



LAWS OF KENYA

**THE KENYA NATIONAL COMMISSION ON HUMAN
RIGHTS ACT, 2002**

No. 9 OF 2002

Revised Edition 2010 (2002)
Published by the National Council for Law Reporting
with the Authority of the Attorney General

THE KENYA NATIONAL COMMISSION ON HUMAN
RIGHTS ACT, 2002**No. 9 of 2002**

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SCHEDULE.

THE KENYA NATIONAL COMMISSION ON HUMAN
RIGHTS ACT, 2002**No. 9 of 2002***Date of Assent: 24th October, 2002**Commencement: 12th March, 2003*

AN ACT of Parliament to provide for the establishment of the Kenya National Commission on Human Rights for the better promotion and protection of human rights and for connected purposes

ENACTED by the Parliament of Kenya as follows:—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Kenya National Commission on Human Rights Act, 2002.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Commission” means the Kenya National Commission on Human Rights established by section 3;

“commissioner” means a commissioner appointed under section 4;

“committee” means the Parliamentary departmental committee responsible for legal and constitutional affairs;

“disciplined force” means—

- (a) any of the armed forces;
- (b) the Police Force;
- (c) the Prison Service;
- (d) the National Youth Service;
- (e) the Kenya Wildlife Service; or
- (f) any other force or service established by law for the Republic of Kenya;

“human rights” means the fundamental rights and freedoms

of any individual protected under the Constitution and any human rights provided for in any international instrument to which Kenya is a signatory;

“international instrument” means any treaty, convention, declaration or statement of principles relating to human rights adopted by the General Assembly of the United Nations, the Organization of African Unity or any other international or regional organisation of which Kenya is a member;

“Minister” means the Attorney-General and “Ministry” shall be construed accordingly;

“public servant” means a person employed in the public service, that is to say, any person holding or performing with authority, the duties of any of the following offices (whether as principal or as deputy and whether such service is permanent or temporary, paid or unpaid)—

- (a) any office the holder of which is appointed or removed by the President or by any service commission;
- (b) any office the holder of which is appointed, elected or otherwise selected in pursuance of any written law;
- (c) any office the holder of which is appointed by any person or persons holding or performing, with authority, the duties of an office of one of the kinds specified in paragraph (a) or (b) and without prejudice to the generality of the foregoing, includes—
 - (i) an arbitrator or umpire in any proceedings or matter submitted to arbitration by order or with the sanction of any court or in pursuance of any written law;
 - (ii) every member of a commission of inquiry or of a tribunal appointed or selected in pursuance of any written law;
 - (iii) any person in the service of the disciplined forces;
 - (iv) any person in the employment of the Government or any local authority;
 - (v) any person acting in a religious capacity, in respect of the exercise by him of any functions relating to marriage, birth, baptism, death or burial, but not in any other respect;

“service commission” means the Public Service Commission or the Judicial Service Commission;

G.N. 3842/1996.

“Standing Committee on Human Rights” means the Standing Committee on Human Rights established by the President on the 21st June, 1996;

“Tribunal” means a Tribunal appointed under section 11.

PART II—ESTABLISHMENT, POWERS AND FUNCTIONS OF THE KENYA
NATIONAL COMMISSION ON HUMAN RIGHTS

Establishment and
incorporation of the
Commission.

3. (1) There is established a commission to be known as the Kenya National Commission on Human Rights, which shall be the successor to the Standing Committee on Human Rights.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall be capable, in its corporate name, of—

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging or disposing of moveable and immoveable property;
- (c) borrowing and lending money; and
- (d) doing or performing all such other acts or things necessary for the proper performance of its functions under this Act which may be lawfully done by a body corporate.

Membership of
Commission.

4. The Commission shall consist of—

- (a) a chairperson appointed from amongst the commissioners in accordance with section 6;
- (b) nine commissioners nominated by the National Assembly and appointed by the President in accordance with section 6.

Qualifications of
commissioners.

5. (1) A person shall be qualified for appointment as a Commissioner if such person—

- (a) is a citizen of Kenya;
- (b) is a person of high moral character and proven integrity and has knowledge and experience in matters relating to human rights; and

(c) in the case of the chairperson, is qualified to hold office as a Judge of the High Court of Kenya.

(2) No person shall be qualified for appointment as a commissioner if such person—

(a) is a member of Parliament;

(b) is a member of a local authority; or

(c) is a member of the executive body of a political party.

6. (1) The National Assembly shall, within fourteen days of the commencement of this Act, by advertisement in the Gazette and in at least three daily newspapers of national circulation, invite applications from persons qualified under this Act for nomination as commissioners.

Procedure for
appointment of
commissioners.

(2) An application under subsection (2) shall be forwarded to the National Assembly within twenty-one days of the advertisement and may be made—

(a) by any qualified person; or

(b) by any person, organization or group of persons proposing the nomination of any qualified person.

(3) The National Assembly shall, within seven days of the expiry of the period prescribed under subsection (2), cause the committee to—

(a) consider all the applications received under subsection (2); and

(b) recommend to the National Assembly suitably qualified persons for nomination as commissioners.

(4) The committee shall, within thirty days, consider all applications received under subsection (2) and shall recommend to the National Assembly therefrom, twelve persons for nomination as commissioners.

(5) In the performance of its functions under this section, the committee may co-opt any person who in its opinion possesses the relevant expertise in the field of human rights to assist it in its work.

(6) The National Assembly shall, upon receipt of the recommendations of the committee under subsection (4), nominate

twelve persons for appointment as commissioners and shall submit the list of nominees to the Attorney-General for onward transmission to the President.

(7) The Attorney-General shall forthwith forward the names of the persons nominated under subsection (6) to the President who shall, by notice in the Gazette, appoint therefrom nine commissioners.

(8) In nominating or appointing persons as commissioners, the National Assembly and the President shall have regard to—

- (a) Kenya's ethnic, geographical, cultural, political, social and economic diversity; and
- (b) the principle of gender equity.

