 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 24 MAY 2022	DAY: TUESDAY
TABLED BY:	HON. A. Kimunya M.P. L.O.M.P.
CLERK-AT THE TABLE:	Ann Musandu. 445 4th May, 2022

SPECIAL ISSUE

Kenya Gazette Supplement No. 76

(Legislative Supplement No. 34)

LEGAL NOTICE No. 78

THE NATIONAL GENDER AND EQUALITY COMMISSION ACT

(No. 15 of 2011)

THE NATIONAL GENDER AND EQUALITY COMMISSION
(COMPLAINTS HANDLING PROCEDURE) REGULATIONS, 2022

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY

- 1—Citation.
- 2—Interpretation.
- 3—Objective of Regulations.
- 4—Purpose of the Regulations.

PART II—PROCEDURE FOR LODGING, ADMISSION AND
RESPONSE TO COMPLAINTS

- 5—Nature of complaints.
- 6—Lodging a complaint.
- 7—Complaints by a child.
- 8—Complaints by a person suffering from mental impairment.
- 9—Form of a complaint.
- 10—Procedure for lodging a complaint.
- 11—Register of complaints.
- 12—Assessment of complaints.
- 13—Exemption from payment of fees.
- 14—Joinder and misjoinder of complainants.
- 15—Substitution and addition of complainants.
- 16—Joint consideration of complaints.
- 17—Confidentiality.
- 18—Withdrawal of a complaint.

PART III—INVESTIGATION OF COMPLAINTS

- 19—Preliminary investigation.
- 20—Commencement of full investigation.

21—Procedure for full investigation.

22—Summoning witnesses.

23—Investigation report.

24—Procedure after investigation.

25—Investigation by the Commission.

PART IV— RESOLUTION OF COMPLAINTS BY ALTERNATIVE
DISPUTE RESOLUTION MECHANISMS

26—Alternative dispute resolution.

27—Who may attend a negotiation or mediation.

28—Consequences of non-attendance.

29—Procedure where a resolution is reached.

PART V— HEARING AND RESOLUTION OF COMPLAINTS BY
THE HEARING PANEL

30—Composition of the hearing panel.

31—Commencement and notice of hearing.

32—Persons to attend hearing.

33—Procedure at hearing panel.

34—Right to be heard.

35—Conclusion of the hearing.

36—Notification of outcome.

37—Application of Part to inquiries of the Commission.

PART VI— MISCELLANEOUS PROVISIONS

38—Language of proceedings.

39—Extension of time.

40—Evidence.

40—Review.

SCHEDULES

FIRST SCHEDULE—Forms.

SECOND SCHEDULE— Investigation Report.

THE NATIONAL GENDER AND EQUALITY COMMISSION ACT

(No. 15 of 2011)

IN EXERCISE of the powers conferred by section 55 of the National Gender and Equality Commission Act, 2011, the National Gender and Equality Commission makes the following Regulations—

THE NATIONAL GENDER AND EQUALITY COMMISSION
(COMPLAINTS HANDLING PROCEDURE) REGULATIONS, 2022

PART I— PRELIMINARY

1. These Regulations may be cited as the National Gender and Equality Commission (Complaints Handling Procedure) Regulations, 2022. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“Act” means the National Gender and Equality Commission Act, 2011; No. 15 of 2011.

“admission” includes the determination of the eligibility of a complaint by the Commission, and the term “admit” and “admitted” shall, wherever they occur, be construed accordingly;

“child” has the meaning assigned to it under the Children Act, 2008; No. 8 of 2008.

“Commission” means the National Gender and Equality Commission established under section 3(1) of the Act;

“complainant” means a person who lodges a complaint with the Commission in accordance with regulation 6;

“Court” means the High Court established under Article 165(1) of the Constitution;

“disability” has the meaning assigned to it under Article 260 of the Constitution;

“hearing panel” means a panel designated by the chairperson under regulation 30 to hear and determine a complaint;

“investigator” includes an officer of the Commission appointed for that purpose or a public officer or investigation agency of the Government employed under section 28 of the Act, for the purpose of conducting any investigation pertaining to an inquiry under the Act;

“Preliminary investigation” means an assessment of a complaint, examination of documents, correspondence, court records, transcripts or tapes; interviews of the complainant, counsel, court staff and other witnesses; and inspection of physical facilities or objects, or any other means of gathering evidence conducted by the Commission to determine whether a complaint has merit to warrant a full investigation and, whether it is appropriate or in the public interest to further investigate the matter;

“respondent” means a person against whom a complaint is lodged with the Commission in accordance with the Act and these Regulations;

“summons” means an order of the Commission, in writing, directing a person to appear before the Commission and testify or produce a document.

3. The objective of these Regulations is to facilitate the fair, impartial, just, expeditious, proportionate and affordable determination of complaints lodged with the Commission under the Act and these Regulations, without undue regard to technicalities of procedure. Objective of Regulations.

4. The purpose of these Regulations is to provide for the procedure for— Purpose of the Regulations.

- (a) lodging complaints with the Commission pursuant to section 33 of the Act;
- (b) hearing of complaints and admission of evidence;
- (c) resolution of complaints lodged with the Commission by means of alternative dispute resolution mechanisms specified under section 29(2) of the Act;
- (d) determination of complaints; and
- (e) referral of complaints not within the mandate of the Commission for determination by the relevant bodies or institutions.

