve well its members.

To this end, the study sought to prove that while Kenyan political parties have attempted to establish internal mechanisms to resolve their disputes, they have not been effective as demonstrated by disputes that are either appealed to the judiciary, IEBC Dispute resolution Committee or the Political Parties Tribunal. The study further sought to establish that political parties with strong and effective internal mechanisms such as the electoral management boards, dispute resolution committees and the national delegates

councils are likely to resolve the disputes arising from the primaries amicably. By structuring the dispute resolution process, the institutions so established will do so effectively thus preventing any fall out. The theory therefore assumes that absence of the appropriate institutions lead to the failure of the political parties to effectively resolve their disputes, more so disputes from party primaries.

2.6. Research Hypotheses

- i) Political parties with effective internal dispute resolution mechanisms are likely to amicably resolve disputes from their primaries.
- ii) The number of unresolved disputes from party primaries is directly proportional to the effect on the party's performance at the actual elections.
- iii) The performance of state institutions responsible for resolution of political parties' disputes has a direct bearing on the performance of Political Parties in resolving internal disputes arising from party primaries.

CHAPTER THREE: RESEARCH METHODOLOGY

3.0.Introduction

This chapter presents the research design used, target population of the study, the sampling design and sample size, data collection methods, validity and reliability of the study, data analysis and presentation.

3.1.Research design

Research design is a plan that indicates how, when and where data is to be collected and analyzed (Parahoo, 1997). This study was cross sectional since it studied various actors' namely political parties and state agencies with respect to dispute resolution during the 2013 party primaries. The study used both primary and secondary data obtained from the political parties and the IEBC.

3.2.Target population

As defined by Mugenda (2003), target population is the population to which the researcher wants to generalize the results of a study. The research targeted Political parties that participated in the 2013 general elections, conducted primaries and had parliamentary representation in the 11th Parliament of Kenya. The focus was on the disputes that arose with respect to primary elections for the Member of National Assembly positions.

3.3.Sample size and sampling procedures

Sampling refers to the selection of individuals to be studied with an intention of yielding some knowledge about a population of concern, especially for the purposes of statistical inference (Lohr, 1995). The sampling frame must be representative of the population. For this research the sampling frame comprised of political parties which participated in the 2013 general elections, had disputes during primaries for the positions of Member of National Assembly (MNA) position and had representation in the eleventh Parliament. They included: ODM, TNA, United Republican Party (URP), Wiper Democratic Movement (WDP) Kenya, United Democratic Front (UDF), Kenya African Union

(KANU), FORD Kenya, and New-FORD Kenya. The sample also included the IEBC national secretariat and the IEBC Dispute resolution Committee.

3.4. Methods of Data Collection

Data collection is the means by which information is obtained from the sample (Wanan, 2011). Although various methods of collection exist, they depend on the sampling technique, time available, manpower and the cost, among other unforeseeable factors. This study collected data using a researcher-administered questionnaire on Key Informants. Questionnaires were administered to the CEOs of the Political Parties an official of the IEBC Secretariat working directly with the IEBC Dispute Resolution Committee. The researcher informed the respondents that the instruments that were being administered were for research purpose only and the responses from the respondents would be kept secret and confidential. In total, the study had nine (9) respondents as follows:

- i) All the 8 CEOs or their representatives of the selected political parties since they were the custodians of the political parties information and records;
- ii) The CEO or a Member of the IEBC Secretariat directly working with the IEBC Dispute resolution Committee.

The researcher obtained a permit from the National Council for Science and Technology and an introductory letter from the University to collect data from the respondent then personally delivered the questionnaires to them. The study also used secondary data available online from the Political Parties, IEBC Dispute resolution Committee, IEBC website, library and the electronic and print media.

3.5. Validity of research instruments

Validity is the degree to which the research instruments measures what it is supposed to measure (Mugenda, 1999). Validity is the accuracy and meaningfulness of interpretations of the results. Therefore, validity refers to the extent to which an instrument has to measure what it ought to measure accurately on the variables of the study and produce data, which can be used to explain the phenomenon and give meaningful inferences. This was done through careful examination of the content and removing from it all those

elements that may prejudice the data and the key informant responses and triangulation of the different methods used, both primary and secondary sources of data.

3.5.1. Reliability of research instruments

Gay (1976) defines reliability as a measure of degree to which a research instrument yields consistent results or data after repeated trials. The study used already published and compared both recent and old data to validate the outcome. The instruments used to collect data were pre-tested and inconsistencies addressed before actual survey.

3.6. Data analysis and presentation

The objective of data analysis was to obtain usable and useful information. The researcher used both quantitative and qualitative techniques to gather and analyse data. The study employed descriptive statistics where data was presented in form of tables and interpretation of the findings. Qualitative data was captured and analysed in prose and quotes.

CHAPTER FOUR: DATA ANALYSIS, PRESENTATION, AND INTERPRETATION

4.0. Introduction

This chapter presents analyses and discussion of the findings of the relationships between political parties internal mechanisms and electoral disputes; impact of intra party electoral disputes on the performance of the political parties in the general elections; and political party and state electoral institutions in resolving disputes arising from political party primaries. The results of the analysis of the findings are presented in tables, respectively.

4.1. The capacity of Political Parties internal mechanisms to resolve electoral disputes

The study sought to examine the capacity of political parties to resolve their disputes especially those emanating from party primaries/nominations. It was hypothesized that political parties with effective internal dispute resolution mechanisms are likely to amicably resolve disputes from their primaries. The argument was that internal disputes including those arising from party primaries should be addressed within the party structures. We had theorised using the rational choice approach of the institutional theory that institutions structure processes. As such, members of political parties without appropriate or with weak political party structures to handle internal party disputes, usually resort to other dispute resolution mechanisms, which at times will be against the interest of the party. We therefore sought to establish whether or not all the political parties which participated in the 2013 General elections had party structures for resolving election disputes. We also sought to establish the nature of these structures in terms of their composition and processes and effectiveness to solve disputes. We used data obtained from the political parties' constitutions, the Office of the Registrar of Political Parties, and the IEBC Dispute Resolution Committee.

4.1.1. Political Party Organs/entities responsible for dispute resolution

An analysis of all the political party constitutions deposited with the office of the Registrar of Political Parties revealed that all had organs responsible for dispute

resolution primarily as part of their party structure in compliance with the Political Parties Act, 2012. This was also confirmed by all the CEOs of the political parties under study. Table 4.1 shows that all the top 8 political parties according to their parliamentary seats strength in 2013 general election had internal political party mechanisms meant to resolve internal disputes with different names. Under the law, a party member has to utilise the party internal mechanisms before appealing to state organs such as the IEBC Dispute resolution Committee or the Judiciary (Political Parties Act, 2010). It was therefore expected that the disputes arising from the political parties' primaries could be resolved within the party structures. This was not the case since several disputes ended up at the IEBC dispute resolution Committee as shown in table 4.2.

Table 4. 1: Showing Internal Political Party Dispute Resolution Organs

No.	Political Party	Internal Dispute resolution mechanism
1.	Orange Democratic Movement(ODM)	Appeals Tribunal(County and National)
2.	The National Alliance(TNA)	Dispute Resolution Board
3.	United Republican Party(URP)	Nominations Dispute Committee
4.	Wiper Democratic Party(WDP)	Nomination Appeals Tribunal
5.	United Democratic Front(UDF)	National Elections Board
6.	Kenya African National Union (KANU)	National Appeals Tribunal
7.	New Ford Kenya (NFK)	Elections Appeals Board
8.	Ford Kenya(Ford K)	Nomination Appeals Tribunal

Source: Author's own compilation of responses by CEOs of Political Parties and the Office of the Registrar of Political Parties website (<http://www.orpp.or.ke>).

