



INITIATIVE FOR RESEARCH,
INNOVATION AND ADVOCACY
IN DEVELOPMENT



FACTSHEET

ELECTION TRIBUNAL APPROACHES IN SELECTED COUNTRIES



Introduction

The outcome of the 2023 general elections, disputes arising from the process and efforts to address these through the judiciary (Election Tribunals) have generated widespread interest in the activities of Election Tribunals in the country. This interest was recently expressed through calls for the proceedings of the Presidential Election Petition Tribunals (PEPT) to be publicized. Major opposition political parties in Nigeria, the Peoples Democratic Party (PDP) and the Labour Party (LP) requested that the Tribunal stream its proceedings live for Nigerians to see.¹ As a fallout of this, several interlocutors expressed similar position,² and the decision of the election petition court against publicizing the tribunal proceedings was met with widespread backlash arising from concerns about the transparency of the process and the guarantee of fairness.

Openness is a fundamental requirement of democratic processes. As such, democracies globally are adjudged to be more open than other forms of government.³ However, due to the recent position of the Election Petition Tribunal on live-streaming proceedings of the Presidential Election Petition Tribunal, it becomes necessary to examine the state of openness of Election Tribunals globally. Do democracies across the world allow open access to election adjudication processes or are they opaque? How are tribunals, and the judiciary, perceived by the public? What are their powers and how are electoral tribunals composed?

The Electoral Hub in line with its commitment to promoting electoral knowledge, integrity, and accountability has provided an answer to the afore-stated questions through this concise factsheet on Election Tribunal Approaches in selected countries. The focus here is to provide a general understanding of the transparency (openness) status, composition and powers of election petition tribunals in countries across the world. Countries are purposively selected from Africa, Asia and Latin America to allow for patterns to be gleaned from countries of similar democratic status as Nigeria.

¹ <https://punchng.com/presidential-poll-tribunal-parties-disagree-as-court-rules-on-live-broadcast-today/>

² Maikyau, Yakubu Chonoko. "NBA President calls for live telecast of Tribunal proceedings." Daily Trust, 19 Jun. 2023, <https://dailytrust.com/nba-president-calls-for-live-telecast-of-tribunal-proceedings/>.

³ Chatham House. "The importance of democracy." Chatham House, 1 Apr. 2021, www.chathamhouse.org/2021/04/importance-democracy.

Select Countries

S/N	COUNTRY	Body	Composition	Powers	Openness and Public Perception
1	Kenya	Judicial Committee on Elections.	The Judicial Committee on Elections comprises a bench of three judges appointed by the Chief Justice ⁴ .	The Kenyan Judicial Committee on Elections has the power to hear, and decide on all disputes arising from the electoral process.	Election adjudication processes in Kenya are largely opaque. This means that the proceedings of the tribunal are not entirely open to the public, but the public is allowed to participate in certain aspects of the proceedings. ⁵ The adjudicating body, the courts, in Kenya are perceived as are widely trusted by the Kenyan publics. Although, dissenting positions are expressed by losing parties in election verdicts, the broad narrative indicates an acceptance of the legitimacy of the judiciary and widespread public trust. ⁶
2	Tanzania	Tanzania Judiciary	The Tribunal is composed of three judges appointed by the Chief Justice of Tanzania. The	The Tribunal has the power to hear and determine all disputes arising from the conduct	In Tanzania, election adjudication processes are opaque. The decisions of higher courts are public; the lower court

⁴ The Elections Act, 2011, Section 90

⁵The Elections Act, 2011, Section 91(1)