PART II— PROCEDURE FOR LODGING, ADMISSION AND RESPONSE TO A COMPLAINTS

5. (1) Subject to section 30 of the Act, a person may lodge a complaint with the Commission alleging discrimination, differential treatment, marginalization, inequality, or any other act or omission which undermines or impairs the equalization of opportunity to the complainant’s prejudice or to the prejudice of a class of persons of whom the complainant is a member. Nature of complaints.

(2) Without prejudice to the generality of paragraph (1), the act or omission contemplated in this regulation shall relate only to the claimant’s right to equality and freedom from discrimination guaranteed under Article 27 of the Constitution.

6. (1) Pursuant to section 32 of the Act, any person aggrieved by a matter complained of may lodge a complaint with the Commission— Lodging a complaint.

- (a) acting in their own interest;
- (b) acting on behalf of another person who cannot act in their own name;
- (c) acting as a member of, or in the interest of, a group or class of persons;
- (d) acting in the public interest; or
- (e) an association acting in the interest of one or more of its members,

in accordance with these Regulations.

(2) Where a complaint is made on behalf of another person under section 32(2), the consent of the aggrieved person or other person who, under paragraph (1)(b), (c) and (e) is entitled to make the complaint on behalf of the aggrieved person shall be in writing and signed by the aggrieved person, or by a person entitled to represent the aggrieved person pursuant to section 32(2)(a) of the Act.

(3) Despite paragraph (2), the Commission may require such other supporting documents as may be necessary to prove consent for persons lodging complaints under this regulation.

(4) A person in whose behalf a complaint is lodged in accordance with paragraph (1) may, at any time before determination of the complaint, apply, in writing, to the Commission requesting the Commission to allow them to take over and conduct the complaint in their own name.

(5) A request made to the hearing panel under paragraph (4) shall be served on every person named as a party to the complaint.

7. (1) Where the person aggrieved by the matter complained of is a child, the complaint shall be lodged in the name of the child, parent, guardian or other authorized intermediary.

Complaints by a child.

(2) A child on whose behalf a complaint is lodged shall, on attaining eighteen years, and upon notification by the parent, guardian or other authorized intermediary of the existence of the complaint, elect whether he will proceed with the complaint in his own name.

(3) The notification under regulation 7(2) to the child shall be done within twenty-one days of the child attaining eighteen years and shall be served on the Commission within seven days after notification of the child by the parent, guardian or other authorized intermediary.

(4) Where a complainant on whose behalf a complaint was lodged elects to proceed with the complaint in their own name under paragraph (1), the complainant shall apply to the Commission for an order discharging the parent, guardian or intermediary, and for leave to proceed in the complainant's name.

8. (1) Where the person aggrieved by the matter complained of is a person suffering from mental impairment, the complaint shall be lodged in their name by an intermediary pursuant to regulation 6.

Complaints by a person suffering from mental impairment.

(2) For the purposes of paragraph (1), a person has mental impairment if, on inquiry by the Court pursuant to section 26 of the Mental Health Act, the person is found to be suffering from such mental disorder or impairment as to render them incapable of protecting their rights.

Cap. 248.

9. (1) A complaint may be lodged—

Form of a complaint.

- (a) in Form NGEC1 set out in the First Schedule and signed by the complainant;
- (b) orally; or

- (c) through electronic means including email, web posting or any other electronic means approved by the commission from time to time.

(2) Where a complaint is made orally in accordance with section 33(1) of the Act to an officer of the Commission or via electronic means, the commission shall reduce the complaint into writing in Form NGEC1, and cause the complaint to be duly signed, in accordance with paragraph (1).

(3) Where a complaint is lodged by a representative of the complainant, the complaint shall not fail solely due to the inability of the representative to furnish the Commission with such relevant information or documents as would otherwise be within the power or control of the complainant.

10. A complaint shall be duly lodged with the Commission if Procedure for lodging a complaint.
the complaint—

- (a) is delivered to the offices of the Commission;
- (b) is delivered to such other place as the Commission may, from time to time, designate;
- (c) is transmitted by way of electronic mail to the designated email address of the Commission;
- (d) has been sent by way of registered post to the designated postal address of the Commission;
- (e) has been sent to the Commission through a duly registered courier service; or
- (f) is made orally to an officer of the Commission, and reduced to writing in accordance with regulation 9(2).

11. (1) The Commission shall keep and maintain an up-to-date Register of complaints.
Register of Complaints, in which the Commission shall record and number sequentially all complaints lodged with the Commission.

(2) The Register of Complaints shall contain the following particulars in relation to every complainant—

- (a) the full name and contact information of the complainant;
- (b) the sequential number and date on which the complaint was lodged;
- (c) the name and contact information of the respondent;
- (d) the nature of the complaint;
- (e) the date on which the complaint was resolved;
- (f) the outcome of the determination and the recommendations, if any, made in resolution of the complaint;
- (g) if the complaint falls outside the jurisdiction of the Commission, the action taken or reference made and the date of such reference to the appropriate state agency; and

(h) any other information which the Commission considers necessary to record.

(3) the Commission may protect the identity of the complainant where a request to protect the identity is sought by the complainant or where the Commission deems such protection to be necessary.

12. (1) The Commission shall within seven days, upon a complaint being entered into the register of complaints in accordance with regulation 11(1), assess the complaint to ascertain—

Assessment of complaints.

(a) whether the complaint falls within the jurisdiction of the Commission; or

(b) whether the complaint warrants referral to any other person or institution established under the Constitution or any other written law, for appropriate action.