Table 4.1 shows that each of the eight (8) dominant political parties had an internal dispute resolution mechanism by a particular name. Whereas ODM called its organ, Appeals Tribunal, TNA called its structure Dispute Resolution Board, While URP called its organ Nomination disputes Committee. WDP and Ford K each called its organs, Nomination Appeals Tribunal. The existence of the internal dispute resolution mechanism did not however guarantee automatic resolution of the disputes arising from the party primaries. Each of the parties had its own share of conflicts and attempted resolution in their own ways, respectively as shown in table 4.2.

Table 4. 2: showing the number of internal political party disputes that were not solved within the party ranks by Political party

Political Party	Number of disputes lodged at the Political Party's dispute resolution entity	Number of disputes resolved internally	Number of disputes referred to the IEBC Dispute Resolution Committee(MNA position)
ODM	25	8	17
TNA	50	31	19
URP	8	5	3
WDP	3	2	1
UDF)	3	2	1
KANU	3	2	1
New Ford Kenya	4	2	2
Ford Kenya	5	2	3
Total	101	54	47

Source: Authors own compilation from responses by Political Party CEOs and IEBC Dispute Resolution Committee (IEBC National Nomination Dispute Resolution Hearings Notice as published on <https://kenyastockholm.files.wordpress.com/2013/01/national-dispute-resolution-commttee-list-of-cases.pdf>)

Table 4.2 shows that all the 8 political parties had cases which were not resolved within their ranks and had to move to the IEBC disputes resolution committee with TNA leading both in number of disputes lodged at 50 and those resolved at 31 followed by ODM with 8 of the 25 disputes lodged being resolved and WDP resolving 5 out of the reported 8 cases. The other five political parties resolved 2 cases each. This shows that the political parties' internal conflict resolution mechanisms were active. The eight political parties had a total of 101 disputes across all the constituencies in Kenya.

4.1.2. Nature of disputes

A summary of the responses by the respondents revealed that the following were the frequent disputes lodged by disputants to the political parties' dispute resolution entities.

- i.) Challenges to the authority of party officials who presided over the nominations.
- ii.) Challenges relating to the membership of the opposing candidate to the relevant Political Party.
- iii.) Breach of internal party nomination rules.
- iv.) Disputes relating to voter registration i.e. as to whether those who participated in the voting were registered members of the relevant party.
- v.) Claims that the nomination was not conducted within the statutory timeframes.

4.1.3. Performance of the political parties' dispute resolution entities

The Political Parties Act, 2012 requires each political party in Kenya to have internal dispute resolution mechanisms. The political parties had diverse internal structures and prescriptions for the internal disputes resolution mechanisms as shown in table 4.3 which in turn might have influenced their performances

Table 4. 3: Showing the nature of the political party dispute resolution mechanisms

Party	Appointing Authority	Qualifications	Procedures
ODM	<ul style="list-style-type: none"> - National Executive Committee (NEC) for National Appeals Tribunal(NAT) - National Elections Board, and approved by the NEC for County Appeals Tribunal 	<ul style="list-style-type: none"> - Distinguished persons of good moral standing in society and of high integrity. - Academic qualifications not prescribed. 	<ul style="list-style-type: none"> - Payment of application fees by the appellants. - Appellants may appear before the Tribunal or not. - Tribunal has powers to summon the Returning Officer responsible and Party witnesses with relevant evidence. - Tribunal may dismiss the appeal, order re-count, re-tallying of votes or repeat of elections.

Party	Appointing Authority	Qualifications	Procedures
			<ul style="list-style-type: none"> - Tribunal considers issues based on the Constitution of Kenya, any applicable Law, Party Constitution and Election and Nomination Rules - An appeal should be considered within 48 hours of receipt of the appeal.
WDM	NEC	<ul style="list-style-type: none"> - Distinguished persons who are party Members - Academic qualifications not prescribes 	<ul style="list-style-type: none"> - Timelines for appeals set by the Tribunal but should not fall outside the IEBC set timelines - Appellants to be present during hearing - Verdict of the tribunal final - Payment of application fees by appellants.
TNA	NEC	<ul style="list-style-type: none"> - Distinguished persons of good moral standing in society and of high integrity. - Academic qualifications not prescribed 	Not prescribed
URP	<ul style="list-style-type: none"> - NEC for at the national level - Selected and appointed through a consensus made by all aspirants seeking the party ticket at the County level. 	<ul style="list-style-type: none"> - Should not be vying in the elections - Academic qualifications not prescribed 	Not prescribed
UDF	NEC	Not prescribed	Discretionary
KANU	NEC	Not prescribed	Discretionary
New Ford Kenya	NEC	Not prescribed	Discretionary
Ford Kenya	NEC	Not prescribed	Discretionary

Source: Author's own compilation of respective Party constitutions deposited with the Registrar of Political Parties and responses from Political Party CEOs.

Table 4.3 shows that there are no universal guidelines on the nature of the institutions to be established by political parties. The respondents confirmed that each party unilaterally established its own mechanism/entity and fashioned its own rules. Some respondents stated that the entities did not have any set rules to follow when considering cases. The respondents also confirmed that there were no guidelines issued either by legislation or by the relevant authorities such as the IEBC or the Registrar of Political Parties. Table 4.3 shows that only ODM and WDM even though the latter did not prescribe the qualifications for the membership, had prescribed procedures for lodging appeals by litigants. Four parties, namely UDF, KANU, New Ford Kenya and Ford Kenya neither prescribed the qualifications nor procedures for lodging the appeals. The gaps show that except for ODM, did not have proper and reliable structures to address internal disputes arising from the party primaries as and when they arose. This helps to explain why the parties failed to resolve a total of 47 disputes for the position of Member of National Assembly (MNA). For instance, as shown in Table 4.3, dispute resolution committee members in all the political parties were appointed by the respective party's National Executive Committee (NEC). Chukwuemerie, A. (2009) had argued that such organs ought to be independently selected to avoid conflict of interest. A review of all the political parties' Constitutions revealed that the membership of parties' NECs is always drawn from the party's elites who have direct interest in the elections. In fact some were contestants in the elections. For instance, Hon Jakoyo Midiwo who was an ODM NEC member was a candidate in Gem constituency during the 2013 general election whose nomination was disputed with the outcome favouring his candidature as shown in Table 4.4. This therefore casts aspersions on the capability and the impartiality of the members of the dispute resolution entities.

In terms of qualification, there was no prescription for the academic qualification yet dispute resolution is a complex process whose acceptance is a function of quality of the decisions of the disputes resolution entities and the competence of its members. Indeed, some CEOs of political parties responded that the party leaders decided who to sit in the dispute resolution organs not based on merit or any other qualification but on personal relations. There was also no clarity on the procedures to be followed in the dispute resolution process. As already indicated, some respondents stated that the entities did not

have any set rules to follow when considering cases. A good and fair dispute resolution process should be clear, structured, and transparent, provides adequate time for hearing and determination of matters and obeys the rules of natural justice (Tyler, 2011). In cases where some semblance of procedure was mentioned, for instance ODM, there were no adequate provisions to safeguard the process from biasness and unfairness. The prescribed timelines for considering an appeal were also short for both the claimant and defendant to prosecute or defend their cases respectively. For instance the ODM election and nomination rules provided that an aggrieved person had to lodge his/her appeal within 48 hours and the appeals tribunal should consider the appeal with 48 hours. The period is too short to consider an election dispute. In addition, most of the entities are the first point of recourse yet their decisions are final within the party ranks. In essence there is limited or no appeal within the party leading to unsatisfied persons further lodging the appeals to the IEBC dispute resolution committee. For instance, rule 19.2.10 of the ODM election and nomination rules is unequivocal that the decision of the National Appeals Tribunal shall be final. Indeed, all these arguments corroborated the findings of Nahomi Ichino & Noah L. Nathan (2011) in Ghana that political parties which had weak internal mechanisms were ineffective in carrying out their primaries.