⁶ The Conversation (2022, May 16). How Kenya's judiciary can break the cycle of electoral violence. Accessed from: <https://theconversation.com/how-kenyas-judiciary-can-break-the-cycle-of-electoral-violence-182710>

			judges are selected from among the judges of the High Court or the Court of Appeal.	of elections, including challenges to the registration of voters, challenges to the nomination of candidates, challenges to the counting of votes, challenges to the declaration of results, and any other matter relating to the conduct of elections. The decisions of the Tribunal are final and cannot be appealed. ⁷	proceedings are typically closed to the public ⁸ . The judiciary is widely viewed with apprehension and considered status-quo conservative. ⁹
3	Zimbabwe	The Constitutional Court	At least two High Court judges must be appointed as Judges of the Electoral Court by the Chief Justice following consultation with the Judicial Service Commission and the Judge President of the High Court for the	The Electoral Court has exclusive jurisdiction to hear appeals, applications, and petitions under the Act, as well as to examine any decision made or purported to have been made under the Act by the Commission or any other person ¹¹ .	Tribunal proceedings in Zimbabwe are opaque. While the decisions of the higher courts are public, the proceedings in the Electoral Court are typically closed to the public. ¹² The public is widely suspect of courts, especially electoral courts in Zimbabwe as both the Judiciary and Electoral Commissions are frequently

⁷ ibid

⁸The National Elections (Election Petitions) Rules 2010 [Gn No 447 Of 2010]

⁹ World Bank (2017). Citizen-Centric Justice in Tanzania: Expanding and Modernizing Court Services. Accessed from: <https://www.worldbank.org/en/news/feature/2017/05/23/citizen-centric-justice-in-tanzania-expanding-and-modernizing-court-services>

¹¹ Electoral Act, 2004 (Act No. 25 of 2004), Section 161

¹²Electoral Act, 2004 (Act No. 25 of 2004), Part XX

			duration specified in the appointment. ¹⁰		accused of “beholden of public officials.” ¹³
4	Ghana	The Election Dispute Resolution Committee	The Tribunal consists of three persons appointed by the Chief Justice and the Electoral Commission ¹⁴ .	The Election Dispute Resolution Committee has the power to hear disputes arising from elections and make decisions ¹⁵ .	Election adjudication processes in Ghana are open. The Election Tribunal allows for public hearings and media coverage. The decisions and rulings are made public. ¹⁶ Evidence suggests that although public trust seems to be waning, there is a reasonable degree of public trust for the country’s adjudicating body. ¹⁷
5	Senegal	The Constitutional Council	The Constitutional Council is made up of seven members, including five judges, a president, and a vice president ¹⁸ .	The Constitutional Court pronounces the results of the referendum consultations and evaluates the regularity of the national elections ¹⁹ .	The Election Tribunal hearings are open to the public. This means that anyone can attend the hearings and watch the proceedings, and the Tribunal’s decisions are published on its website. ²⁰

¹⁰ Electoral Act, 2004 (Act No. 25 of 2004), Section 161

¹³ Matthias Krönke (2018). Bounded Autonomy: what limits Zimbabweans' Trust in their courts and electoral commission? Accessed from: <https://africaportal.org/publication/bounded-autonomy-what-limits-zimbabweans-trust-their-courts-and-electoral-commission/>

¹⁴ The Representation of the People Act, 2020 (Act 1022), Section 48(1)

¹⁵ Ibid

¹⁶ The Representation of the People Act, 2020 (Act 1022)

¹⁷ Doris Dokua Sasu (2021, May). Opinions on the level of trust in Ghanaian courts 2008-2019. Statista. Accessed from: <https://www.statista.com/statistics/1264320/level-of-trust-in-courts-in-ghana/>

¹⁸ Ibid

¹⁹ Constitution of Senegal, Article 92

²⁰ Constitution of Senegal, Article 89

					The Constitutional Council and the entire justice system of Senegal is widely characterized by pervasive loss of public trust. The judiciary is perceived as a tool used by those in power against the opposition. ²¹
6	Zambia	The Constitutional Court	The President of the Court, the Deputy President, and eleven more Judges make up the Constitutional Court's setup of thirteen Judges. The Court is presided over by the President, who must be replaced if necessary by the Deputy President ²² .	Constitutional Court hears arguments and renders decisions on issues arising from the first and second ballots for the presidential election as well as any matters relating to appeals on petitions of the election of Members of Parliament and Councilors. It handles appeals from inferior courts and tribunals. Its judgment is conclusive ²³ .	The Tribunal is required to hold its hearings in public i.e. means that anyone can attend the hearings and watch the proceedings and also make its judgments public ²⁴ Evidence shows the presence of a fair but declining public trust in the Zambian Judiciary. ²⁵
7	Sierra Leone	The Election Tribunal	A High Court Judge, a retired Superior Court of Judicature Judge, or a	The Tribunal has the power to hear and try	The Tribunal is open to the public. Anyone can attend the hearings and watch the