(2) Upon assessment of the complaint, the Commission may—

(a) admit the complaint and refer the complaint to an investigator to undertake preliminary investigation thereon;

(b) admit the complaint and refer the complaint to full investigation;

(c) admit the complaint and undertake rapid response;

(d) summarily reject the complaint; or

(e) where the complaint is not within the mandate of the Commission, refer the complaint to the relevant person or institution for appropriate action, and notify the complainant of the referral in writing within seven days from the date of receipt of the complaint.

(3) Where a complaint does not merit admission for determination by the Commission, the Commission shall, within fourteen days from the date of the registration of the complaint—

(a) summarily reject the complaint and record the reasons for the rejection in the Register of Complaints; and

(b) notify the complainant of the summary rejection, in writing, together with reasons for the rejection.

(4) Where the complainant is aggrieved by the summary rejection of the complaint under regulation (3), the complainant may appeal to the Commission, in writing, within fourteen days of receipt of the notice.

(5) The Commission may, after considering an appeal made under paragraph (4)—

(a) allow the appeal and—

(i) direct that the complaint be admitted; and

(ii) direct an investigator to conduct preliminary investigations on the complaint; or

- (b) disallow the appeal, whereupon—
- (i) the complaint shall stand rejected;
 - (ii) the Commission shall in writing record its decision and the reasons under paragraph (5); and
 - (iii) notify the complainant of its decision and the reasons for disallowing the appeal within fourteen days from the date of its decision.

13. The Commission shall not charge any fees for the lodging of a complaint with the Commission under these Regulations.

Exemption from payment of fees.

14. (1) Where two or more complainants lodge a complaint against the same respondent, or against two or more respondents jointly on the same subject matter, the Commission may consolidate such complaints into one complaint.

Joinder and misjoinder of complainants.

(2) On admission of a joint complaint lodged under paragraph (1), the Commission shall give a notice of the complaint to the respondent, in writing, or to each of the respondents against whom the complaint is made within fourteen days from the date of the decision made under paragraph (1).

(3) Where the complainant is in doubt as to the persons from whom he or she is entitled to obtain redress, he or she may join two or more respondents in order that the question as to which of the respondents is liable, and to what extent, may be determined.

(4) No complaint shall be defeated by reason of the misjoinder or non-joinder of parties, and the Commission may, in a complaint, deal with the matter in controversy so far as regards the rights and interests of the parties properly before the hearing panel.

15. (1) Where a complaint has been lodged in the name of the wrong person as complainant, or where it is doubtful whether it has been lodged in the name of the right complainant, the Commission may, at any stage of the complaint, if satisfied that the complaint has been lodged through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute to do so, order the relevant person to be substituted or added as a complainant upon such terms as the Commission thinks fit.

Substitution and addition of complainants.

(2) The Commission may, at any stage of the proceedings, either of its own motion or on the application of a party to a complaint, and on such terms as the Commission considers just, order that the name of any party improperly joined, whether as complainant or respondent, be struck out, and the name of a person who ought to have been joined, whether as complainant or respondent, or whose presence before the Commission may be necessary in order to enable the Commission to effectively and completely adjudicate upon and settle all questions raised in the complaint, be added.

(3) Where the name of a complainant or a respondent is struck out before the hearing of a complaint, the Commission shall serve a notice to that effect to the complainant seven days before the date fixed for hearing.

(4) Where a respondent is joined, or substituted in a complaint, the amended copy of the complaint, and any summons issued in the proceedings, shall be served on the new respondent and on the join respondent or respondents, as the case may be.

16. (1) The Commission may consolidate and resolve, at the same time, two or more complaints in any case where—

Joint consideration of complaints.

- (a) one complainant lodges two or more complaints against one respondent;
- (b) one complainant lodges two or more similar complaints against two or more respondents; or
- (c) two or more complainants separately lodge similar complaints against one or more respondents.

(2) Where two or more complainants lodge separate complaints raising similar issues against one or more respondents, the Commission may—

- (a) consolidate the complaints; or
- (b) treat one complaint as the test complaint, and stay further action on the other complaints with which it is consolidated until the test complaint is resolved, whereupon its outcome shall with necessary modifications be binding on the stayed complaints.

(3) The Commission shall in writing communicate to the parties any decision made under this regulation.

(4) The Commission shall not consolidate any claims under these Regulations if it is shown to the satisfaction of the Commission that such consolidation is likely to prejudice the rights or interests of any of the parties thereto.

17. (1) A complainant may, when lodging a complaint, or at any stage thereafter, request the Commission to keep the particulars of the complaint confidential and not to disclose them to any unauthorized person.

Confidentiality.

(2) Notwithstanding paragraph (1), Commission shall keep the personal information of a complainant who is a child, confidential and not disclose the information to any unauthorized person.

(3) A request for confidentiality pursuant to paragraph (1) shall be in writing and shall be supported by a statement explaining the reason for the request to keep the information confidential.

(4) Where a complainant has made a request pursuant to paragraph (1), and the Commission is of the considered view that it was necessary to disclose the particulars in issue in order to facilitate the resolution of the complaint, the Commission shall, in writing, within seven days of receipt of the request—

- (a) inform the complainant of the particulars which the hearing panel considers necessary to disclose;

- (b) explain to the complainant the reasons for the disclosure; and
- (c) request the complainant to furnish written consent to the disclosure of such particulars.

(5) Where a complainant declines to give consent on request made under paragraph (4)(c), the Commission may decline to investigate the complaint and, within fourteen days of its decision, inform the complainant of its decision, giving reasons therefor, whereupon the complaint shall stand closed.