4.1.4. The role of Political Party Leaders

The study also sought to establish the influence of the party leader in the resolution of nomination disputes since most political parties in Kenya revolve around the party leader. A review of authenticated media reports revealed that political party leaders in the leading political parties had a great influence on how the disputes were resolved. This was either by directly intervening in the dispute or by influencing the decisions of the dispute resolution entity. For instance, Uhuru Kenyatta, the leader of TNA then, issued a tough statement after disputes emerged following party nominations⁹. The statement gave direction on how the disputes were to be resolved. In the statement, Uhuru Kenyatta urged aspirants to abide by the decisions of the internal mechanisms thus ensuring that members stuck with the decision of the party. In addition, Kenyatta inadvertently intervened in the Othaya constituency nomination dispute and ensured that an aspirant

⁹ <https://www.kenya-today.com/politics/uhuru-kenyatta-tna-nominations>

Mary Wambui was issued with a nomination certificate after the aspirant had been allegedly rigged out by the party. In addition, as a way of appeasing the losers, the TNA party leader promised the aspirants government appointments if the party would form government following the general elections. On the other hand, ODM party leader intervened in several nomination disputes that occurred in 2013 nominations by influencing decisions of the Board¹⁰. For instance, in Suna East constituency, the party leader's word meant Junet Mohamed was issued with the party nomination certificate¹¹. In Siaya County, Raila's underground interventions in the nomination dispute that ensued between his own brother Oburu Odinga and William Oduol saw Cornell Rasanga given the ODM party ticket for Siaya Gubernatorial position a position he eventually won¹². In Nairobi, in a bid to avert a fall out, Raila intervened and persuaded Elizabeth Ongoro not to vie for the senate position she had shown interest and instead allow Margaret Wanjiru to run for the Senate seat. The later was nominated to the Senate as part of the party leader's intervention.

4.2. Effects of nomination disputes.

The second objective of the study was to establish the impact of intra party electoral disputes on the performance of the political parties in the general elections. We had hypothesised that the higher the number of unresolved disputes from party primaries the greater the negative effect on the party's performance at the actual elections. The data on the performance of a political party was important in understanding whether nomination disputes had an impact on the performance of the party in the actual election. To determine the impact, the researcher examined the performance of the political party in the disputed constituency and the party's presidential choice. The data was obtained from the IEBC dispute resolution committee and the 2013 general election results as declared by the IEBC and responses by CEOs of political parties. The party's performance was studied at two levels, the votes obtained by the party's presidential candidate and secondly the political party of the winning candidate.

¹⁰ <https://www.capitalfm.co.ke/news/2012/11/raila-end-wrangles-in-odm/>

¹¹ <https://www.kenyans.co.ke/news/28461-how-junet-mohammed-became-raila-odingas-most-trusted-ally>

¹² <https://www.capitalfm.co.ke/news/2013/01/oburu-oduol-kicked-out-of-governors-race/>

Table 4. 4: Performance of the political party in the disputed constituency

Political party	Party Coalition	Disputed Constituency (MNA position)	Defections by disputants(if any)	Winning political party or candidate	Coalition of the winning party
ODM	CORD	Kuria East	NA	KANU	Jubilee
		Alego Usonga	Defected to WDP	WDM-P	CORD
		Westlands	NA	ODM	CORD
		Gem	Defected to FPK	ODM	CORD
		Kilgoris	NA	URP	Jubilee
		Nyando	Defected to FORD Kenya	ODM	CORD
		Narok West	NA	URP	Jubilee
		Mathare	NA	TNA	Jubilee
		Mumias West	Defected to FPK	ODM	CORD
		Langata	NA	ODM	CORD
		Nyakach	Defected to WDP	ODM	CORD
		Vihiga	Defected to LPK	UDF	Amani
		South Mugirango	NA	ODM	CORD
		Narok West	NA	URP	Jubilee
		Nyaribari Chache	Defected to FORD People	ODM	CORD
		Garissa township	NA	URP	Jubilee
		Changamwe	NA	ODM	CORD
TNA	Jubilee	Marakwet East	NA	URP	Jubilee
		Makadara	NA	TNA	Jubilee
		Yatta	NA	Muungano Party	NA
		Maragwa	NA	TNA	Jubilee
		Bahati	NA	TNA	Jubilee
		Kajiado east	NA	TNA	Jubilee
		Kikuyu	Peoples Patriotic Party of Kenya	TNA	Jubilee
		Othaya	Defected to Sabasaba	TNA	Jubilee
		Molo	NA	TNA	Jubilee
		Malindi	NA	ODM	CORD
		Subukia	Defected to DP	TNA	Jubilee
		Westlands	NA	ODM	CORD
		Kipipiri	Defected to APK	APK	Jubilee

Political party	Party Coalition	Disputed Constituency (MNA position)	Defections by disputants(if any)	Winning political party or candidate	Coalition of the winning party
		Ruiru	Defected to PICK	TNA	Jubilee
		Mwingi west	NA	WDM	CORD
		Jomvu	NA	WDM	CORD
		Gatanga	Defected to NARC	NARC	Jubilee
		Kilifi South	Defected to KNC	ODM	CORD
		Ol-Kalou	NA	TNA	Jubilee
URP	Jubilee	Mosop	NA	URP	Jubilee
		Aldai	NA	URP	Jubilee
WDM-P	CORD	Jomvu	NA	WDP	CORD
UDF	AMANI	Kibra	NA	ODM	CORD
KANU	AMANI	Nakuru Town West	NA	TNA	Jubilee
New-Ford Kenya	AMANI	Kimilili	NA	ODM	CORD
		Kanduyi	Defected to FPK	FORD Kenya	CORD
Ford Kenya	CORD	Endebes	NA	URP	Jubilee
		Kimilili	NA	FORD Kenya	CORD
		Embakasi Central	NA	TNA	

Source: Author's own compilation of responses by Party CEOs and Official election results as released by the IEBC and published on IEBC website <https://www.iebc.or.ke/election/?election-results>.

Table 4.4 shows that ODM lost in 8 constituencies out of the 16 disputed constituencies which had appeals at the IEBC dispute resolution committee. The constituencies were; Kuria East, Kilgoris, Narok West, Mathare, Vihiga, Narok West, and Garissa Township. Six (6) of the constituencies were from the party's stronghold at the time of election as demonstrated by the win of the party's preferred presidential candidate and they included; Kuria East, Alego Usonga, Kilgoris, Narok West, Mathare, and Garissa township. With regard to TNA, the party lost in 9 constituencies out of the 19 disputed constituencies. The constituencies were; Kipipiri, Gatanga, Marakwet East, Yatta, Malindi, Westlands, Mwingi west, Jomvu, and Kilifi South. 2 of the constituencies were from the TNA's strongholds and include Kipipiri and Gatanga. A TNA candidate in a dispute in Kipipiri constituency who defected to APK went ahead and won the seat while a candidate in

Gatanga constituency who defected to NARC also won. In ODM, a candidate in a dispute in Alego Usonga who defected to WDP won the seat.

