



INSTITUTION OF ENGINEERS OF KENYA (IEK)
ALTERNATIVE DISPUTE RESOLUTION COMMITTEE
TERMS OF REFERENCE 2020 – 2022

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1. INTRODUCTION

The Institution of Engineers of Kenya (IEK) is the learned society of the engineering profession and co-operates with national and international institutions in developing and applying engineering to the benefit of humanity. The institution was first established as the East Africa Association of Engineers on 19th January 1945. It was established to promote the general advancement of the science and practice of Engineering and to facilitate the exchange of information and ideas on those subjects amongst members. This served the East African countries until November 1972 when at a meeting in Nairobi it was agreed that the functions of the Division serving Kenya be transferred to a new body, the Institution of Engineers of Kenya as it is today.

The objects and purposes of the Institution of Engineers of Kenya (hereinafter called “The Institution”) are to promote the general advancement of the science and practice of Engineering and its applications in Kenya and to facilitate the exchange of information and ideas on those subjects amongst the members of the Institution and otherwise and for that purpose:

The Institution of Engineers of Kenya operates under the following strategic goals:

- i. Grow IEK Membership to 20,000 by 2023
- ii. Relevance
- iii. Expertise
- iv. Revenue Growth
- v. Governance and Institutional Strengthening

Activities of the Institution of Engineers of Kenya are conducted by a Council which is elected at the Annual General Meeting.

The Constitution and Bylaws of IEK provide that the Council may establish Committees to undertake specific functions of behalf of Council.

In line with IEK’s Constitution and Bylaws, the Council shall establish a Committee to be known as Membership committee.

The Committee may establish sub-Committees to assist it in the conduct of its business provided the Council approves such action.

2. THE PURPOSE OF THE COMMITTEE

It is important to safeguard the dignity and integrity of the engineering profession as well as the standards set to guide the application of engineering knowledge to the solution of problems. The Council of the Institution of Engineers of Kenya has established the Alternative Dispute Resolution Committee (“the Committee”). The Committee reviews, and as appropriate, acts on behalf of the Council; or makes recommendations to the Council concerning dispute resolution and discipline issues pertaining to professional conduct and ethics of Engineers. Alternative Dispute Resolution Mechanisms include Conciliation, Mediation, Expert determination and Arbitration.

The basic responsibility of the Committee is to exercise its professional judgment in carrying out responsibilities described in these Terms of Reference in a manner that the Committee members reasonably believe to be in the best interest of the Institution of Engineers of Kenya and its stakeholders. The Committee is not expected to assume an active role in the day to day operations and /or management of the Institution of Engineers of Kenya.

3. RELEVANT STRATEGIC GOALS

The IEK Alternative Dispute Resolution Committee will indirectly contribute towards the achievement of all the five strategic goals by regulating the professional conduct and ethics of Engineers. Compliance with the Code of Ethics coupled with a robust and efficient ADR mechanism is expected to enhance good interpersonal relations and promote a healthy relationship with all stakeholders thus facilitating repositioning of IEK as the “go to” institution on matters infrastructure and industrial development in line with strategic plan, goal 2. This will also contribute towards good corporate governance and institutional strengthening in line with strategic plan, goal 5.

4. RESPONSIBILITIES AND FUNCTIONS OF THE COMMITTEE

The Committee shall have the following duties and responsibilities, as well as such other duties and responsibilities as it deems appropriate to carry out its purposes or as directed by the Council:

- i. The Committee shall hear and determine disputes relating to the professional conduct and ethics of engineers.
- ii. The Committee shall enforce the code of conduct of engineers and regulate the conduct and ethics of the engineering profession in general.

- iii. The Committee shall prepare/update existing discipline and dispute resolution Procedures and Rules and recommend to the Council for amendment, approval or otherwise.
- iv. The Committee will ensure that the discipline and dispute resolution procedures and rules must conform to Engineer's Act 2011, Engineer's rules 2009 and Provisions of all the laws of Kenya.
- v. Ensure that there are disciplinary and dispute resolution handling procedures in place outlining how they are administered.
- vi. The Members of the Committee shall familiarise themselves with the Procedures for Dispute Resolution,
- vii. The Committee may appoint an ad-hoc committee to investigate complaints made against Professional Engineers by either the Public or other Professional Engineers. The ad hoc committee shall hold formal hearing sessions and give its findings and recommendations to the Committee. If the Alternative Dispute Resolution Committee finds the practitioner guilty of professional misconduct, and has committed an offence under the Engineers Act 2011 as well as other statutory provisions of the laws of Kenya, it may recommend to the Council to:
 - a. Deregister the practitioner from IEK register; or
 - b. Suspend the practitioner's licence and have him removed from the Register for such a period as the Council may determine; or
 - c. Limit the practitioner's professional work; or
 - d. Impose conditions on the practitioner for continued practice; or
 - e. Require the practitioner to demonstrate engineering knowledge through specific technical examinations; or
 - f. Direct the findings to be published in summary or in detail; or
 - g. Take other action as specified in the Engineers Act 2011 of Kenya
 - h. Inform the Engineers' Board of Kenya action taken against the practitioner
- viii. The Committee shall compile and have in place a register of Arbitrators and continuously maintain and update the register in collaboration with the Chartered Institute of Arbitrators to update it for purpose of having competent engineers to be engaged in the dispute resolution methods stated herein.
- ix. The Committee is directly answerable to the IEK Council and shall not transact any business directly with Engineers Board of Kenya.