(6) A complainant who is aggrieved by the decision of the Commission under this regulation may—

- (a) appeal to the Commission; or
- (b) apply to the court for review in accordance with section 7 of the Fair Administrative Action Act, 2015.

18. (1) A complainant may, at any time before the resolution of a complaint, withdraw the complaint by notice in writing to the Commission and to all persons named as party to the complaint.

No. 4 of 2015.
Withdrawal of a
complaint.

(2) A withdrawal under sub regulation (1) shall be granted upon approval of the Commission.

(3) Where a notice of withdrawal is given after commencement of hearing under Part V, the withdrawal shall take effect only with leave of the Commission on such terms as the Commission may direct.

(4) Upon withdrawal of a complaint under this regulation, the Commission shall make an entry in the Register of Complaints marking the complaint as withdrawn.

PART III— INVESTIGATION OF COMPLAINTS

19. (1) Upon referral of a complaint to an investigator under regulation 12(2) and the investigator determines that a preliminary investigation is necessary, the preliminary investigation shall be conducted within twenty-one days from the date of such determination.

Preliminary
Investigation

(2) In undertaking the preliminary investigation, the investigator shall—

- (a) consider recommendations of the rapid response action and investigations report, where applicable;
- (b) contact the complainant or any witness for purposes of recording their statement;
- (c) gather all information and documents; and
- (d) identify and interview witnesses.

(3) Upon conclusion of preliminary investigations, the investigator shall prepare a preliminary investigation report which shall contain—

- (a) the findings under paragraph (2); and
- (b) the recommendations on the appropriate action to be taken with respect to the complaint which may include—

- (i) closure of the complaint;
- (ii) full investigation of the complaint; or
- (iii) referral of the complaint to the relevant person or institution for appropriate action.

(4) The investigator in making recommendations as envisaged under paragraph (3)(b) may consider the following—

- (a) a full investigation need not be carried out if—
 - (i) the complainant fails to supply the required information making it impossible for the Commission to conduct an investigation;
 - (ii) the complainant has failed to substantiate the complaint;
 - (iii) the complaint is a criminal offence or a matter pending before any court or judicial tribunal;
 - (iv) the complaint does not fall within the category of complaints handled by the Commission under the Act or these Regulations; or
 - (v) the complaint is of a vexatious or frivolous nature; or
- (b) a full investigation is required if the complaint concerns serious violation of principles of equality and freedom from discrimination, or is of public interest

20. (1) Upon admission of a complaint, the Commission shall, within twenty-one days of the admission serve a copy of the complaint upon the respondent, and require the respondent to submit a written response to the complaint within fourteen days from the date of service.

Commencement of full investigation.

(2) Upon receipt of the complaint under paragraph (1), a designated officer of the Commission shall undertake an assessment of the complaint to determine the appropriate cause of action, which may include—

- (a) rapid response;
- (b) preliminary investigation; or
- (c) full investigation of the complaint.

(3) Upon the expiry of the fourteen days specified in paragraph (1), the Commission shall appoint an investigator to investigate the complaint and submit a report thereon—

- (a) if the respondent fails to lodge a response to the complaint within the specified period or at all; or
- (b) if the respondent denies the complainant's claim in the complaint.

(4) Upon appointment under paragraph (3), the investigator shall, within seven days of the appointment—

- (a) invite the complainant for an interview to—

- (i) ascertain the nature of the complaint and clarify the matters to be investigated;
 - (ii) explain to the complainant the role and powers of the Commission in relation to the issues raised in the complaint;
 - (iii) explain the procedure of the investigation and determination of the complaint, indicating the time within which the Commission is expected to deal with the complaint; and
 - (iv) where necessary, request further information from the complainant; and
- (b) prepare and submit written a report of the interview to the Commission.

(3) Upon receipt of the requisite information and evidential documents, if any, from the complainant, the investigator shall proceed to investigate the complaint.

21. (1) When undertaking full investigations under this Part, the investigator may—

Procedure for full investigation.

- (a) require the complainant to submit such other or further information or evidential documents as the officer considers necessary to facilitate the investigation; or
- (b) interview the respondent or any other relevant person, and require them to submit such information or documents, as the investigator considers necessary for the determination of the issues raised in the complaint.

(2) Without prejudice to the generality of paragraph (1), the investigator may, unless otherwise directed by the Commission, undertake investigations under this Part by means of—

- (a) telephone communication, audio-visual communication, electronic mail or other form of correspondence;
- (b) research, inspection, fact-finding mission, survey or questionnaire;
- (c) face-to-face meetings with persons summoned to appear before the hearing panel in accordance with regulation 20; or
- (d) requisition and consideration of evidential documents in the power and control of a person, whether or not named as party to the complaint.

22. (1) In order to facilitate investigations under this Part, the Commission may, in exercise of its powers under section 27(a) of the Act, and either of its own motion or on request by a party, summon a person to appear before an investigator for the purpose of examination, or to produce any document, relating to a complaint.

Summoning witnesses.

(2) Summons to appear before the investigator shall be in Form NGEC 2 set out in the First Schedule.

(3) Where a person is summoned to produce a document as contemplated in paragraph (1), the summons shall be in Form NGEC 3 set out in the First Schedule.

23. (1) The investigator shall, within ninety days of the commencement of the investigations, submit a report on their findings to the Commission for consideration. Investigation report.