Table 4.4 therefore shows that political parties which did not resolve their disputes internally during primaries either performed dismally or below expectations during the actual general elections for the disputed Member of National Assembly (MNA) position. This was the case irrespective of whether the constituency was in the political party's stronghold or not. The disputes led to either splitting of votes or low voter turn-out due to low morale and incidences of voter protests where candidates either opted to vote for their own candidate who may have defected to another party due to a failed dispute resolution process or voting for an opposing party as shown in table 4.4. This set of findings corresponds with a similar study conducted in Ghana in 2012 by Nahomi Ichino & Noah L. Nathan (2011) where they found out that indeed how the party conducts its primaries affects its performance during the actual election.

Alternatively, after defection of one of the candidates in a dispute, they ended up splitting their votes since they had an almost similar support base leading to a candidate of an opposing party to win. For instance in ODM, it occurred in Vihiga constituency while in TNA, it occurred in Kilifi South. The effect of these three scenarios was that the parties' strength was weakened both within the coalition and in parliament as opposed to if the disputes could have been resolved amicably to the contentment of all persons involved hence leading to no defection. Similarly, it can also be interpreted that where there were no defections after the disputes had been resolved, the party in question won due to the unity of its members. This was the case for TNA in Maragwa, Bahati, Kajiado East, Molo, and Ol-Kalou constituencies, for ODM it was the case in Westlands, Langata, South Mugirango, Narok West, and Changamwe constituencies, for URP, it was the case in Mosop and Aldai Constituencies, and for Ford Kenya it was the case in Kimilili constituency.

Table 4.4 further shows that a total number of 15 appellants defected to other political parties after being dissatisfied with verdicts made by their internal political party organs out of whom 3 still went ahead to win the elections. Of those who won the elections, all had used parties from the same coalition. In most cases the coalition was the dominant

coalition in the region/constituency. For instance ODM candidates defected to a party affiliated to the CORD coalition while those in TNA defected to the parties affiliated to the Jubilee coalition.

4.2.1. Performance of the political party at the presidential level

The data on how the party performed at the presidential election level in the disputed constituencies was meant to corroborate evidence of the impact of disputes on the performance of the party in the actual elections. It was found out that political parties' preferred presidential candidates did not perform well in terms of the votes garnered in constituencies which had unresolved disputes as shown in table 4.5.

Table 4. 5: Difference between the votes garnered by the presidential candidate and the voter turn-out

Political party	Disputed constituency	Registered voters	Turn-out	Presidential Candidate's Votes	Winning coalition	Estimated vote loss (turn-out minus votes garnered)
ODM (CORD Coalition)	Kuria East	25,683	22,133	12,126	CORD	10,007
	Alego Usonga	72,112	67,573	66,380	CORD	1,193
	Westlands	118,983	98,413	97,646	CORD	767
	Gem	55,916	50,534	50,067	CORD	467
	Kilgoris	50,923	45,640	19,738	CORD	25,902
	Nyando	52,213	48,822	48,339	CORD	483
	Narok West	44,489	40,440	22535	CORD	17,905
	Mathare	88,053	69,766	37,688	CORD	32,078
	Mumias West	37,527	31,490	26,521	CORD	4,969
	Langata	96,698	79,095	45,979	CORD	33,116
	Nyakach	47,867	45,478	44,810	CORD	668
	Vihiga	33,727	27,867	11,111	UDF	-
	South Mugirango	51,277	43,615	27,176	CORD	16,439
	Narok West	44,849	40,440	22535	CORD	17,905
	Nyaribari Chache	58,566	48,866	29,589	CORD	19,277
	Garissa township	31,765	23,550	11,813	CORD	11,737
Changamwe	58,992	38,068	27,552	CORD	10,516	
TNA (Jubilee Coalition)	Marakwet East	27,480	25,079	23,195	JUBILEE	1,884
	Makadara	105,388	88,413	39,196	CORD	49,217
	Yatta	55,736	45,102	4,116	CORD	40,986
	Maragwa	69,080	63,801	61,176	JUBILEE	2,625
	Bahati	60,816	55,604	52,142	JUBILEE	3,462
	Kajiado east	71,516	59,294	24,044	CORD	25, 250
	Kikuyu	65,058	59,895	53,904	JUBILEE	5,991
	Othaya	47,306	44,276	42,957	JUBILEE	1,319
Molo	51,142	44,535	36,884	JUBILEE	7,651	

Political party	Disputed constituency	Registered voters	Turn-out	Presidential Candidate's Votes	Winning coalition	Estimated vote loss (turn-out minus votes garnered)
	Malindi	55,856	36,791	5,687	CORD	31, 104
	Subukia	39,049	35,859	33,797	JUBILEE	2,062
	Westlands	118,983	98,413	37,893	CORD	60,520
	Kipipiri	39,690	37,101	36,104	JUBILEE	997
	Ruiru	112,682	95,506	76,403	JUBILEE	19,103
	Mwingi west	35, 393	31,099	2,671	CORD	28,428
	Jomvu	50,553	32,684	7,332	JUBILEE	25,352
	Gatanga	74,152	68,960	61,214	JUBILEE	7,746
	Kilifi South	68,366	35,223	4,375	CORD	30,848
	Ol-Kalou	49,844	46,120	44,774	JUBILEE	1,346
URP (Jubilee Coalition)	Mosop	47,914	43,599	40,409	JUBILEE	3,190
	Aldai	49,901	45,778	34,893	JUBILEE	10,885
WDP (CORD Coalition)	Jomvu	50,553	32,684	27,552	CORD	5,132
UDF (Amani coalition)	Kibra	97,882	77,418	15,739	CORD	61,679
KANU (Amani coalition)	Nakuru Town West	71,743	59,898	31,754	JUBILEE	28,144
New-Ford Kenya (Jubilee Coalition)	Kimilili	37,471	31,081	1,643	CORD	29,438
	Kanduyi	76,466	63,944	4,667	CORD	59,277
Ford Kenya (CORD)	Endebes	29,278	24,241	11,213	Jubilee	13,028
	Kimilili	37,471	31,081	16,323	CORD	14,758
	Embakasi Central	103,868	84,732	37,750	JUBILEE	46,982

Source: Official election results as released by the IEBC and published on IEBC website [https://www.iebc.or.ke/election/?election-resultsand responses by CEOs of political parties](https://www.iebc.or.ke/election/?election-resultsand%20responses%20by%20CEOs%20of%20political%20parties).

Table 4.5 shows that there was a reduction of votes for those voting for the presidential contender supported by the party compared to the voter turn-out. This means that party members who felt aggrieved by the dispute resolution process declined to vote for the party's preferred presidential candidate as a protest. For instance, ODM's preferred presidential candidate Hon. Raila Odinga lost a total of 285,213 votes in the 17 disputed constituencies as follows: Kuria East, Alego Usonga, Westlands, Kilgoris, Narok West, Mathare, Mumias West, Langata, South Mugirango, Nyaribari Chache, Garissa

Township, and Changamwe. Equally, for TNA, the party's preferred presidential candidate H.E. Uhuru Kenyatta lost 441,681 votes for the presidential candidate in the 19 disputed constituencies being; Marakwet East Makadara, Yatta, Maragwa, Bahati, Kajiado East, kikuyu, Othaya, Molo, Malindi, Subukia, Westlands, Kipipiri, Ruiru , Mwingi West, Jomvu, Gatanga, Kilifi South, Ol-Kalou and Endebes.