²¹ Institute for Security Studies (2021, 19th March). Senegal's political turbulence reveals a justice system in crisis. Accessed from: <https://issafrica.org/iss-today/senegals-political-turbulence-reveals-a-justice-system-in-crisis>

²² <https://judiciaryzambia.com/constitutional-court/#:~:text=In%20terms%20of%20its%20composition,must%20preside%20over%20the%20Court.>

²³ <https://www.elections.org.zm/verc/governmentArms.php>

²⁴ The Electoral Process Act, No. 35 of 2016, Part IX

²⁵ https://www.afrobarometer.org/wp-content/uploads/migrated/files/media-briefing/zambia/zam_r6_presentation2_judiciary.pdf or Phiri, Christopher. "A Curious Decision by Zambia's Highest Court: Six Years Imprisonment for Civil Contempt?" *African Journal of Legal Studies* 12, no. 2 (2019): 115-138.

			barrister or solicitor who is qualified to serve as a High Court Judge makes up the Tribunal ²⁶ .	questions and issues that may arise from elections.	proceedings, and all hearings are held in public. The Tribunal also publishes its decisions, which are made available to the public. ²⁷ Public perception of Election Tribunals in Sierra Leone was found to be largely negative with only 31% of participants in an Afrobarometer survey affirming that they trust the courts as of 2018. ²⁸
8	Uganda	Constitutional Court of Uganda	A tribunal is made up of three people who the Chief Justice appoints ²⁹ .	A tribunal that has heard an appeal from a commission decision under Article 64(2) of the Constitution may confirm, reverse, or modify the judgment, or it may return the decision to the commission for reconsideration ³⁰ .	The public and media can observe the hearings and access court documents unless there are specific reasons for confidentiality or restrictions imposed by the court. ³¹ trust the courts, Uganda can be said to have a predominantly positive perception of their constitutional court. ³²

²⁶ Ibid

²⁷ Public Elections Act, 2022, Part XIII, Section 143

²⁸ See, https://www.afrobarometer.org/wp-content/uploads/2022/02/ab_r6_dispatchno171_access_to_justice_in_sierra_leone.pdf

²⁹ The Electoral Commission Act, Cap 140, Section 37

³⁰ The Electoral Commission Act, Cap 140, Section 40

³¹ The Electoral Commission Act, Cap 140, Part V

³² See, https://www.afrobarometer.org/wp-content/uploads/2022/02/ab_r7_dispatchno253_perceptions_of_ugandas_judiciary.pdf

					With 58% of participants in an Afrobarometer survey in 2018 affirming that they
9	South Africa	The Electoral Court	The Electoral Court is made up of the following individuals, who will be chosen by the President based on the Judicial Service Commission's recommendation: a chairperson who sits on the Appellate Division of the Supreme Court, two additional Supreme Court judges, and two additional South African citizens. ³³	The Electoral Court has the power to review any decision of the Commission relating to an electoral matter ³⁴ .	The hearings and proceedings of the Electoral Court are open to the public and the media. However, certain exceptional circumstances may require the court to restrict access to protect confidential or sensitive information. ³⁵ Evidence indicate a weak public trust in South African Courts, including the Electoral Court. Over 50% of participants in an Afrobarometer survey indicated that they had little or no trust for their courts. ³⁶
10	Mozambique	Constitutional Council of Mozambique	The Constitutional Council of Mozambique consists of six members appointed by the Parliament and a chair appointed by the	The Constitutional Court has the power to hear protests and complaints arising for the conduct of an election and make	The election tribunal process is open to the public. This means that anyone can attend the hearings and listen to the evidence. The process is also transparent, meaning that all decisions are made public. This