(2) The investigation report submitted under paragraph (1) shall contain, among others the matters set out in the Second Schedule, and shall be accompanied by—

- (a) written statements of the persons interviewed during the investigation, and signed by the makers thereof; and
- (b) duly authenticated copies of the evidential documents, if any, submitted for consideration in support of, or in response to, the complaint.

24. (1) Upon receipt of the investigation report submitted under regulation 23, the Commission may— Procedure after investigation.

- (a) refer the complaint to a hearing panel for hearing and determination;
- (b) undertake resolution of the complaint through alternative dispute resolution mechanisms specified under section 29 of the Act; or
- (c) having regard to the nature of the complaint, make recommendations to the Commission, that the complaint be the subject of an inquiry pursuant to section 33(4)(b) of the Act.

25. (1) The provisions of this Part shall apply, with necessary modifications, to complaints initiated by the Commission on its own motion pursuant to section 29(1) of the Act. Investigation by the Commission.

(2) The investigations initiated under paragraph (1), may include investigations on alleged violation of, or threat to the right to equal treatment or non-discrimination.

PART IV— RESOLUTION OF COMPLAINTS BY ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

26. (1) Upon receipt of the investigator's investigation report, the Commission shall, pursuant to section 29(2) of the Act, take all necessary steps to secure resolution of the complaint by — Alternative dispute resolution.

- (a) negotiation between the complainant and the respondent;
- (b) conciliation with the assistance of a conciliator appointed by the commission;
- (c) by mediation with the assistance of a certified mediator duly accredited to practice in Kenya as a mediator; or

- (d) a combination of two or more methods of alternative dispute resolution.

(2) In determining whether a complaint should be submitted for negotiation, conciliation mediation, the Commission shall consider—

- (a) the nature of the complaint;
- (b) whether the complaint discloses a criminal offence, in which case the Commission shall not subject the complaint to negotiation, conciliation or mediation;
- (c) whether resolution of the complaint by means of alternative dispute resolution would offend public policy;
- (d) whether the complainant or the respondent has previously refused to co-operate with the Commission in any proceedings involving both or either of them;
- (e) whether any of the parties has, without lawful justification or other reasonable cause, previously failed to attend at any inquiry or proceedings of the Commission relating to a complaint to which they were a party;
- (f) whether the complaint raises issues of public interest, in which case the complaint may be considered appropriate for public inquiry or other means of resolution; or
- (g) any other matter which the Commission considers relevant for consideration in any complaint.

(3) The Commission shall notify all persons named as parties to the complaint of any meeting scheduled for negotiation or conciliation in Form NGEC4 set out in the First Schedule.

(4) Where the complaint proceeds to mediation, the mediator shall be appointed by the Commission within seven days.

(5) The Commission shall, upon the appointment of a conciliator or a mediator schedule the complaint for mediation and notify all the parties to the complaint in Form NGEC4 set out in the First Schedule, of the first and all subsequent sessions of the mediation.

27. (1) Where a negotiation, conciliation or mediation session is scheduled and duly notified, a negotiated or mediation resolution shall be considered to have been properly reached only if —

- (a) the complainant and the respondent, and all other persons named as parties to the complaint are present; or
- (b) any of the persons mentioned in paragraph (a) are represented in the negotiations, conciliation or mediation by a legal practitioner, or by a duly authorised agent appointed in writing for that purpose, with authority to legally bind the appointing party.

Who may attend a negotiation, conciliation or mediation.

28. (1) Where a party fails to attend a negotiation, conciliation or mediation session, or fails to come to an agreement at such sessions, the Commission may proceed to have the complaint resolved in accordance with Part V of the Act.

Consequences of non-attendance.

(2) The Commission may dismiss a complaint where the complainant—

- (a) willfully refuses or neglects to participate in negotiations or mediation notwithstanding voluntary submission thereto; or
- (b) fails to attend three consecutive negotiation or mediation sessions duly convened and notified in accordance with these Regulations.

(3) Where a complaint is dismissed under paragraph (2), the Commission shall, within seven days of its decision, notify the parties of the dismissal in writing.

29. (1) Where a complaint is resolved through negotiation, conciliation or mediation, the Commission shall—

Procedure where a resolution is reached.

- (a) record the terms on which the complaint is resolved and require the parties to sign the resolution on the agreed terms; and
- (b) enter an abstract report of the agreement in the Register of Complaints.

(2) If the complaint is not resolved through negotiation, conciliation or mediation, the complaint shall proceed for hearing by a hearing panel for resolution.

PART V— HEARING AND RESOLUTION OF A COMPLAINT BY THE HEARING PANEL

30. (1) Upon submission of an investigation report prepared under Regulation 23, and the failure to resolve a complaint by alternative dispute resolution mechanisms, a complaint may be submitted to hearing and resolution by the hearing panel consisting of—

Composition of the hearing panel.

- (a) the chairperson of the Commission, or a member of the Commission designated by the chairperson, who shall be Chair to the hearing panel;
- (b) at least one person, who has knowledge and skills in matters relating to the complaint, co-opted by the chairperson; and
- (c) the Chief Executive Officer of the Commission, or a member of staff of the secretariat designated by the Chief Executive Officer, who shall provide administrative support to the hearing panel.

(2) The chairperson may designate such number of members of the Commission as may be necessary to hear and resolve a complaint lodged with the Commission.

(3) A member of the Commission, or an officer of the Commission engaged in preliminary investigations under Part III or in negotiation, conciliation or mediation of the complaint in accordance with Part IV, shall not be appointed to be members of the hearing panel.