(9) The Attorney-General shall, within fifteen days of the appointment of the commissioners, convene the first meeting of the Commission at which the commissioners shall elect from amongst their number—

- (a) a chairperson; and
- (b) a vice-chairperson,

who shall be of opposite gender.

(10) The chairperson and the commissioners shall, upon appointment, hold office on a full time basis and shall enjoy—

- (a) in the case of the chairperson, the status of a judge of appeal; and
- (b) in the case of a commissioner, the status of a judge of the High Court.

Secretary to the
Commission.

7. (1) There shall be a Secretary to the Commission who shall be appointed by the Commission upon such terms and conditions of service as the Commission may determine and shall enjoy a status not less than that of a Permanent Secretary.

(2) Subject to the general control of the general control to the Commission, the Secretary shall—

- (a) be responsible for the carrying out of the policy decisions of the Commission and the day-to-day administration and management of the affairs of the Commission and the control of the other staff of the Commission; and

(b) perform such other function as may be assigned by the Commission.

(3) The Secretary shall, unless in any particular case the Commission otherwise directs in writing, attend all meetings of the Commission but shall have no vote on any matter falling to be decided by the Commission at any such meeting.

(4) The Secretary may be removed by the Commission only for—

(a) inability to perform the functions of his office arising out of physical or mental incapacity; or

(b) misbehaviour or misconduct; or

(c) incompetence.

(5) Before the Secretary is removed under subsection (5), he shall be informed of the case against him and shall be given an opportunity to defend himself against any allegations against him.

8. (1) The Chairperson, the commissioners and the Secretary shall each make and subscribe to the oath or affirmation set out in the Schedule.

Oath of office.

(2) Every oath or affirmation by the chairperson shall be administered by the Secretary and every oath or affirmation by a commissioner or the Secretary shall be administered by the chairperson.

9. Unless the appointment of the chairperson or a commissioner is earlier terminated under this Act, a person appointed as the chairperson or as a commissioner shall hold office for a term of five years from the date of appointment and shall be eligible for re-appointment for one further term of a period not exceeding five years:

Term of office of chairperson and commissioners.

Provided that in the case of the initial commissioners, the Commission shall, at its first meeting, elect—

(a) four commissioners whose terms of office shall expire at the end of three years; and

(b) four other commissioners whose terms of office shall expire at the end of four years

from the date of appointment.

Terms and conditions of service of the chairperson and commissioners.

10. (1) The salaries and allowances payable to, and other terms and conditions of service of the chairperson and commissioners shall be such as may be determined by the Committee in consultation with the Treasury.

(2) The salaries and allowances provided for under subsection (1) shall be a charge on the Consolidated Fund.

Termination of appointments in certain circumstances.

11. (1) The office of a person appointed as the chairperson or as a commissioner shall become vacant if the person—

- (a) dies; or
- (b) resigns from office by writing under his hand addressed to the President; or
- (c) is convicted of an offence and sentenced to imprisonment for a term of three months or more without the option of a fine; or
- (d) is unable to discharge the functions of his office by reason of physical or mental infirmity as certified by two registered medical practitioners; or
- (e) is absent from three consecutive meetings of the Commission without good cause; or
- (f) is declared bankrupt by a court of competent jurisdiction.

(2) The President shall notify the termination of the appointment of the chairperson or a commissioner under this section by notice in the Gazette.

(3) Without prejudice to subsection (1), the chairperson or a commissioner may be removed from office for misbehaviour or misconduct; or, if the commissioner is convicted of an offence involving moral turpitude but not sentenced to a term of imprisonment, but shall not be removed except in accordance with this section.

(4) Where the removal from office of the chairperson or a commissioner arises under subsection (3)—

- (a) the Chief Justice shall, by notice in the Gazette, appoint a Tribunal which shall consist of a chairperson and two other members selected by the Chief Justice from among persons who hold or have held office as judges of the High Court;

(b) the Tribunal shall inquire into the matter and report on the facts to the Chief Justice and recommend whether the chairperson or the commissioner ought to be removed from office and the Chief Justice shall communicate the recommendations of the Tribunal to the President.

(5) Where the question of removing the chairperson or a commissioner has been referred to a Tribunal under subsection (4), the President may suspend the chairperson or the commissioner from the Commission and the suspension may at any time be revoked by the President and shall in any case cease to have effect if the Tribunal recommends to the President that the chairperson or the commissioner, as the case may be, should not be removed.

(6) Where a vacancy occurs in the office of a commissioner, the National Assembly shall nominate a sufficient number of persons to fill the vacancies arising and two additional persons and the President shall, within a period of six months, appoint the required number of commissioners to fill the vacancies out of the total number of nominees.

(7) In the filling of vacancies under subsection (6), the procedure prescribed under section 6 shall, *mutatis mutandis*, apply.

(8) A commissioner who is appointed in place of a commissioner whose office has become vacant under this section shall hold office for the remainder of the term of office of that commissioner.

12. If the chairperson of the Commission vacates office under subsection (1) of section 11 or is suspended under subsection (5) of that section, the vice-chairperson shall act as the chairperson until the appointment of a new chairperson or until the Tribunal recommends that the chairperson should not be removed.

Temporary vacancy of office of chairperson.

13. No act or proceedings of the Commission shall be invalid by reason only of a vacancy or defect in the composition of the Commission.

Vacancies, etc., not to invalidate the proceedings of the Commission.

14. (1) The principal office and meeting place of the Commission shall be in Nairobi.

Principal office, meetings and procedure of the Commission.

(2) The Commission may establish such regional offices as it considers suitable for the better performance of its functions.

(3) Subject to subsection (1) and to any rules made under subsection (4), the Commission shall meet at such times and places as the Commission may deem appropriate but shall meet at least once in every month.

(4) Subject to this Act, the Commission may regulate its own procedure and formulate its own rules.

(5) The quorum for any meeting of the Commission shall be five commissioners.

(6) All orders and decisions of the Commission shall be authenticated by the chairperson or the Secretary or any other commissioner authorised in writing by the chairperson in that behalf.

