Regulations on Complaints and Appeals

MAY 6, 2016
Monrovia, Liberia
Preamble

Whereas, Article 89 of the January 6, 1986 Constitution of the Republic of Liberia established the Elections Commission as autonomous public Commission;

Whereas, Section 9(g), Chapter 2 of the New Elections Law of 1986 further empowers the National Elections Commission to conduct all elections for all referendums and declare the results thereof;

Whereas, Section 9(h), Chapter 2 of the 1986 Elections Law empowers Elections Commission to formulate and enforce electoral guidelines;

Whereas, Section 2.9 (q) and (w) of The 1986 Elections Law empower the Commission to be a sole judge of all contests relating to the election results, and to punish for contempt for any obstruction or disobedience of its orders;

Whereas, Section 2.24 of The 1986 Elections Law provides that the Commission shall have the original administrative jurisdiction to hear and determine all electoral offences, subject only to judicial review by the Supreme Court of Liberia;

Whereas, International elections standards provide that election contestants and citizens may complain and appeal violations of the election process;

Whereas, the requirements of all of the above referenced legal provisions and instruments have been respected and there has been full compliance with the same;

NOW THEREFORE, it is hereby promulgated as follows:
General Provisions

Article 1. Application and Citation
1.1. This regulation may be cited as “Complaints Regulations”.
1.2. This regulation regulates challenges to candidates and applies to all complaints on offences against the Elections Law or violations of the guidelines, regulations or codes of conduct issued by the NEC.

Article 2. Definitions
2.1. In these Complaints Regulations, unless context otherwise requires:
“Candidate” means a person contesting elections and duly registered by NEC during the candidate nomination.
“NEC” means the National Elections Commission;
“Offence” means any violation of Constitution or Elections Law.
“Political Party” means political organization duly registered by the NEC.
“Violation” means irregularity during the election process or violation of the Regulations and guidelines adopted by the NEC.

Article 3. Standing to file a Complaint or Challenge
3.1. Any of the following may challenge the eligibility of a candidate or file a complaint related to an offence or violation:
   a) A registered voter;
   b) An agent of a political party or candidate;
   c) A candidate;
   d) A political party, coalition or alliance.
3.2. A challenge or a complaint must not be based on hearsay and must be made by an individual who has personal knowledge of or was a witness to the matters that are the basis of the challenge or complaint.

Article 4. Investigation initiated by NEC
4.1 The NEC may investigate and determine whether or not a candidate on the provisional list is qualified, whether or not a challenge has been received.
4.2. The NEC may investigate and determine whether or not an offence against the Elections Law or a violation of the guidelines, regulations or codes of
conduct issued by the NEC has occurred, whether or not a complaint has been received.

Candidate Nomination Challenges

Article 5. Challenges to Candidates

5.1. A candidate rejected by the NEC during the candidate nomination period may appeal the NEC’s decision to the Supreme Court within 48 hours after the NEC’s determination.

5.2. A challenge to the eligibility of a candidate on the preliminary list of candidates must be in writing and signed by the challenger and presented to the NEC within 48 hours after publication of the provisional list of candidates, with all evidence available to support the challenge.

5.3. The NEC shall investigate and determine the challenges presented to it and if it decides that the candidate is not qualified, shall remove the candidate from the provisional list of candidates.

5.4. A candidate removed from the provisional list by NEC may appeal the decision to the Supreme Court within 48 hours after it is issued.

5.5. Challenger may appeal NEC’s decision on rejection of the challenge within 48 hours after NEC’s determination.

Complaints

Article 6. Complaints against Offences and Violations

6.1 A complaint that an offence against the Elections Law or a violation of a guideline, regulation or a code of conduct approved by the NEC has occurred, must be in writing and signed by the challenger and presented to the NEC’s Magisterial Offices within 48 hours after the offence or violation occurred, or to the polling place presiding officer during the polling and counting, with all evidence available to support the complaint.

6.2. The complaint must include the name, address and contact information of the complainant, the date, time and location of the offence or violation, and information about accused and any other witnesses, if available.

6.3. All complaints shall comply with these regulations.
Article 7. Hearings

7.1. NEC shall designate hearing officer/s who shall be independent in their duties as hearing officers under this regulation. Magistrates have power and jurisdiction of first instance as provided by law.

7.2. The Magistrate or Hearing Officer shall, give a candidate who is challenged and an identified person who is alleged to have committed an offence or violation an opportunity to be heard.

7.3. A hearing officer or Magistrate may issue a citation for appearance, subpoena or any other procedural action, and shall make reasonable efforts to contact the challenged candidate or person accused to ensure transparency and a fair due process for all parties involved during the hearing.

7.4. A Magistrate may not determine a complaint against himself or herself, but shall send any such complaint to the Hearing Officer.

7.5. Magistrate shall make determination on a matter which may be appealed to the NEC within 48 hours.

7.6. Hearing Officer has a power and jurisdiction of first instance.

7.7. NEC Board of Commissioners shall sit in appellate division and exercise only appellate jurisdiction over all disputes related to decisions made by the Hearing Officer/Magistrates and rule based on the case documents, or in exceptional cases request the hearing of argument of the representatives only.

Article 8. Sanctions

8.1. The NEC or a Magistrate may dismiss a challenge or complaint if the evidence is insufficient or not credible.

8.2. The NEC or a Magistrate may apply any sanction authorized by the Elections Law or Regulations issued by NEC and may, whether or not a sanction has been applied, refer any matter to the state prosecutor if it believes a crime has been committed or that an offence should be punished by imprisonment.

8.3. If, after investigation, the NEC determines that there is credible evidence that a ballot box has been corrupted by fraud, the NEC may order that the ballot box be excluded from the count of votes.

8.4. The Commission may order that a person employed by the NEC who has committed an offence or violation be dismissed from the NEC or otherwise disciplined.

8.5. The NEC may apply any other remedy it deems reasonable and adequate to the offence violation, including, but not limited to re-count of the ballot box or repeat elections in a polling center or a whole constituency.
Article 9. Due Process

9.1. The hearing process, investigation and determination of challenges and complaints by the NEC shall be organized according to rules of procedures issued by the NEC.

9.2. A decision by the NEC or a Magistrate shall be published on the premises of the NEC or the Magistrate’s office.

9.3. A Magistrate’s decision can be appealed to the NEC within 48 hours after determination by Magistrate.

9.4. Determination of Hearing officer shall be appealed to the Board of Commissioners no later than 48 hours after determination.

9.5. Determination of NEC Board of Commissioners on the complaint can be appealed to the Supreme Court of Liberia no later than 48 hours after the determination is issued.

Amendments and Entry into Force

Article 10. Amendments

10.1. These regulations may be amended or revised at any time and published by the NEC. All amendments and revisions shall become effective upon publication.

Article 11. Entry into Force

11.1. These Regulations shall come into effect upon publication by the NEC on its web-site and shall be binding on all citizens, political parties, political entities, alliances and coalition of Liberia.
Approval of Complaint Regulations:


Signed:

Hon. Boakai Amadu Dukuly
COMMISSIONER

Hon. Davidetta Browne Lansanah
COMMISSIONER

Hon. Samuel Z. Joe
COMMISSIONER

Cllr. Jeanette A. Ebba-Davidson
COMMISSIONER

Cllr. Sarah M. Jegede-Toe
CO-CHAIRMAN

Hon. Jonathan K. Weedor
COMMISSIONER

Hon. Jerome G. Korkoya
CHAIRMAN