31. (1) A hearing panel shall, within seven days of receipt of the investigation report, appoint the date, time and place for the hearing of a complaint.

Commencement and notice of hearing.

(2) Subject to paragraph (1), the hearing panel shall give at least fourteen days' notice of hearing of the complaint, in Form NGECC 5 set out in the Schedule, to—

- (a) all persons named as parties to the complaint;
- (b) the legal counsel and other persons, if any, representing the parties in the proceedings;
- (c) a person required to attend at the hearing to give oral evidence or produce a document in support or defence of the complaint; and
- (d) a person required to attend the hearing to produce a report, or to give expert evidence or opinion relating to the complaint.

32. (1) A hearing under this Part shall be open to the public.

Persons to attend hearing.

(2) Notwithstanding paragraph (1), the hearing panel may, either of its own motion or on request by a party to the complaint, conduct the hearing of a complaint in private where the hearing panel is satisfied that the public hearing of the complaint, or disclosure of any evidential material to the public, would—

- (a) prejudice the complainant's right to privacy or human dignity;
- (b) prejudice the successful resolution of the complaint;
- (c) undermine the security of a party to the complaint, or of a person attending at the hearing; or
- (d) compromise the discharge of the functions of the hearing panel or mandate of the Commission.

(3) Notwithstanding paragraph (1) and (2), where a complaint involves a child, the hearing of the complaint shall be conducted in private, and no person other than the parties to the complaint or legal counsel, or intermediary duly appointed for that purpose, shall be allowed to attend the hearing except—

- (a) where their attendance at the hearing is necessary for the effective resolution of the complaint;
- (b) for good reason or in the interest of justice; or
- (c) where their attendance at the hearing is a source of comfort to, or is otherwise in the best interest of, the child.

(4) Before determining whether the hearing of a complaint shall be in private under paragraph (2), the hearing panel shall hear and consider representations from the persons named as parties to the complaint in that regard.

(5) Where the complainant or any other person required to attend at the hearing of a complaint is a person with disability, the

hearing panel shall provide reasonable accommodation and give such support as may be required by that person to fully participate in the hearing.

(6) A hearing panel may where it considers it necessary direct that a person or class of persons, or all persons the presence of whom is, for good reason, not desirable, be excluded from the hearing of a complaint or part thereof.

33. (1) In discharge of its functions under this Part, a hearing panel shall, among other procedural matters— Procedure at hearing panel.

- (a) consider the findings of the preliminary investigation together with all written statements, reports and evidential documents submitted to a hearing panel;
- (b) interview the parties, witnesses, and other persons appearing before a hearing panel, with a view to establishing the facts of the complaint;
- (c) determine the witnesses to summon and interview, and the order in which they are to be heard;
- (d) question and hear the parties directly or through their legal counsel or other representatives, including intermediaries;
- (e) determine the information, oral or documentary evidence may be disclosed and admitted at the hearing;
- (f) hear and consider submissions on points of law or fact from legal counsel or other persons representing the parties or either of them;
- (g) give such directions relating to the procedure at hearing as a hearing panel considers necessary for the effective discharge of its functions under this Part; and
- (h) exercise its discretionary powers to resolve each complaint independently of previous decisions in similar complaints.

(2) The hearing panel may give such directions relating to the disclosure or publication of any information or evidence presented to a hearing panel as it thinks fit, including directions that—

- (a) the presentation by a person of such information or evidence to a hearing panel shall be in private; or
- (b) where a complaint involves a child, —
 - (i) the identity of the child shall not be disclosed; or
 - (ii) any evidence to be adduced by a child be presented either by the child or by an intermediary, or by both.

(3) At the commencement of a hearing, a hearing panel shall explain to the parties, and to the persons in attendance at the hearing—

- (a) the purpose of the hearing; and
- (b) the procedure at the hearing including the matters specified in paragraph (1).

(4) In addition to the matters specified in paragraph (3), the chairperson of a hearing panel shall, at the commencement of the hearing, briefly outline the nature of the complaint and the issues falling to be resolved at the hearing.

(5) A party to a complaint shall have the right to—

- (a) legal representation by a legal practitioner or by a person duly appointed by the party for that purpose; and
- (b) personally, or by a representative, inspect and obtain copies of documents submitted to a hearing panel in the proceedings.

34. In conduct of the proceedings at the hearing of a complaint, a hearing panel shall give each party a reasonable opportunity to present their case, and to respond to the evidence presented by the other party through— Right to be heard.

- (a) oral evidence;
- (b) witnesses or witness statements made on oath and submitted in support of their case or defence;
- (c) submission of evidential documents;
- (d) written submissions on points of law or fact; or
- (e) in the case of a child, an oral statement made either personally or through an intermediary, or by both.

35. (1) At the conclusion of the hearing, each party to the complaint shall have the right to— Conclusion of the hearing.

- (a) make closing statements either in person or by a representative appointed by the party in that regard; and
- (b) in the case of a child, to make a closing statement personally or through an intermediary, or by both.

(2) After the conclusion of the closing statements, a hearing panel shall—

- (a) consider all relevant oral and documentary evidence put to a hearing panel in support of, and in response to, the complaint;
- (b) make a finding on all issues that needed to be resolved in the proceeding; and
- (c) determine the appropriate remedial action to be taken in resolution of the complaint, including suitable measures to redress the complaint.