(7) The common seal of the Commission shall be kept in such safe custody as the Commission may direct and shall not be used except on the order of the Commission.

(8) The common seal of the Commission when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Commission under this section shall be presumed to have been duly given.

(9) Subject to any regulations under section 35, the Commission may establish subcommittees of the Commission and co-opt into their membership such experts as may be necessary for the better exercise of the powers and carrying out of the functions of the Commission.

Officers and
other staff of the
Commission.

15. (1) The Commission may appoint such officers and other staff of the Commission as it may consider necessary for the proper performance of its functions under this Act.

(2) The officers and other staff appointed under subsection (1) shall serve on such terms and conditions as the Commission, in consultation with the Treasury, may determine.

(3) The Public Service Commission may, upon the request of the Commission, second thereto such number of public servants as may be necessary for the purposes of the Commission.

(4) A public servant seconded to the Commission under subsection (3) shall, during the period of his secondment, be deemed to be an officer of the Commission and shall be subject only to the direction and control of the Commission.

Functions of the
Commission.

16. (1) The functions of the Commission shall be—

- (a) to investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any human rights;

- (b) to visit prisons and places of detention or related facilities with a view to assessing inspecting the conditions under which the inmates are held and make appropriate recommendations thereon;
- (c) to inform and educate the public as to human rights for the purpose of enhancing respect for such rights by means of a continuing programme of research, publication, lectures and symposia and by such other means as the Commission may deem fit;
- (d) to recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights or their families;
- (e) to formulate, implement and oversee programmes intended to inculcate in the citizens of and other persons resident in Kenya, awareness of their civic responsibilities and an appreciation of their rights and obligations as free people;
- (f) to act as the chief agent of the Government in ensuring the Government's compliance with its obligations under international treaties and conventions on human rights;
- (g) to encourage the efforts of other institutions working in the field of human rights and co-operate with such other institutions for the purpose of promoting and protecting human rights in Kenya;
- (h) to investigate and conciliate complaints on its own initiative where the nature of the alleged human rights violation makes conciliation both possible and appropriate;and
- (i) to perform such other functions as the Commission may consider necessary for the promotion and protection of human rights.

17. In the performance of its functions under this Act, the Commission shall—

Guiding objects and principles of the Commission.

- (a) accommodate the diversity of the Kenyan people;
- (b) observe the principle of impartiality and gender equity;
- (c) have regard to all applicable international human rights standards and in particular, to the fact that human rights

are indivisible, interdependent, interrelated and of equal importance for the dignity of all human beings; and

(d) observe the rules of natural justice and fairness.

Powers generally of
the Commission.

18. The Commission shall have all the powers necessary or expedient for the proper performance of its functions under this Act and shall not be subject to the direction or control of any other person or authority.

Powers of a court.

19. (1) In the performance of its functions under this Act, the Commission shall have the powers of a court to—

(a) issue summonses or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;

(b) question any person in respect of any subject matter under investigation before the Commission;

(c) require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission.

(2) The Commission may, if satisfied that there has been an infringement of any human right or freedom, order—

(a) the release of any unlawfully detained or restricted person;

(b) the payment of compensation; or

(c) any other lawful remedy or redress.

(3) A person or authority dissatisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days of such order.

(4) An order of the Commission under subsection (2) may be filed in the High Court by any party thereto in such manner as the Commission may, in Regulations made in consultation with the Chief Justice, prescribe and such party shall give written notice of the filing of the order to all other parties within thirty days of the date of the filing of the order.

(5) If no appeal is filed under subsection (3), the party in favour of whom the order is made by the Commission may apply *ex parte*

by summons for leave to enforce such order as a decree and the order may be executed in the same manner as an order of the High Court to the like effect.

(6) A person who—

- (a) fails to attend before the Commission in accordance with any summons or order issued under subsection (1)(a); or
- (b) having attended before the Commission, refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse, to answer any question or to produce any document; or
- (c) knowingly gives any false or misleading information to the commission; or
- (d) causes an obstruction or disturbance in the course of any proceedings before the Commission,

commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand shillings, or to imprisonment for term not exceeding six months, or to both.

20. (1) The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, utilise the services of any public servant or investigation agency of the Government and where a public servant is so utilised under this subsection, the Commission shall pay such public servant or agency for the service rendered.

Powers relating to investigation.

(2) For the purpose of investigating into any matter pertaining to an inquiry, a public servant or agency whose services are utilised under subsection (1) may, subject to the direction and control of the Commission—

- (a) summon and enforce the attendance of any person for examination;
- (b) require the discovery and production of any document; and
- (c) subject to the Official Secrets Act, requisition any public records or copy thereof from any public servant.

Cap. 187.

(3) The provisions of section 24 shall apply in relation to any statement made by a person before any public servant or agency whose services are utilised under subsection (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The public servant or agency whose services are utilised under subsection (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission in that behalf.

(5) The Commission shall satisfy itself on the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under subsection (4) and for that purpose, the Commission may make such inquiry (including the examination of any person or persons who conducts or assists in the investigation) as it deems fit.

Annual reports of the Commission.

21. (1) The commission shall submit an annual report to the President and to the National Assembly through the Minister and may at any time submit special reports to the President and to the National Assembly on any matter.

(2) The annual report submitted by the Commission under subsection (1) shall include an overall assessment by the Commission of the performance of the Government in the field of human rights during the period under review.

(3) The Minister shall lay the annual report of the Commission before the National Assembly within two months of receipt thereof, with any comments thereon which the Minister considers necessary:

Provided that the Minister may present the report to the National Assembly at its first sitting where the two months period under this subsection extends into the recess or prorogation of the National Assembly.

Inquiry into complaints.

22. (1) A person wishing to lodge a complaint of the violation of human rights shall do so orally or in writing addressed to the Secretary or such other person as may be duly authorised by the Commission for that purpose.

(2) A complaint under subsection (1) shall be in such form and contain such particulars as the Commission may, from time to time, prescribe.