Table 4. 6: Performance of the party's preferred presidential candidate compared to MNA candidate in the disputed constituency.

Political party	Constituency	Party Candidate's votes (MNA)	Party's Coalition Candidates votes (Presidential)	Defections by disputants (votes garnered)	Winning candidate (Presidential)	Vote difference (MNA minus Presidential)
ODM	Kuria East	2,445	12,126	NA	CORD	-9681
	Alego Usonga	25,634	66,380	Defected to WDP	CORD	-40,746
	Westlands	44,344	97,646	NA	CORD	-53,302
	Gem	31,972	50,067	Defected to FPK	CORD	-18,095
	Kilgoris	18,671	19,738	NA	CORD	-1,067
	Nyando	24,558	48,339	Defected to FORD Kenya	CORD	-23,781
	Narok West	13,861	22535	NA	CORD	-8,674
	Mathare	26,916	37,688	NA	CORD	-10,772
	Mumias West	18,932	26,521	Defected to FPK	CORD	-7589
	Langata	25,394	45,979	NA	CORD	-20585
	Nyakach	32,962	44,810	Defected to WDP	CORD	-11,848
	Vihiga	2,104	11,111	Defected to LPK	UDF	-9,007
	South Mugirango	25,550	27,176	NA	CORD	-1626
	Narok West	13,861	22535	NA	CORD	-8,674
	Nyaribari Chache	11,628	29,589	Defected to FORD People	CORD	-17,961
	Garissa township	23,355	11,813	NA	CORD	-11,542
Changamwe	15,923	27,552	NA	CORD	-11,629	
TNA	Marakwet East	9,116	23,195	NA	JUBILEE	-14,079
	Makadara	37,967	39,196	NA	CORD	-1,229
	Yatta	1,701	4,116	NA	CORD	-2,415
	Maragwa	53,415	61,176	NA	JUBILEE	-7,761
	Bahati	49,450	52,142	NA	JUBILEE	-2,692
	Kajiado east	23,645	24,044	NA	CORD	-399
	kikuyu	43,028	53,904	Defected to New Democrats & Peoples Patriotic Party of Kenya	JUBILEE	-10,876
	Othaya	16,514	42,957	Defected to Sabasaba	JUBILEE	-26,443

	Molo	43,086	36,884	NA	JUBILEE	-6,202
	Malindi	2,661	5,687	NA	CORD	-3026
	Subukia	21,459	33,797	Defected to DP	JUBILEE	-12,338
	Westlands	28,316	37,893	NA	CORD	-9,577
	Kipipiri	16,689	36,104	Defected to APK	JUBILEE	-19,415
	Ruiru	60,784	76,403	Defected to PICK	JUBILEE	-15,619
	Mwingi west	856	2,671	NA	CORD	-1,815
	Jomvu	2,476	7,332	NA	JUBILEE	-4,856
	Gatanga	22,592	61,214	Defected to NARC	JUBILEE	-38,622
	Kilifi South	2,198	4,375	Defected to KNC	CORD	-2,177
	Ol-Kalou	22,201	44,774	NA	JUBILEE	-22,573
URP	Mosop	30,656	40,409	NA	JUBILEE	-9,753
	Aldai	22,654	34,893	NA	JUBILEE	-12,239
WDP	Jomvu	1,732	27,552	NA	CORD	-25,820
UDF	Kibra	3,223	15,739	NA	CORD	-12,516
KANU	Nakuru Town West	1,667	31,754	NA	JUBILEE	-30,087
New-Ford Kenya	Kimilili	6,664	1,643	NA	CORD	5,021
	Kanduyi	7,768	4,667	Defected to FPK	CORD	3,101
Ford Kenya	Endebes	979	7,608	NA	CORD	6,629
	Kimilili	14,307	16,323	NA	CORD	2016
	Embakasi Central	511	37,750	NA	JUBILEE	37,239

Source: Official election results as released by the IEBC and published on IEBC website <https://www.iebc.or.ke/election/?election-results>

Table 4.6 shows that defection of candidates to other political parties within or outside the coalition of the original party did not affect the performance of the party's presidential candidate. This therefore means the popularity of a particular coalition in a region determined how voters casted their votes where most voters voted for the popular coalition.

4.3. State institutions responsible for resolution of political party disputes

The third objective of the study was to investigate the relationship between political party and state electoral institutions in resolving disputes arising from political party primaries. The Kenyan political and electoral laws created state institutions responsible for resolution of the appeals from the parties. Most appeals from the party's internal mechanism end up in the state institutions and there investigating how they handle the appeals was crucial. We hypothesized that the performance of state institutions responsible for resolution of political parties' disputes had a direct bearing on the

performance of Political Parties in resolving internal disputes arising from party primaries. The following state institutions were responsible for resolving political party decisions appeals:-Political Parties Disputes Tribunal (PPDT), IEBC Dispute Resolution Committee and the Judiciary (Elections Act, 2012). However, the law dictates that parties to a dispute must exhaust internal party mechanisms before appealing to the state institutions (Political Parties Act, 2010). The study established that the performance of state institutions responsible for resolution of nomination disputes influenced the performance of political party internal dispute resolutions mechanisms parties' performance during the actual/general elections as shown in table 4.7.

Table 4. 7: Showing the decisions of the IEBC Dispute Resolution Committee and the Judiciary.

Party	Constituency	Verdict	Reasons for the decision	Appeal to the High-Court and decision	Winning political party or candidate
ODM	Kuria East	Complaint dismissed upheld party decision	Insufficient evidence	NA	KANU
	Alego Usonga	Complaint dismissed upheld party decision	Insufficient evidence.	NA	WDM-P
	Westlands	Complaint dismissed upheld party decision	The complaint was found not to have any merit	NA	ODM
	Gem	Party decision dismissed	Party nominations were not completed and thus a candidate could not be declared.	NA	ODM
	Kilgoris	Complaint dismissed upheld party decision	The claimant did not produce any evidence to substantiate his claims	NA	URP
	Nyando	Complaint dismissed upheld party decision	Insufficient evidence	NA	ODM
	Narok West	Complaint dismissed upheld party decision	The Complainant did not indicate how he knew that the voters in Ilmotiok did not vote and the number of the registered voters in that Ward was unknown	NA	URP
	Mathare	Complaint dismissed upheld party decision	The complaint was disallowed due to insufficient evidence.	NA	TNA
	Mumias West	Complaint	Insufficient evidence.	NA	ODM

Party	Constituency	Verdict	Reasons for the decision	Appeal to the High-Court and decision	Winning political party or candidate
		dismissed upheld party decision			
	Langata	Complaint dismissed upheld party decision	Insufficient evidence.	NA	ODM
	Nyakach	Complaint dismissed upheld party decision	Insufficient evidence.	NA	ODM
	Vihiga	Complaint dismissed upheld party decision	Insufficient evidence.	NA	UDF
	South Mugirango	Complaint dismissed upheld party decision	Insufficient evidence.	NA	ODM
	Nyaribari Chache	Complaint dismissed upheld party decision	Insufficient evidence.	NA	URP
	Garissa township	Complaint dismissed upheld party decision	Insufficient evidence.	NA	ODM
	Changamwe	Complaint dismissed upheld party decision	Insufficient evidence.	NA	URP
TNA	Kiambu County	Dispute resolved by consensus	Following the concession by TNA there was no further dispute between the Complainant and the Party.	NA	TNA
	Marakwet East	Complaint dismissed upheld party decision	In sufficient evidence	Appealed Dismissed due since prima facie case not established	URP
	Makadara	Complaint dismissed upheld party decision	Insufficient evidence.	NA	TNA
	Yatta	Complaint dismissed upheld party decision	Insufficient evidence.	NA	MUUNGANO PARTY
	Maragua	Complaint dismissed upheld party decision	The complainant was unmerited since the complainants name did appear on the ballot paper in every polling station.	NA	TNA
	Bahati	Complaint dismissed upheld	Insufficient evidence.	NA	TNA