(3) The remedial measures or redress contemplated in paragraph (2)(c) includes—

- (a) any of the reliefs specified in section 41 of the Act;
- (b) the making of recommendations on—

- (i) the appropriate steps to be taken by the respondent to redress the violations complained of, and to ensure the promotion and protection of the complainant's right to equality or non-discrimination;
- (ii) the specific steps to be taken to stop unfair discrimination or similar violation of the rights of the complainant or other person or class of persons;
- (iii) the specific steps to be taken to avail the opportunities or privileges unfairly withheld from the complainant, or other person or class of persons;
- (iv) the implementation by the respondent of special measures to address inequality or unfair discrimination of the complainant or other persons or class of persons;
- (v) the appropriate measures of intervention to ensure reasonable accommodation, by the respondent, of the complainant or other person or class of persons;
- (vi) the audit of such policies or practices of the respondent as may be specified by a hearing panel;
- (vii) the necessary steps to be taken by the respondent to ensure compliance with any of these Regulations, and the need to make periodic progress report to the Commission regarding compliance with such recommendations; or
- (viii) the suitability of an unconditional apology towards amicable settlement of the complaint.

(4) Subject to paragraph (2), a hearing panel shall—

- (a) prepare a report of its findings and recommendations, including the proposed measures of intervention and relief due the complainant; and
- (b) enter into the Register of Complaints an abstract of its findings and recommendations in accordance with regulation 11(2)(f).

(5) A hearing panel shall make a finding or decision by consensus or, where the hearing panel is unable to reach a consensus, by a simple majority.

36. The Commission shall, within seven days of receiving a hearing panel's report prepared under regulation 35(4)(a)—

- (a) deliberate on the findings and recommendations of a hearing panel and make a determination;
- (b) notify the persons named as parties to the complaint of the Commission's findings and recommendations, in writing; or
- (c) notify the persons named as parties to the complaint of the date, time and place fixed for delivery of the findings and

Notification of outcome.

recommendations of the hearing panel in Form NGEN 5 set out in the First Schedule.

37. The provisions of this Part shall apply, with necessary modifications, to investigations or public inquiry conducted by the Commission, either of its own motion or on request by a person or class of persons not being complainants within the meaning of these Regulations, of any matter relating to the right to equality and non-discrimination pursuant to section 29(1) of the Act.

Application of Part to inquiries of the Commission.

PART VI — MISCELLANEOUS PROVISIONS

38. (1) The Proceedings before the Commission, proceedings of alternative dispute resolution mechanisms or the hearing panel under Parts IV and V shall be conducted in English, Kiswahili or Kenyan sign language.

Language of proceedings.

(2) The Commission shall provide an interpreter on request by a party or other person appearing to give evidence in proceedings under these Regulations who does not understand the language of proceedings at the cost of the Commission.

(3) The Commission shall where necessary facilitate the hearing of complaints in braille and all other communication formats or technologies acceptable to persons with disabilities.

39. (1) Where a time limit for doing of any act or taking any proceedings under these Regulations, or by summary notice or by order of the Commission has been fixed, the Commission shall have the power to extend such time on such terms as the Commission considers just.

Extension of time.

(2) The Commission may make an order to extend time under paragraph (1) notwithstanding the fact that the application for extension shall not be made until after the expiration of the time fixed in these Regulations or by order of the hearing panel.

40. (1) All evidence given before the Commission at the hearing shall be given on oath or affirmation.

Evidence.

(2) All documents presented, to the Commission, shall be original and, where an original cannot be found or is obliterated, a certified copy of the original.

(3) Despite paragraph (1) and (2), strict rules of evidence shall not apply to the proceedings of the Commission.

41. (1) The Commission may review, either on its own motion or on written request by a person aggrieved by, its own decision, on any of the following grounds—

Review.

- (a) a mistake or error apparent on the face of the record;
- (b) discovery of new and important matter or evidence; or
- (c) any other sufficient reason.

FIRST SCHEDULE

Form NGEC 1

(r. 9(1)(a)(2))



THE NATIONAL GENDER AND EQUALITY COMMISSION

Complaint Number..... of 20....

Between

Complainant.....

AB

and

Respondent.....

COMPLAINT FORM

1. Personal Details of the Person Lodging Complaint

Name: Surname Other names

Sex: Male Female Intersex (tick where appropriate)

Disability: Yes No (tick where appropriate)

If yes, describe the nature of disability.....

Physical address:

Postal address: Postal code

Telephone Contact: Email address

National Identification Card / Passport No.

Profession/Occupation:Nationality:

County: Location

2. Other Particulars

Do you lodge this complaint on your own behalf? Yes No

If No, on whose behalf do you lodge the complaint? (give particulars)

Reasons why the complaint is lodged in a representative capacity

The victim is a Child Person Suffering from Mental Impairment Class of Persons Other (specify)

Age bracket (tick one): 11 – 17 18—34 35- 59 60 and above

If lodged in a representative capacity, state—

Name of Complainant

Gender Male Female Intersex (tick where appropriate)

Disability: Yes No (tick where appropriate)

If yes, describe the nature of disability.....

Physical address:

Postal address: Postal code.....

Telephone Contact: Email address

National Identification Card / Passport No.

Profession/Occupation: Nationality:

County: Location

If lodged in a representative capacity, state the capacity in which you lodged the complaint-

Parent Guardian Next of Kin Intermediary or Legal Counsel

Do you have written authority/consent to lodge this complaint? Yes No

If yes, attach a certified copy of the complainant's authority/consent

3. Particulars of the Person or Institution Against Whom the Complaint is Lodged

Name of the Respondent:

Physical address

Postal address Postal code

Telephone Contact Email address

4. Nature of Complaint (briefly explain the nature of your complaint)

.....