(3) Upon receipt of a complaint under subsection (1), the Commission may—

(a) call for information or a report regarding such complaint from the Government or any other body within such reasonable time as may be specified by the Commission:

Provided that—

- (i) if the information or report is not received within the time stipulated by the Commission, the Commission may proceed to inquire into the complaint without such information or report;
 - (ii) if on receipt of the information or report the Commission is satisfied either that no further action is required or that the required action has been initiated by the Government or other body, the Commission shall, in writing, inform the complainant accordingly and take no further action;
- (b) without prejudice to paragraph (a), initiate such inquiry as it considers necessary, having regard to the nature of the complaint.

23. (1) Subject to subsection (2), if at any stage of an inquiry the Commission—

Persons likely to be prejudiced or affected to be heard.

- (a) considers it necessary to inquire into the conduct of any person; or
- (b) is of the opinion that the reputation of any person is likely to be prejudiced by the inquiry,

it shall give that person an opportunity to appear before the Commission by himself or by an advocate to give evidence in his own defence.

(2) This section shall not apply where the credibility of a witness is being impeached.

24. No statement made by a person in the course of giving evidence before the Commission shall subject such a person to any civil or criminal proceedings except for giving false evidence by such statement:

Statements made by persons to the Commission.

Provided that the statement—

- (a) is made in reply to a question which the person is required by the Commission to answer; and
- (b) is relevant to the subject matter of the inquiry.

25. The Commission may take any of the following steps after completing an inquiry into a complaint under this Act—

Steps after inquiry.

- (a) where the inquiry discloses a violation of human rights or

negligence in the prevention of violation of human rights by a public servant, recommend to the Attorney-General or any other relevant authority—

- (i) the prosecution of the person suspected of violating the human rights or being negligent in the prevention of the violation; or
 - (ii) such other action as the Commission may deem fit against the concerned person or persons; or
- (b) in its own name, commence and prosecute appropriate proceedings in the High Court under section 84(1) of the Constitution for such orders, writs or directions as may be appropriate; or
- (c) recommend to the petitioner a course of other judicial redress which does not warrant an application under section 84 (1) of the Constitution; or
- (d) recommend to the petitioner and to the Government or other body concerned in the alleged violation of human rights other appropriate methods of settling the complaint or to obtain relief; and
- (e) provide a copy of the inquiry report to all interested parties; and
- (f) send a copy of its quarterly report together with its recommendations to the President.

PART III—FINANCIAL PROVISIONS

Finances of the
Commission.

26. (1) The funds of the Commission shall be derived from such sums as may, from time to time, be appropriated by Parliament for that purpose.

(2) The Commission may receive grants and donations from any other source:

Provided that such grants and donations shall not be made or received for purposes of influencing the decision or ability of the Commission in any way and shall be disclosed in the annual report of the Commission.

(3) There shall be paid out of the funds of the Commission, all expenditure incurred by the Commission in the exercise of its powers

or the performance of its functions under this Act.

27. The Commission shall open and maintain such bank accounts as are necessary for the performance of its functions. Bank accounts.

28. The Commission may— Investment of funds.

(a) invest any of its surplus funds in Government securities;

(b) place on deposit with such banks as it may determine, any moneys not immediately required for the purposes of the Commission.

29. The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year. Financial year.

30. At least three months before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year. Annual estimates.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year and in particular, the estimates shall provide for—

(a) the payment of salaries, allowances and other charges in respect of the staff of the Commission;

(b) the payment of pensions, gratuities and other charges in respect of the staff of the Commission;

(c) the proper maintenance of the buildings and grounds of the Commission;

(d) the maintenance, repair and replacement of the equipment and other property of the Commission.

(3) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval and after the Minister's approval, the Commission shall not increase the annual estimates without the consent of the Minister.

31. (1) The Commission shall cause to be kept proper books and records of account of the income, expenditure and assets of the Commission. Accounts and audit.

(2) Within a period of four months from the end of each financial

year, the Commission shall submit to the Controller and Auditor-General, the accounts of the Commission together with—

- (a) a statement of the income and expenditure of the Commission during that year; and
- (b) a statement of the assets and liabilities of the Commission on the last day of that year.

(3) Notwithstanding the provisions of any other written law for the time being in force, the accounts of the Commission shall be audited by the Controller and Auditor-General.

PART IV — MISCELLANEOUS PROVISIONS

Exclusion of certain matters.

32. The Commission shall not investigate—

- (a) any matter which is pending before a court or a judicial tribunal;
- (b) a matter essentially involving the relations or dealings between the Government and the Government of any foreign state or international organisation recognized as such under international law; or
- (c) a matter relating to the exercise of the prerogative of mercy.

Protection of actions taken in good faith.

33. No suit or other legal proceeding shall lie against the Commission or any commissioner or any person acting under the direction of the Commission or appointed to serve on a subcommittee of the Commission in respect of anything which is done in good faith or intended to be done in pursuance of this Act or of any regulations or order made hereunder or in respect of any report, paper or proceedings of the Commission.

Transfer of property to the Commission.

34. All property, except such property as the Minister may determine, which immediately before the commencement of this Act was vested in the Ministry for the use of the Standing Committee on Human Rights shall, at the commencement of this Act, vest in the Commission subject to all interests, liabilities, charges, obligations and trusts affecting such property.

Regulations.

35. The Commission, with the approval of the Minister, may make regulations prescribing anything which under this Act may be prescribed and generally for the better carrying out of the purposes and objects of the Act.

36. Notwithstanding the provisions of section 4, the Standing Committee on Human Rights shall continue in office until the President appoints the commissioners under this Act. Transitional.

SCHEDULE

(s.8)

**OATH/ AFFIRMATION OF THE OFFICE OF A
COMMISSIONER/ THE SECRETARY**

I
having been appointed (a commissioner of/the secretary to) the Kenya National Commission on Human Rights under the Kenya National Commission on Human Rights Act, 2002 do solemnly (swear/declare and affirm) that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said

before me this Day of

.....
(Chairman/Secretary)
Kenya National Commission on Human Rights.

[Subsidiary]

SUBSIDIARY LEGISLATION

L.N. 115/2005.

**THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
(COMPLAINTS PROCEDURES) REGULATIONS, 2005**

PART 1—PRELIMINARY

Citation.

1. These Regulations may be cited as the Kenya National Commission on Human Rights (Complaints Procedures) Regulations, 2005.

Interpretation.

2. In these Regulations unless the context otherwise requires—

“admission” means the process by which the eligibility of a complaint to determination by the Commission is done and “admit” and “admitted” shall wherever they occur, be construed accordingly;

“chairperson” means the chairperson of the Commission referred to in section 4 (a) of the Act;

“complaint” means an oral or written communication made or addressed to the Secretary to the Commission alleging a violation of a human right or a fundamental freedom;

“complainant” means a person alleging a violation of a human right or a fundamental freedom;

“conciliation” means the process in which a mediator helps a complainant and a respondent to reach a fair settlement of a complaint or dispute and includes the process of mediation, negotiation and arbitration;

“hearing” means a sitting of a hearing panel for the purpose of enabling it to reach or announce a decision for a complaint under adjudication;

“hearing panel” means a complaints hearing panel established under regulation 28;

“inquiry” means an inquiry under section 20 of the Act;

“joinder” means the joining of a party to a complaint;

“Legal Services Department” means the administrative unit of the Commission mandated to handle complaints and provide legal solutions to complaints;

“mis-joinder” means the improper joining of parties to a complaint;

“non-joinder” means the omission to join some person as a party to a complaint;

“preliminary investigation” means the initial stage in the complaints

[Subsidiary]

process where a respondent is given the opportunity to respond to allegations contained in a complaint;

“public hearing” has the same meaning as an “inquiry” under section 20 of the Act;

“respondent” means the person whom it is alleged violated or participated in the violation of a fundamental human right or freedom.

PART II—GENERAL PROVISIONS

3. A complaint may be lodged at the offices of the Commission or at such place or places as the Commission may from time to time designate. Lodging of complaints.

4. A complaint may be lodged by the complainant in person or by a person acting on behalf of the complainant or by any person in law authorized to act for the complainant. Parties to a complaint.

5. (1) Where the complaint is made orally, or the complainant cannot read or write, the complaint shall be reduced into writing by a designated officer of the Commission to whom the complaint may be made or by any other person chosen by the complainant. Form of complaint.

(2) A person who reduces into writing the oral complaint of a complainant under sub regulation (1) shall—

- (a) read over and explain the contents of the complaint to the complainant;
- (b) declare on the form that the complainant has fully understood or appeared to understand and appreciate the contents; and
- (c) cause the complainant to sign or thumbprint at the bottom of each page of the document.

(3) A written complaint shall be in Form 1 set out in the First Schedule and shall include—

- (a) the name, address, telephone number and description of the complainant;
- (b) the name, address, telephone number and description of the respondent;
- (c) the facts within the knowledge of the complainant or of the persons lodging the complaint, stating in summary form, the nature and manner of the complaint; and
- (d) the date and place of occurrence of the complaint.

(4) The provisions of paragraphs (a), (b), (c) and (d) of sub regulation (3) shall not bar the Commission from entertaining any complaint.

[Subsidiary]

(5) The complaint shall, upon completing Form 1, attach thereto any documents in support of the complaint.

Joinders and
misjoinder in
complaints.

6. (1) Where there is more than one person in a complaint, any one or more of the persons may, subject to the written authority of each of the other persons and with the prior approval of the Commission, complain on behalf of the other persons.

(2) The Commission shall, upon receipt of a complaint filed under sub regulation (1), give notice of the filed complaint to all the other persons either by personal service or, in cases where personal service is not reasonably practicable, by such public advertisement as it may, in each case, direct.

(3) Any person, on whose behalf a complaint is made under sub regulation (1), may submit a request to the Commission to be joined as a party to the complaint.

(4) A complainant may, where in doubt as to the person from whom to obtain redress, claim from two or more respondents in order that the question as to which of the respondents is liable and to what extent, may be determined between all the parties.

(5) No complaint shall be defeated by reason of a misjoinder or non joinder of parties and the Commission may deal with the right in dispute in so far as it relates to the rights and interests of the parties actually before it.

(6) Where a complaint has been filed in the name of a wrong person as complainant, or where it is doubtful whether it has been filed in the name of the complainant, the Commission may, at any stage of the hearing, if satisfied that the claim has been filed through a bona fide mistake, and that it is necessary for the determination of the real claim to a right in question, order any other person to be substituted or joined as complainant upon such terms as the it may deem fit.

(7) The Commission may, at any stage of the proceedings, either of its own motion or upon request by any person and on such terms as may it may deem just, order that the name of any party improperly joined to be struck out.

(8) The Commission may order that the name of any person, whose presence is necessary for the effective determination of any violation of a human right or freedom, be joined in the complaint.

(9) Where the name of a complainant or a respondent is struck out before the hearing of the complaint, a notice to that effect shall be served upon the complainant before the date fixed for hearing.

(10) Where the respondent is joined or substituted in a complaint, an amended copy of the complaint and any summons shall be served on the new respondent and on the first respondent.

Principles of natural
justice and evidence.

7. In the determination of complaints under these Regulations, the Commission shall conduct all proceedings informally and expeditiously and

in accordance with the principles of natural justice but shall not be bound by any legal or technical rules of evidence applicable to proceedings before a court of law.

8. (1) No fee shall be chargeable by the Commission in the lodging or determination of a complaint. Fees.

(2) Notwithstanding the provisions of sub regulation (1), a standard nominal fee may be charged where copies of proceedings of the hearing panel are requested in accordance with the Commission's schedule of fees for the time being in force.

9. (1) Any document required or authorized to be served under these Regulations, shall, where practicable, be served personally on the person by delivering or tendering the document to the person. Service of documents.