5. COMPOSITION OF THE COMMITTEE

The Committee shall comprise of not fewer than five members from the Institution of Engineers of Kenya.

Members shall be appointed by the Council and shall serve at the discretion of the Council and for the number of terms that the Council may determine. The term of service of a Committee member shall be two years. The Committee members may be replaced, and the Chair may be changed, once their term of service has come to an end or upon resignation of a member by way of giving notice.

The Council shall appoint, from among the council members, a Chairperson and a Vice Chairperson of the committee.

The other members shall be engineers of good standing with relevant track record, academic qualification, and experience that will enable them contribute optimally to the mandate thereof. Preferably they should have qualifications in arbitration or should be practising arbitrators.

An officer from IEK Secretariat formally appointed by the CEO shall attend all meetings of the Committee and will provide secretarial and logistical support to the Committee.

The committee shall appoint one of the members as the secretary.

6. TENURE OF THE COMMITTEE

The term of the committee shall be two (2) years.

7. MEETINGS OF THE COMMITTEE

The Committee shall meet at least once a month, and more frequently if there any matters of urgency requiring to be addressed.

An annual schedule of planned meetings shall be prepared and submitted each year. The schedule shall be reviewed on a quarterly basis and be updated as necessary or as required by the Secretariat. Every effort will be made to co-ordinate with the members to maximize attendance.

Where possible, at least seven (7) working days' notice of any unplanned in-person meeting shall be provided to all members. Where possible, at least three (3) working days' notice of any technology-based meeting shall be provided to all members.

Quorum of a Standing Committee for the purpose of conducting business will be more than 50% of the members of the Committee.

IEK EXCOM members are eligible to attend meetings of the Committee on request and are entitled to receive a copy of any documentation in advance of the meeting.

All the committee meetings shall be recorded by the secretary of the committee.

The secretary will forward the minutes/circular to the chair of the Committee for approval.

The Secretary will forward the approved minutes/ circulate to the Hon Secretary for circulation to council.

8. CONFLICT OF INTEREST

Members of the Committee must comply with their legal, statutory and fiduciary duties and policy obligations, when discharging their responsibilities as members of the Alternative Dispute Resolution Committee. The Secretariat shall provide information to assist Committee members as appropriate to their functions.

Members of the Committee shall act in good faith and in the best interests of IEK as a whole, act with care and diligence and for proper purpose as per IEK policies.

Members of the Committee must disclose to the Chair and/or the Committee any actual, perceived or potential conflicts of interest, which may exist as soon as the Committee Member becomes aware of any issue and shall recuse themselves from discussion and or decisions which may involve that conflict.

9. CONFIDENTIALITY AND NON- DISCLOSURE

All members of this committee SHALL NOT disclose any content of the membership proceedings to anyone whatsoever.

10. INDEPENDENT EXPERT

The Committee through the IEK Council shall collaborate with other Professional Institutions e.g.: Engineers Board of Kenya, Law Society of Kenya, and Chartered Institute of Arbitrators.

11. TASK GROUP/SUBCOMMITTEE

The Committee shall compile and have in place a register of Arbitrators from within its members and continuously maintain and update the register in collaboration with the Chartered Institute of Arbitrators to update it for purpose of having competent engineers to be engaged in the dispute resolution methods stated herein.

The Committee may appoint Arbitrators or Ad-hoc Committees in case there are any disputes either in implementation of projects or other institutional related disputes.

The Committee shall do this professionally and diligently in accordance to laid down procedure and criteria.

12. AUTHORITY

The Committee has no authority to incur expenditure without prior council approval.

13. REVIEW OF TERMS OF REFERENCES

The Committee shall review this Terms of Reference in not more than two years. The Committee shall recommend any changes proposed to the Terms of Reference to the IEK Council for its approval.

14. Administration

The IEK secretariat CEO, in conjunction with the duly appointed officer, shall provide the administrative support necessary for the smooth running of the committee.

15.COMMITTEE EVALUATION AND REPORTS

The Committee shall:

- a) Conduct an annual performance evaluation of the Committee, which evaluates the performance of the Committee in relation to the requirements of this TORs and other matters that the Committee may deem appropriate. The performance evaluation by the Committee shall be conducted in a manner that the Committee deems appropriate.

- b) Report its activities to the Council on a regular basis and make recommendations with respect to the matters within its responsibility that the Committee may deem necessary or appropriate. The report should include:
- Number of meetings held
 - Agendas of the meetings
 - Major decisions taken
 - Recommendations made to the Council

16. RESOURCES OF THE COMMITTEE

The Council shall provide the Committee with the necessary resources appropriate to discharge its duties and responsibilities, including acquiring the services of an independent counsel or other experts or consultants.

APPENDICES

Appendix 1: schedule of working groups/ Ad-hoc committees

| Number | Title | Purpose or Scope of Activity |
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