Party	Constituency	Verdict	Reasons for the decision	Appeal to the High-Court and decision	Winning political party or candidate
		party decision			
	Kajiado east	Complaint dismissed upheld party decision	Insufficient evidence.	NA	TNA
	Kikuyu	Complaint dismissed upheld party decision	Insufficient evidence.	NA	TNA
	Othaya	Case withdrawn	Consensus between disputants	NA	TNA
	Molo	Complaint dismissed upheld party decision	Insufficient evidence	NA	TNA
	Malindi	Party decision dismissed	Insufficient evidence	NA	ODM
	Subukia	Complaint dismissed upheld party decision	Insufficient evidence	NA	TNA
	Westlands	Complaint dismissed upheld party decision	Insufficient evidence.	NA	ODM
	Kipipiri	Complaint dismissed upheld party decision	Abuse of procedure	Appealed. Appeal dismissed on condition that there was no allegation of procedural improprieties on the part of the IEBC Dispute resolution Committee.	APK
	Mwingi West	Party decision dismissed	Insufficient evidence	NA	WDM
	Ruiru	Complaint dismissed upheld party decision	Insufficient evidence	NA	TNA
	Jomvu	Party decision dismissed	Following the concession by TNA there was no further dispute between the parties	NA	WDM
	Gatanga	Complaint dismissed upheld party decision	Insufficient evidence.	NA	NARC
	Kilifi South	Complaint dismissed upheld party decision	Insufficient evidence.	NA	ODM

Party	Constituency	Verdict	Reasons for the decision	Appeal to the High-Court and decision	Winning political party or candidate
	Ol-Kalou	Complaint dismissed upheld party decision	Insufficient evidence.	NA	TNA
URP	Mosop	Complaint dismissed upheld party decision	Insufficient evidence.	NA	URP
	Aldai	Complaint dismissed upheld party decision	Insufficient evidence.	NA	URP
WDP	Jomvu	Complaint dismissed upheld party decision	Insufficient evidence.	NA	WDP
UDF	Kibra	Complaint dismissed upheld party decision	Insufficient evidence.	NA	ODM
KANU	Nakuru Town West	Complaint dismissed upheld party decision	Insufficient evidence.	NA	TNA
New Ford Kenya	Kimilili	Party decision dismissed	The Respondent conceded that the second certificate be revoked hence effectively reverting to the position after the first appeal	Appealed Court must decline to interfere with the independence of the IEBC in the decision which it has taken.	ODM
	Kanduyi	Complaint dismissed upheld party decision	Insufficient evidence.	NA	FORD Kenya
FORD Kenya	Endebes	Complaint dismissed upheld party decision	Insufficient evidence.	Appeals No grounds to disallow the decision of the IEBC Dispute resolution Committee.	URP
	Kimilili	Complaint dismissed upheld party decision	Insufficient evidence.	NA	FORD Kenya
	Embakasi Central	Complaint dismissed upheld party decision	Insufficient evidence.	NA	TNA

Source: IEBC Secretariat, the IEBC. (2013). *Case digest decision of the IEBC dispute resolution Committee. Nairobi: IEBC and Kenya Law website (<http://kenyalaw.org/caselaw/>)*

Table 4.7 shows that the IEBC Dispute Resolution Committee upheld 40 decisions of the political parties and dismissed 5 decisions of the parties. A review of the decisions of the IEBC Disputes resolution Committee and responses by the secretariat revealed that reasons for upholding party decisions were based on technical and procedural weaknesses attributed to failure by appellants to provide “sufficient evidence” rather than the merits of the cases. A review of the cases as stated on the Kenya Law website indicate that all the appeals were dismissed on grounds that the courts didn’t want to interfere with IEBC Dispute resolution committee decisions since the committee had the primary mandate to hear and determine the cases. Other reason given was that the appeals lacked sufficient evidence (<http://kenyalaw.org/caselaw/>).

Decisions of both the IEBC and the judiciary impacted on political parties in two ways: First, in cases where the party decision was upheld and not appealed or the High Court ruled in favour of the party decision, it gave credence to the party’s internal resolution mechanisms with the party winning in the majority of the affected constituencies. This accounted for 23 cases heard and determined. Where a party’s decision was dismissed for whatever reason it casted aspersion on the performance of the party’s internal dispute resolution mechanism irrespective of whether the party won the sit or not. This accounted for five (5) cases heard and determined by the IEBC Dispute resolution Committee. The implication of these two scenarios was that it determined whether party members will have faith in the party dispute resolution process or not in subsequent elections. The table showed that the cases dismissed due to insufficient evidence rather merits of the case cut across the parties implying that the state institutions remained a constant factor in the conflict resolutions and performance in elections both primaries and actual elections.

Secondly, where decisions of the state agencies was unpopular with the party members especially the aggrieved ones, the respective parties lost during the actual elections just because the institutions determined who their candidates were. This was the case where one of the appellants defected to other parties and won despite losing appeals both in the party and with state institutions. This occurred in three constituencies namely Alego

Usonga constituency for ODM party and Kipipiri and Gatanga constituencies in TNA party.

CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSION, AND RECOMMENDATIONS

5.0. Summary of Findings

The study was conducted to investigate the ability of political parties' internal mechanisms to resolve disputes that arise during party nominations/primaries in Kenya. Three objectives were formulated to guide the study. The first objective was to examine the capacity of Political Parties internal mechanisms to resolve electoral disputes arising from their nominations. The second objective was to establish the nature and impact of intra party electoral disputes on the performance of the political parties in the general elections. The third objective was to investigate the relationship between political party and state electoral institutions in resolving disputes arising from political party primaries.

5.1. The capacity of Political Parties internal mechanisms to resolve electoral disputes arising from their nominations

The study found out that all political parties in Kenya had internal mechanisms meant to resolve disputes emanating from their primaries in compliance with the existing legal frame work. The mechanisms have different names and composition depending on the political party's constitution. As hypothesised, political parties with effective internal dispute resolution mechanisms are likely to amicably resolve disputes from their primaries. The study further found out that most of the political parties in Kenya lacked capacity to effectively resolve the nomination disputes due to their nature leading to their failure to resolve a total of 47 disputes for the position of Member National Assembly (MNA) during the 2013 party primaries. While it was found out by the study that effective party structures help in resolution of disputes, TNA party which had weaker structures as compared to WDM, performed better than WDM in terms of the number of disputes lodged and resolved. It therefore implies that other than party structures, there might be other factors that contribute to the effective resolution of disputes which require further inquiry or study. This could include the personality of party leaders and other informal means employed by the party. These were outside the scope of this study hence not investigated.

5.2. The nature and impact of intra party electoral disputes on the performance of the political parties in the general elections.