(2) Where it is not possible, to effect service of a document in the manner provided for under sub regulation (1), service may be made by—

- (a) leaving the duplicate of the document for the person with any adult person residing with the person, some adult member of the person's family, or with the person's employer or employee;
- (b) affixing the duplicate of the document to some conspicuous place in the house or homestead in which the person summoned ordinarily resides or by affixing the duplicate in some conspicuous place in the person's office or work place and also to some conspicuous place in the Commission;
- (c) sending the document to the person's proper address by registered post or by other verifiable form of posting; or
- (d) publishing in a newspaper circulating in the person's area or in any other media, the particulars of the document.

(3) Every person upon whom a document is served under this regulation shall sign or put a mark in recognition of the receipt of the document, and refusal to do so shall be recorded in writing by the person effecting the service of the summons or notice.

(4) Every document issued under these Regulations and requiring service shall be served by an officer of the Commission or any other person authorized to do so including a chief or his assistant, a police officer or an authorized court process server.

(5) Any document served on the advocate of any party whether by registered post or by leaving it at the registered office or ordinary residence of the advocate shall, whether it is for the personal appearance of the party or not, be presumed to be duly communicated and made known to the party whom the advocate represents and unless the Commission otherwise directs, and shall be as effectual for all purposes as if it had been served on the party in person.

[Subsidiary]

(6) Where a document is sent by registered post or other verifiable form of posting, it shall be deemed to have been received by the addressee seven days following the date on which it is received for dispatch by the post office.

(7) Any document required to be served on an incorporated company or body shall be deemed to be duly served if served upon an authorized officer of the company or body.

(8) Where a person on whom any document is required to be served cannot be found or has died and has no known personal representative, or is out of Kenya, or if for any other reason, service upon him cannot be readily effected, the Commission or the hearing panel, in case of a complaint before it, may, on application or own motion, make an order for substituted service on that other person in such other form as it may deem fit.

(9) For purposes of this section, “document” does not include normal or routine correspondence.

Language.

10. (1) Proceedings before the Commission shall be conducted in the English or Swahili language.

(2) A party to a complaint who cannot speak or understand the language of proceedings shall be entitled to the services of an interpreter.

(3) For the purposes of sub regulation (2), interpretation shall include interpretation for braille, sign language or such other interpretation as may be necessary for a person with a disability.

Withdrawal and lapse
of complaint.

11. (1) A complainant may, in writing, withdraw a complaint pending before the Commission at any stage during its consideration.

(2) Notwithstanding the provisions of sub regulation (1), the Commission may, in its discretion, continue with investigation of the complaint if such investigation is in the public interest.

(3) Where a complainant fails or neglects to respond to communication from the Commission within three months from the date of the communication, the Commission may deem the complaint to have lapsed.

Consolidation of
complaints.

12. Where two or more complaints are lodged in which the same or similar allegations are raised against a respondent or respondents, the Commission may—

(a) order a consolidation of such complaints; or

(b) treat one complaint as the test complaint and stay further action on the other complaints consolidated with it, until the test complaint is determined.

Judicial notice.
Cap. 80.

13. The Commission may take judicial notice of facts that are publicly known and that may be judicially noticed by a court of law under the Evidence Act.

14. The Commission shall not disclose or publish matters or information given or received by it in confidence without the prior consent of a part or informant. Confidentiality.
15. The Commission shall keep a register of complaints in which all complaints shall upon receipt, be entered. Register of complaints.
16. (1) A complaint shall, upon being entered into the register under regulation 15, be forwarded to the Legal Services Department for initial assessment and processing. Procedure for processing complaints.
- (2) The Legal Services Department shall upon consideration of a complaint—
- (a) admit the complaint and initiate preliminary investigations;
 - (b) liaise with a body or organization that is possessed of technical capacity and resources in remedying the complaint;
 - (c) advise the complainant, where appropriate, that the matter is not within the statutory mandate of the Commission;
 - (d) advise the complainant that the matter lies for determination by another body or institution and refer the same to the body or institution appropriately.
17. Where in the opinion of the Legal Services Department a complaint does not merit admission, it may within twenty one days of receipt of the complaint, summarily reject the complaint, record its reasons and notify the complainant that it will not act on the complaint. Summary rejection of complaints.
18. (1) Where a complaint to the Commission has been summarily rejected under regulation 17, the complainant may, in writing, appeal against the rejection within twenty one days from the date of receipt of notice of the rejection. Appeal.
- (2) The chairperson or a commissioner designate shall consider the appeal and allow or disallow the same, with notice in writing to the appellant within fourteen days of the filing of the appeal.
- (3) Where an appeal is allowed, the complaint shall be referred back to the Legal Services Department for a continuation of the process under these Regulations.
- (4) Where an appeal is disallowed, the complaint shall be closed and appellant shall be notified appropriately.
- (5) For purposes of this regulation, a letter notifying the complainant of the matters required shall suffice as notice.

[Subsidiary]
Amendment of
complaint.

19. (1) A complaint, response or any other communication to the Commission by any of the parties to the complaint may be amended at the request of either of the complainant or respondent, as the case may be, by serving a notice of the intended amendment on the opposing party and the Commission.

(2) The Commission may accept or reject the request for amendment, having regard to the circumstances of the case.

PART III—INVESTIGATIONS

Preliminary
investigations.

20. (1) The Commission shall initiate in the first instance, preliminary investigations on into all the complaints that it admits.

(2) Where the Commission admits a complaint, it shall cause a copy of the complaint or appropriate notification to be transmitted to the person against whom the complaint is made with a request for comments.

(3) The person against whom the complaint is made shall within fourteen days from the date of receipt of the complaint under sub regulation (2) or such further period as the Commission may specify, submit comments to the Commission.

(4) Where the Commission considers that the comments received under sub regulation (3) require a response from the complainant, it shall forward the comments to the complainant for the response.

(5) The chairperson or his representative may assign an investigator or officer of the Commission to carry out preliminary investigations into any complaint lodged with the Commission.

(6) Where a complaint is not resolved at the level of preliminary investigations, the Legal Services Department shall review the complaint for purposes of initiating further investigations.

Further
investigations.