What relief or measure of intervention do you request the Commission to take?

.....

5. Evidential Documents in Support of the Complaint

This form shall be accompanied by—

- (a) a written statement duly signed by the complainant setting out events leading to the violation or matter complaint of;
- (b) the injury, loss or damage suffered;
- (c) the relief sought; or
- (d) an affidavit sworn by the complaint deposing to the matters specified in paragraph (a);
- (e) witness statements (if any) made in support of the complaint; and

(f) certified copies of correspondence (if any) or other documents in support of the complaint

6. Declaration

I declare that the information given in this complaint is true to the best of my knowledge and belief, and that the same is lodge voluntarily.

Dated this of 20.....

Name Signature

FOR OFFICIAL USE ONLY

Complaint Number of 20.....

7. Remarks on Assessment of the Complaint

Does the complaint fall within the jurisdiction of the Commission? Yes No

If yes, does it disclose a reasonable cause of action to warrant the intervention of the Commission? Yes No

If no, explain.

Is this a proper case for referral to an appropriate state agency Yes No

If yes, state to which agency the complaint should be referred.....

8. Summary of Recommendations

Is this a proper case for admission and preliminary investigation? Yes No

Conclusion

I recommend that this complaint be - Admitted Reject (tick where appropriate)

Dated this day of 20.....

Name: Designation: Signature:

Form NGEC 2

(r. 22(2))



THE NATIONAL GENDER AND EQUALITY COMMISSION

Complaint Number..... of 20....

Between

Complainant

AB

and

Respondent CD

SUMMONS FOR PERSONAL ATTENDANCE

To:

Whereas this Commission is investigating the above complaint

And whereas your personal attendance is now necessary for the determination of the complaint

You are hereby required to appear in person or by an authorized representative before the Commission or an investigation officer of the Commission at its offices situate, on the day of 20..... at O'clock for the purpose of providing information by way of oral evidence or to produce the following evidential documents relation to the complaint

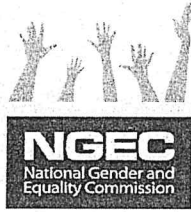
.....

Issued this day of 20

Name..... Signature..... Designation.....

Form NGEC 3

(r. 22(3))



THE NATIONAL GENDER AND EQUALITY COMMISSION

Complaint Number..... of 20.....

Between

Complainant

AB

and

Respondent CD

SUMMONS TO PRODUCE DOCUMENTS

To:

Whereas this Commission is investigating the above complaint;

And whereas your production of documents or information within your possession, custody or knowledge is necessary for the determination of the complaint;

You are hereby required to appear in person or by an authorised representative before the Commission or an authorised officer of the Commission at its offices situate..... on the day of 20..... at O'clock for the purpose of producing such documents as are within your power and control, and relating to the complaint and, in particular, the following documents

.....

Issued this day of 20

Name..... Signature Designation.....

Form NGEC 4

(r. 26(3), (5))



THE NATIONAL GENDER AND EQUALITY COMMISSION

Complaint Number..... of 20....

Between

ComplaintAB

and

Respondent

.....CD

NOTICE OF NEGOTIATION / CONCILIATION/MEDIATION

To:

Whereas the parties to the complaint have voluntarily submitted to negotiation/conciliation/mediation with a view to amicable resolution of the complaint,

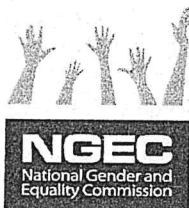
TAKE NOTICE that the complaint is scheduled for negotiation/mediation at the offices of the Commission situate at on the day of 20 atO'clock. Take further notice that your attendance in person or by a duly authorised representative is required to facilitate effective resolution of the complaint.

Issued this day of 20

Name..... Signature..... Designation.....

Form NGEC 5

(r. 31(2),36(c))



The National Gender and Equality Commission

Complaint Number..... of 20....

Between

ComplaintAB

and

Respondent

CD

HEARING /PRONOUNCEMENT OF FINDINGS

To: Complaint /Respondent

TAKE NOTICE that this complaint is scheduled for Hearing/Pronouncement of the hearing panel findings (delete as appropriate) before a committee of the Commission at the offices of the Commission situate at on the dayof 20 at O'clock. Take further notice that you are required to appear in person or by your duly authorised representative and, in the case of a hearing, together with your witnesses (if any) to give evidence in support or defence of the complaint.

Please note that, in the event of your non-attendance, the committee shall take such action or make such orders and directions as the committee considers just.

Issued this day of 20

Name..... Signature..... Designation.....

SECOND SCHEDULE

(r. 23(2))

INVESTIGATION REPORT

- (a) the name and contact information of the complainant or complainants, as the case may be;
- (b) the name and contact information of the respondent or respondents, as the case may be;
- (c) the nature of the complaint;
- (d) the date on which the complaint was lodged;
- (e) the date on which the complaint was admitted;
- (f) the date on which the investigator was appointed to undertake preliminary investigations;
- (g) the period within which the preliminary investigations were carried out;
- (h) the names and contact information of the persons interviewed;
- (i) the investigator's findings on the respective issues raised in the complaint;
- (j) the date on which the report is made; and
- (k) the name of the officer by whom the report is made.

JOYCE MWIKALI MUTINDA,
Chairperson, the National Gender and Equality Commission.