The researcher found out that the nature of disputes that occur during nominations range from breach of internal party rules, challenges relating to the membership of the candidate to the relevant Political Party, claims that the nomination was not conducted within the statutory timeframes, and challenges to the authority of party officials. The study further found out that the said disputes if not resolved amicably have a negative impact on the performance of political parties in the actual general elections. This was the case irrespective of whether it was in the political party's stronghold or not. We had hypothesised that the higher the number of unresolved disputes from party primaries the greater the negative effect on the party's performance at the actual elections. The study found out that political parties lost in most of the constituencies that were disputed while the vote count for their presidential contenders also reduced. However, the study could not conclusively establish whether other factors other than disputes during primaries affect the party performance in the actual elections and with what extent. For instance, the impact of defection of party candidates, the individual characteristics of the party's preferred presidential candidate and coalition politics was not conclusively determined partly due to the scope of the study.

5.3. The relationship between political party and state electoral institutions in resolving disputes arising from political party primaries.

As to whether there was any relationship between political parties and state electoral institutions in the resolution of nomination disputes, it was found out that indeed decisions of both the IEBC dispute resolution committee and the judiciary, which are state institutions, had an impact on how political parties resolved their disputes internally and how they performed in the actual elections. We had hypothesised that the performance of state institutions responsible for resolution of political parties' disputes has a direct bearing on the performance of political parties in resolving internal disputes arising from party primaries. The study found out that, first, in instances where the party decision was upheld and not appealed or the High Court ruled in favour of the party decision, it gave credence to the party's internal resolution mechanisms with the party winning in the majority of the affected constituencies. Where a party's decision was

dismissed for whatever reason it casted aspersion on the performance of the party's internal dispute resolution mechanism irrespective of whether the party eventually won the seat or not. The impact of the two scenarios is that it determined whether party members will have faith in the party dispute resolution process or not in subsequent elections. Second, where decisions of the state agencies was unpopular with the party members, especially the aggrieved ones, the respective parties lost during the actual elections as members showed resentment to the decision. The study could not affirm whether the decisions of the state agencies reinforced member's loyalty to the party decisions or they only pacified party members. However, from the aforementioned cases of Alego Usonga, Kipipiri and Gatanga constituencies it is evident that protest votes against the decision to favour a particular candidate arose.

6.0. Conclusion

The study was undertaken in line with four main objectives, namely: to examine the capacity of Political Parties internal mechanisms to resolve electoral disputes arising from their nominations, to establish the impact of intra party electoral disputes on the performance of the political parties in the general elections and to investigate the relationship between political party and state electoral institutions in resolving disputes arising from political party primaries.

The study concluded that internal party mechanisms have a significant role in resolving disputes from their primaries and other internal disputes. However, Kenya's Political Parties internal mechanisms are ineffective due to capacity challenges which include lack of prescribed and just rules of procedure and limitation in terms of the ability of the members of the entities to resolve disputes. In resolving the disputes, the internal mechanisms help in fostering unity within the party and guaranteeing the party's victory at the ballot. If the mechanisms perform well to the contentment of the litigants, chances of the party performing well in the actual elections become high. On the other hand, if they do not effectively deal with the disputes, then chances of the party performing dismally during the actual elections are equally high. In addition, the study concluded that the nature of the internal party mechanism in terms of its composition and its processes determines whether such entity would be able to deliver on its mandate. The

entities need to be institutionalised. Institutions give meaning to interactions and provide the context within which interactions take place and since electoral processes are inherent of disputes, the need for structured institutions to resolve the disputes is paramount. The study confirmed that having rules and institutions for the internal adjudication of disputes prevents conflicts from escalating and spilling over to external courts which is not good for the party in question. This therefore means if party primaries have to succeed, there is need to institutionalise internal political party processes i.e. both the actual voting/selection of candidates and resolving disputes that arise.

7.0. Recommendations

Based on the study findings, the researcher made recommendations to political parties, policy makers and academic researchers that should be implemented by political parties, state electoral institutions and other stakeholders to ensure effective internal political party resolution mechanisms.

7.1. To Political Parties

Even though the study established that most political parties in Kenya have created mechanisms to resolve their internal disputes in compliance with the existing legislations, most of them lack capacity in terms of their structure and processes which require intervention by the parties themselves in order to strengthen the mechanisms. The study therefore recommended the following to be undertaken by the political parties:

- i) Political Parties should strive to resolve all disputes, especially disputes emanating from party nominations, internally before aggrieved candidates can appeal to state institutions to avoid the negative impact such disputes have on the performance of the party.
- ii) Members of the political party's dispute resolution organ should be independently selected by a professional and a non-partisan entity through a competitive recruitment process to eliminate conflict of interest between party elites and the party organs while discharging their mandate.

- iii) Persons for appointment to the party dispute resolution organ must have qualifications experience in dispute resolution.
- iv) The procedure for consideration of the disputes should be agreed on by all party members and be stated in the party regulations. The procedure should allow enough time for lodging appeals within the party structures (at least a month before submission of names of nominated candidates to IEBC).

7.2. To policy makers, state institutions and non-state actors.

The study found out that decisions of the state agencies affect the way the party mechanisms perform. Similarly, there are policy interventions by state agencies and non-state actors which are required for proper performance of the party mechanisms. The study therefore recommended the following:-

- i) Parliament in consultation with the IEBC and ORPP should review the Political Parties Act, 2012 so that it provides for the minimum requirements for the nature of internal political party resolution entities.
- ii) The IEBC, ORPP and non-state actors such as NGOs involved in Democracy and Governance should build capacity of political party dispute resolution entities in order to improve their performance.
- iii) The IEBC dispute resolution committee and the Judiciary should consider appeals after an appellant has exhausted internal party mechanisms as required by the law and that before dismissing or upholding party decisions due diligence must be done in order to strengthen political parties.

7.3.To Academic Researchers

This study is not entirely exhaustive on the role of internal party mechanisms in resolution of internal disputes especially disputes that emanated from party primaries and their impact on the performance of the party in the actual elections. It is therefore recommended that future studies should explore the following aspects:-

- i) The extent to which other factors that affect the performance of the party in the actual elections other than disputes that arise during party primaries.
- ii) Other factors that contributes to the effective resolution of internal party disputes other than effective party mechanisms.
- iii) Whether the decisions of the state agencies reinforced member's loyalty to the party decisions or they only pacified party members.

REFERENCES

- Aoki, M. (2001). Toward a comparative institutional analysis. Comparative institutional analysis.
- Burdi, K. (2011). Recent Experiences of Election Management in Uganda. Mauritius: Electoral Commission of Uganda.
- Chege, M. (2007). The electoral system and multipartysim in Kenya. Nairobi: African Research and Resoure Forum(ARRF).
- Coleman, K. J. (2015). The presidential nominating process and the national party conventions, 2016: Frequently Asked Questions . Congressional research services.
- Commonwealth. (2013). Report of the Commonwealth Observer Group: 2013 Kenya General
- Chukwuemerie, A. (2009). *Necessity as the mother of trail blazing: Applying Dispute Resolution Mechnisms to Political Party disputes in Africa*. Journal of Politics and Law Vol. 2. No.4 .
- Downs, A. (1957). An Economic Theory of Political Action in a Democracy. Journal of Political Economy. <https://doi.org/10.1086/257897>
- Friedrich Ebert Stiftung. (2010). Institutionalizing political parties in Kenya. Nairobi: Friedrich Ebert Stiftung.
- Hofmeister, W & Grabow, H. K. (2011). Political Parties. Collection. <https://doi.org/10.1093/oxfordhb/9780199230952.003.0024>
- IEBC. (2013). Case digest decision of the IEBC dispute resolution Committee . Nairobi: IEBC.