21. (1) The Legal Services Department may undertake further investigations on a complaint through—

(a) issuance and enforcement of appropriate summons for witness and personal appearance or for production of documents which shall be in Form 2 and Form 3 respectively set out in the First Schedule;

(b) site visits to scenes of violation for information gathering;

(2) Upon commencement of further investigations, the Commission on advice of the Legal Services Department may—

(a) refer the complaint to the hearing panel;

(b) refer the complaint to conciliation;

(c) commence an inquiry or public hearing.

[Subsidiary]

22. (1) The Commission shall keep a record of each investigation, which in all appropriate circumstances shall be in form of a report containing the findings and recommendations of the Commission. Investigation report.

(2) The Commission shall, pursuant to such report, exercise any of powers vested on it under section 25 of the Act as may be appropriate.

PART IV — CONCILIATION

23. Where preliminary investigations indicate that a complaint may be more appropriately resolved by way of conciliation, the Commission may investigate and determine the same by conciliation. Commission may conciliate.

24. (1) The Legal Services Department may, in writing, advise parties to a complaint that their dispute may be resolved through conciliation. Conciliation procedure.

(2) Where both parties to a complain are desirous to have their complaint resolved by way of conciliation and state so in writing, the Legal Services Department shall, in consultation with the parties, fix an appropriate date for a conciliation meeting.

(3) The Legal Services Department shall, as reasonably possible after the fixing of a date under sub regulation (3), issue a conciliation notice in Form 4 set out in the First Schedule which shall include the—

- (a) names of parties;
- (b) date of issue;
- (c) date, time and place of the conciliation meeting; and
- (d) fact that parties may appear in person or through advocate or an authorized agent.

(4) Upon the issuance of a conciliation notice but before the date of the conciliation meeting, the Commission shall constitute a conciliation panel consisting of at least one designated Commissioner, a member of the Legal Services Department and, where necessary, a co-opted member who is an expert in the issues under consideration.

25. During the conciliation meeting, the conciliation panel appointed under regulation 24 may use such conciliation procedures as it may, the interest of the parties, deem fit. Procedures at conciliation meeting.

26. (1) At the conclusion of the conciliation process, both parties shall sign a conciliation agreement bearing the common seal of the Commission and signed by the designated commissioner. Conciliation agreement.

(2) A conciliation agreement signed under sub regulation (1) shall be enforceable as an order of the Commission under section 19(4) of the Act.

[Subsidiary]

(3) The Commission may make conciliation awards under this Part which awards shall be enforceable in the same way as an order of the Commission.

PART V — COMPLAINTS HEARING PANEL

Complaints hearing panel.

27. (1) The chairperson or a commissioner designated by the chairperson for that purpose, shall, whenever advised by the Legal Services Department, establish a complaints hearing panel for a particular complaint or group of complaints.

(2) A hearing panel established under sub regulation (1) shall consist of—

- (a) a presiding commissioner and such number of commissioners appointed by the chairperson;
- (b) the Legal Counsel; and
- (c) such members of the Legal Services Department as appointed by the Secretary.

Hearing procedures.

28. (1) The hearing panel shall hear complaints referred to it by the Legal Services Department.

(2) Upon a complaint being referred to the hearing panel for determination, the hearing panel shall forthwith issue a notice to the concerned parties informing them that a complaints hearing panel has been formed for purposes of hearing the complaint and requiring them to enter appearance.

(3) The notice referred to in sub regulation (2) shall be in Form 5 set out in the First Schedule and shall include the—

- (a) names of the parties;
- (b) date of issue;
- (c) date, place and time of the hearing;
- (d) penalty for non-compliance;
- (e) duration by which appearance is required; and
- (f) fact a party may appear in person or by advocate of his choice.

(4) An appearance before the hearing panel shall be made within fourteen days from the date of service of the notice to the parties under sub regulation (2).

(5) Where a party has entered appearance pursuant to sub regulation (4), the hearing panel shall, within seven days from the date of receipt of the appearance, invite the parties or their representatives to fix a hearing date and for purposes of any directions before hearing.

(6) For the purposes of this regulation, a letter or any other sufficient indication, by a party, notifying that the party shall appear on the date and place of hearing, shall suffice as appearance by that party.

(7) An invitation to fix a hearing date shall be in Form 6 set out in the First Schedule and shall include the—

- (a) names of parties;
- (b) date of issue;
- (c) place for fixing hearing date; and
- (d) penalty for non compliance.

(8) Upon fixing a hearing date, hearing notice in Form 7 set out in the First Schedule shall be served on all the parties.

29. (1) Where a party to a complaint has been duly served and fails to appear as required, the hearing panel may proceed to hear the appearing party and such make orders in default as it may deem fit. Default in appearance.

(2) If on the day fixed for the hearing of a complaint, the respondent appears in answer to the summons but the complainant does not appear, the hearing panel shall, if satisfied that a notice of the time and place for the hearing has been duly served upon the complainant, ask whether the respondent admits the complaint.

(3) Where the respondent admits the complaint or any part of it, the hearing panel may make a decision against the respondent on the complaint or that part of it that is admitted.

(4) Where the respondent does not admit the complaint, the hearing panel may dismiss the complaint or proceed to hear the complaint or adjourn the hearing to another date, and when another date is fixed for the hearing, the hearing panel shall cause a notice to be served on the complainant and the respondent requiring each to attend the Commission at the time and place specified in the notice.

(5) Where a complaint is dismissed under sub regulation (4), the complainant may bring a new complaint or request for the original complaint be reinstated upon satisfying the hearing panel as to the reasons for failing to appear at the previous sitting.

(6) If on the date fixed for the hearing, the respondent does not appear, the hearing panel may, if satisfied that the notice under regulation 28(2) has been duly served on the respondent, proceed to hear the evidence of the complainant and the witnesses, if any, and decide the matter on the basis of the evidence before it.

(7) Where a decision has been given against a respondent under sub regulation (6), the respondent may apply for the decision to be set aside giving

[Subsidiary]

the grounds which prevented his attendance at the hearing.