³³ The Electoral Act, 1996, Section 19

³⁴ The Electoral Act, 1996, Section 20

³⁵ The Electoral Act, 1996, Chapter 5

³⁶ See, <https://www.afrobarometer.org/feature/public-trust-in-sa-courts-weakening/#:~:text=The%20majority%20of%20South%20Africans,patterns%20in%20levels%20of%20trust.>

			President of the republic. ³⁷	decisions on the election which are final ³⁸ .	helps to ensure that the election tribunal process is fair and impartial. ³⁹ Election adjudication process is however viewed critically by the public as the judiciary is considered as “not always independent.” ⁴⁰
11	Indonesia	The Constitutional Court (Mahkamah Konstitusi)	The Constitutional Court has nine judges in which the DPR, President, and Supreme Court each select three judges ⁴¹ .	The Indonesian Constitutional Court has the power to resolve disputes over the results of the general election. ⁴²	The election tribunal process in Indonesia is generally open to the public. The court hearings are typically conducted in public, allowing interested parties, including media organizations and members of the public, to observe the proceedings. ⁴³ The Constitutional Court of Indonesia is more populist than other arms of government,

³⁷ https://aceproject.org/ace-en/topics/em/electoral-management-case-studies/mozambique-a-need-for-depoliticization/mobile_browsing/onePag

³⁸ The Electoral Law 2007, Article 185

³⁹ The Electoral Law 2007, Article 185

⁴⁰ See, <https://www.thenewhumanitarian.org/news/2006/10/05/judiciary-not-always-independent-report>

⁴¹ <https://brill.com/previewpdf/book/9789004250598/B9789004250598-s004.xml?pdfJsInlineViewToken=1777314676&inlineView=true>

⁴² Handbook on Election Result Dispute Settlement Constitutional Court of the Republic of Indonesia. Accessed from: [https://aceproject.org/ero-en/regions/asia/ID/Handbook Election Result Dispute Settlement.pdf/at_download/file](https://aceproject.org/ero-en/regions/asia/ID/Handbook_Election_Result_Dispute_Settlement.pdf/at_download/file). p. 3

⁴³ Law of Republic of Indonesia Number 7 Year 2017 Governing Elections, Article 466

					<p>making it a beneficiary of positive public perception.⁴⁴</p> <p>Recent events following the elongation of the tenures of Judges in the country has, however, raised some doubts about the credibility of judges.⁴⁵</p>
12	India	The Election Tribunals	The Chief Justice will occasionally assign one or more judges to serve on the Election Tribunal, which is made up of a single High Court judge. ⁴⁶	The Election Tribunal has the authority to hear and try protests and complaints regarding election administration and render rulings regarding the election that are binding. ⁴⁷	<p>The election tribunal process in India is generally open to the public. The hearings are conducted in open courtrooms, allowing interested parties, including the media and members of the public, to attend and observe the proceedings. However, it's important to note that certain sensitive cases or matters that involve classified information may be held in closed sessions.⁴⁸</p> <p>Despite its open status, courts are generally perceived negatively amongst the Indian populace,</p>

⁴⁴ Dominic Nardi (2018, February 22). Indonesia's Constitutional Court and public opinion. <https://www.newmandala.org/indonesias-constitutional-court-public-opinion/>

⁴⁵ See, <https://blog-iacl-aicd.org/2023-posts/2023/6/29/gd121xoz08wl4apf6v0h8blj9le8he>

⁴⁶ Representation of the People Act, 1951, Section 80(1)