- Ichino, N., & Nathan, N. L. (2012). Primaries on demand? Intra-party politics and nominations in Ghana. *British Journal of Political Science*.
<https://doi.org/10.1017/S0007123412000014>
- Ichino, N., & Nathan, N. L. (2013). *Do Primaries Improve Electoral Performance? Clientelism and Intra-Party Conflict in Ghana*. *American Journal of Political Science*. <https://doi.org/10.1111/j.1540-5907.2012.00624.x>
- Jonyo, F. (2013). assessing the role of political parties in democratization. Nairobi: Fredrich Ebert Stiftung Working Paper.
- Kenya National Commission on Human Rights. (2013). *Political Party Nominations*. Nairobi: KNCHR.
- Kopecký, P. (2006). *Political parties and the state in post-communist Europe: The nature of symbiosis*. *Journal of Communist Studies and Transition Politics*.
<https://doi.org/10.1080/13523270600855654>
- Mugenda, O. (1999). *Research Methods, quantitative and qualitative approaches*. Nairobi: Acts press.
- Musila, G. (2013). *Hand book on election disputes in Kenya, context, legal framework, institutions and jurisprudence*. Nairobi: Law Society of Kenya.
- National Democratic Institute . (2011). *A compilation of political parties statutes*.
- Norris, P. (2005). *Building political parties : Reforming legal regulations and internal rules*. Building. <https://doi.org/10.1017/CBO9781139519755>
- Odote, C. (2016). *Balancing the scales of electoral justice, resolving disputes from the 2013 elections in Kenya and emerging jurisprudence*. Nairobi: International Development Law organization and Judiciary training institute.

- Olsen. (1989). *Rediscovering Institutions*. New York: The Free Press Macmillan.
- Ogutu, M. (2013). *Rational Choice Theory: Assumptions, Strengths, and Greatest Weaknesses in Application outside the Western Milieu Context*. *Arabian Journal of Business Management Review*, Vol.1 No.3 .
- Ongoya, Z. (2012). *A handbook on Kenya's electoral laws and system*. Nairobi: EISA.
- Oonagh, G. (2009). *Candidate selection-Primaries*. House of Commons Library.
- Oyugi, W. (2010). *The politics of transition in Kenya, from KANU to NARC*. Nairobi: Henrich Boll Foundation.
- Peters, B. G. (2000). *Institutional Theory: Problems and Prospects*. Institut Für Höhere Studien (IHS), Wien . <https://doi.org/10.1177/00131610121969451>
- Schlagar, C. (2014). *Modern Political Party Management- What can be learned from international practices*. Shanghai: Friedrich-Ebert-Stiftung.
- Shin, Y. (2009). *The divisiveness of a political party's nomination process and its effect on U.S Presidential elections*. *The Korean Journal of International Relations* Vol 49. No. 6 OF 2009 .
- Tyler, T. (2011) *Procedural Justice and the Rule of Law: Fostering Legitimacy in Alternative Dispute Resolution*, Yale Law School
- Vianello, L. C. (2009). *Strengthening electoral process and systems throughout the Hemisphere: The role of the media in Electoral campaigns and relationship between Electoral Management Bodies and Political Parties*. *Second Inter-American Electoral Training Seminar (pp. 47-51)*. Mexico: Organisation of American States & Federal Electoral Institute of Mexico.
- Constitution of Kenya. (2010).
- Elections Act. (2012).
- Political Parties Act. (2010).

APPENDICES

APPENDIX A: TRANSMITTAL LETTER

Makokha Shadrack Omweba

University of Nairobi

Department of Political Science and Public Administration

NAIROBI

Dear Respondent,

**RE: AN EVALUATION OF THE EFFECTIVENESS OF INTERNAL POLITICAL
PARTY MECHANISMS IN RESOLVING DISPUTES FROM ELECTION
PRIMARIES IN KENYA.**

I am a postgraduate student at the University of Nairobi, undertaking a research project on effectiveness of internal political party mechanisms in resolving disputes from election primaries in Kenya. The information collected will be treated with uttermost confidentiality and it will be used for educational research only. Your participation in the study will be highly appreciated.

Thank you in advance.

Shadrack Makokha Omweba

Reg. No. C50/75265/2014

0726776856

APPENDIX B: QUESTIONNAIRE FOR POLITICAL PARTY CEOs OR THEIR REPRESENTATIVES.

I am **Makokha Shadrack Omweba** a student from the University of Nairobi. I am researching on the effectiveness of political party internal dispute resolution mechanisms. I kindly ask you to accept to answer questions on the performance of your party dispute resolution mechanisms I am going to ask you. I will keep the answers to myself and not share with other persons.

Section A: Personal Details (Optional)

Name..... Political Party.....

Position held.....

Telephone contact:

Section B: Nature of the Political Party Dispute resolution Mechanisms

(Kindly tick appropriately where applicable)

1. Does your political party have a dispute resolution entity?

Yes [] No []

2. If your answer in one (1) above is yes, briefly explain the procedure of its establishment.

.....
.....
.....
.....
.....

3. What is the minimum academic qualifications for a Members of the dispute resolution entity?

- Primary []
- Secondary []
- Undergraduate []
- Post-graduate []
- Others.....

4. Briefly describe the procedure for considering a dispute in your political party?

.....
.....
.....
.....

Section C: Performance Political Party Dispute resolution Mechanisms.

5. How many disputes arising from party nominations for Member of the National Assembly during the 2013 party nominations were lodged to the Party Dispute resolution Mechanisms?

6. Briefly state the nature of disputes in (6) above.

- i)
- ii)
- iii)
- iv)
- v)
- vi)

7. How many disputes in six (6) above were resolved internally by the party dispute resolution entity?

8. How many decisions of the party on the disputes in six (6) above were appealed to the IEBC Dispute resolution Committee?

9. Of the constituencies the party had disputes in six (6) above, how many did it lose during the actual general elections?

**APPENDIX C: QUESTIONNAIRE FOR MEMBERS OF THE IEBC
SECRETARIAT DEALING DIRECTLY WITH THE IEBC DISPUTE
RESOLUTION COMMITTEE.**

I am **Makokha Shadrack Omweba** a student from the University of Nairobi. I am researching on the effectiveness of political party internal dispute resolution mechanisms. I kindly ask you to accept to answer questions on the relationship between the political party internal dispute resolution mechanism and the IEBC Dispute Resolution Committee. I will keep the answers to myself and not share with other persons.

Section A: Personal Details (Optional)

Name..... Position held in IEBC.....

Telephone contact:

Section B: Performance of the IEBC Dispute Resolution Committee.

1. How many appeals arising from political party nominations for position of Member of National Assembly were lodged with the IEBC Dispute Resolution Committee during the 2013 general elections with respect to the following political parties?

- (i) Orange Democratic Movement (ODM)
- (ii) The National Alliance (TNA)
- (iii) United Republican Party (URP)
- (iv) Wiper Democratic Party (WDP)
- (v) United Democratic Front (UDF)
- (vi) Kenya African National Union (KANU)
- (vii) New Ford Kenya (NFK)
- (viii) Ford Kenya (Ford K)

2. How many decisions of the Political Party on the disputes in (1) above were:-

a) Upheld by IEBC Dispute Resolution Mechanism
.....

b) Dismissed by the IEBC Dispute Resolution Mechanism
.....

3. Briefly explain the reasons given by the IEBC Dispute resolution Committee for dismissing party decisions:-

.....
.....
.....
.....
.....
.....

10. How many decisions of the IEBC Dispute Resolution Committee on disputes in one (1) above were appealed to the High Court.....