⁴⁷ ibid

⁴⁸ Representation of the People Act, 1951, Section 80(3)

					especially amongst those who have had personal experience in courts. ⁴⁹ The cost and time of adjudication are also identified as drivers of negative perception of courts.
13	Mexico	Tribunal Electoral del Poder Judicial de la Federación (Electoral Tribunal of the Federal Judicial Branch)	The Tribunal consists of the Superior Courtrooms and the Regional Courtrooms; the Superior Courtroom consists of seven electoral judges while each Regional Courtroom consists of three judges ⁵⁰ .	The Electoral Tribunal has the authority to definitively and unquestionably resolve appeals against election results.	The tribunal's hearings are open to the public. Interested parties, including media organizations and members of the public, can attend the hearings in person to observe. ⁵¹ With Statista report showing that 58.3% of Mexicans trusts the judges, ⁵² public perception of the election adjudication body can be adjudged to be moderately positive.
14	Brazil	Tribunal Superior Eleitoral (Superior Electoral Court) and the Regional Electoral Courts	The Superior Electoral Court compose of seven members chosen: through the election, by secret vote,	The Tribunal Superior Electoral hears issues arising from the conduct	The proceedings are open for interested parties, including media representatives and members of the public, to attend and observe. The judicial

⁴⁹ Ram Mohan, M. P., Muhammed Faisal, Jacob Alex, and Shiju Mazhuvanchery. "Public perception of courts in India: unmeasured gap between the justice system and its beneficiaries." (2020).

⁵⁰ Ibid

⁵¹ Representation of the People Act, 1951, Section 80

⁵² See <https://www.statista.com/statistics/985190/mexico-trust-authorities/>

			and through appointment by the President of the Republic, two judges from among six lawyers of notable juridical learning and good moral repute, nominated by the Supreme Federal Court ⁵³	of elections and makes final decisions ⁵⁴ .	processes are however characterized by low public trust as it is widely perceived to be encrusted with layers of complication. ⁵⁵
--	--	--	---	--	--

⁵³ Constitution of the Federative Republic of Brazil, Article 119

⁵⁴ Ibid

⁵⁵ Taylor, Matthew M. "Citizens against the State: the riddle of high impact, low functionality courts in Brazil." *Brazilian Journal of Political Economy* 25 (2005): 418-438.

Conclusion

The table above has laid out facts about the body responsible for adjudicating electoral disputes, the openness of electoral processes, the composition of electoral adjudication bodies, and the powers of these bodies. These facts serve to enhance the understanding of global best practices in electoral dispute adjudication. It can be gleaned from the table above that electoral dispute adjudication processes are open to the public in many democracies globally. The countries drawn from Asia and Latin America all allow for openness in their election adjudication processes. For the African continent, the experience has been a mix of openness and opacity. The power of these bodies largely revolves around hearing and deciding on the validity of electoral processes.

For Nigeria, tribunals largely exist to enhance the credibility of electoral processes and this requires transparency and accountability. To promote transparency in the election tribunal process, proceedings of election adjudication bodies are open to the public to keep the public informed about the process. While live-streaming is not common practice as the law does not provide for it. Media coverage is permitted to keep the general public informed and updated about the process.



INITIATIVE FOR RESEARCH,
INNOVATION AND ADVOCACY
IN DEVELOPMENT



...promoting electoral knowledge, accountability and integrity

ABOUT THE ELECTORAL HUB

The Electoral Hub, an affiliate of the Initiative for Research, Innovation and Advocacy in Development (IRIAD), is a knowledge and advocacy hub which seeks to provide solutions to improve the credibility and integrity of the electoral process. The Electoral Hub aims to strengthen electoral governance and accountability in Nigeria through research, documentation, electoral education, policy influencing-informing and impact advocacy. We believe that the integrity of the electoral process is crucial in improving electoral governance and sustaining democracy in Nigeria. We also believe in solutions rooted in the principles of justice and equity.

9B Omolara Adeyemi Street, Kukwaba, Abuja

Phone: +2347047998525 or +235915122138

Twitter: @electoralhub and @iriadev

Instagram: @electoralhub, @theelectoralforum, and @iriadev

Facebook: @electoralhubng, @electoralforum, and @iriadev

LinkedIn: <https://www.linkedin.com/company/the-electoral-hub/>

<https://www.linkedin.com/company/iriadev/>

YouTube: <https://www.youtube.com/@electoralhub1196>

Websites: <https://electoralhub.iriadng.org> and <https://iriadng.org>

Copyright © 2023

Initiative for Research, Innovation and Advocacy in Development
and The Electoral Hub