(8) If the hearing panel, upon hearing the application under sub regulation (7), is satisfied that there are good and sufficient reasons for the absence of the respondent, and that the matter as recorded merits consideration, it may, upon such terms and conditions as it thinks fit, set aside the decision and fix a new date for the hearing of the complaint and give notice of the new hearing date to both parties.

(9) No decision made may be set aside unless the application to set aside is made within thirty days from the date the decision was given.

(10) If on the day fixed for the hearing or any date to which the hearing of a complaint is adjourned, neither party appears, the hearing panel may order that the complaint be dismissed.

(11) Where a complaint is dismissed pursuant to the provisions of sub regulation (10), the complainant may bring a new complaint or request for the original complaint to be reinstated upon satisfying the Commission as to the reasons for failing to appear at the previous sitting.

Procedures at
hearing.

30. (1) Notwithstanding the provisions of this regulation, a hearing panel may conduct a hearing before it in such manner as it considers most suitable for the clarification of issues before it and generally for the just handling of the proceedings and shall, so far as appears to it appropriate, seek to avoid legal technicality and formality in its proceedings.

(2) The parties shall be heard in such order as the hearing panel shall determine and shall be entitled to give evidence, call witnesses, question any witnesses and address the hearing panel both on the evidence and generally on the subject matter of the complaint.

(3) The hearing panel shall, upon appearance of both parties before it, ask whether the respondent admits the complaint or not.

(4) Where the respondent admits the complaint in its entirety, a decision shall be given confirming the violation of the human right or freedom as alleged by the complainant and the hearing panel shall make the appropriate orders in the circumstances in favor of the complainant.

(5) Where the respondent does not admit the complaint or admits it only in part, the hearing panel shall proceed to hear the evidence of the parties.

(6) Unless the hearing panel otherwise orders, the evidence of the complainant shall be heard first, followed by that of the witnesses and the respondent or, where the respondent is represented, the respondent's counsel, shall be given the opportunity to cross-examine the complainant and each of the witnesses.

(7) At the close of the evidence of the complainant or that of the witnesses, the evidence of the respondent shall be heard, followed by that of the witnesses, if any, and the complainant or, where the complainant is represented,

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the complainant's counsel, shall be given the opportunity to cross-examine the respondent and each of the witnesses.

(8) The hearing panel may, at any time, put questions to either party or to any witnesses and may, at its discretion, call such additional evidence as it considers necessary.

(9) The hearing panel may, for sufficient reason, at any time before or after the beginning of the hearing adjourn the proceedings and in every such case the Commission shall fix a date for further hearing of the complaint.

(10) In the course of the proceedings, the hearing panel may make such orders, including orders as to joinder of parties and adjournments as it may deem fit and just to make.

(11) Evidence before the hearing panel may be given orally, or if the hearing panel so orders, by affidavit or written statement, but the hearing panel may at any stage require the personal attendance of any deponent or author of a written statement.

(12) At any hearing, the hearing panel may, if it is satisfied that it is just and reasonable to do so with no resulting prejudice to the respondent, permit a party to rely on grounds not stated in his complaint, or as the case may be, his reply, and adduce any evidence not initially presented to the Commission.

(13) Evidence before the hearing panel shall be given on oath and for that purpose, the hearing panel shall administer oath or affirmation.

(14) The evidence of the parties and that of each witness shall be taken in writing by the hearing panel or by any person authorized to do so by the Commission in narrative form and not in form of question and answers.

31. An advocate who appears for a party at any stage shall be deemed to be that party's advocate throughout the proceedings unless— Change of advocate.

- (a) the party represented files with the Commission a written revocation of the advocates authority;
- (d) the advocate files with the Commission a written statement or withdrawal from the case;
- (e) the advocate states on the record of withdrawing from the case;
- (f) the party represented states on record of revoking the advocates authority; or
- (g) the Commission receives notice of advocate's death or disqualification.

32. (1) Where complaints have been consolidated as provided for by regulation 12, the hearing panel may hear only one complainant as a test complaint and stay the others to await the decision of the test complaint. Test complaints.

[Subsidiary]

(2) The decision of a test complaint shall apply to all other complaints with which the test complaint was consolidated.

Panel decisions.

33. (1) After concluding the hearing of the evidence and submissions where applicable, the hearing panel shall give a decision based on a balance of probabilities.

(2) A decision under sub regulation (1) shall be in writing and shall state—

- (a) the nature of the complaint;
- (b) the nature of evidence;
- (c) a summary of the relevant evidence produced before the hearing panel and the reasons for the hearing panel's accepting or rejecting the evidence;
- (d) the remedy, if any, to which the complaint is entitled; and
- (e) the order of the hearing panel necessary to enforce the remedy.

(3) Where the decision of the hearing panel is not given immediately after the hearing of all the evidence, the hearing panel shall notify the parties or their advocates of the date on which the decision is to be given and which date shall not be more than thirty days from the date of the conclusion of the hearing.

(4) The hearing panel's decision may be given—

- (a) in favour of one or more of the complainants as may be found to be entitled to relief; or
- (b) against one or more of the respondents as may be found to be liable according to their respective liabilities.

Orders.

34. (1) The orders made in a decision of the hearing panel shall be extracted, sealed and authenticated as orders of the Commission and shall be signed by the hearing panel's presiding commissioner.

(2) Orders of the Commission shall be enforced in accordance with section 19 of the Act.

Procedure where panel is incomplete.

35. (1) The hearing panel shall be seized of a complaint until a decision thereof has been pronounced.

(2) Where in the course of hearing a complaint, a hearing panel made up of more than one commissioner is, for any sufficient reason, is not fully constituted in terms of these Regulations, the remaining commissioners shall request the chairperson or a commissioner designated by the chairperson for that purpose, to replace the absent commissioners.

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(3) Where a presiding commissioner is to be replaced, the chairperson shall appoint a continuing commissioner to preside.

(4) Where an entire hearing panel is being replaced, the chairperson or a commissioner designated by the chairperson for that purpose, shall appoint a new presiding commissioner.

36. (1) An irregularity resulting from a failure to comply with any provision of this Part or of any direction of the hearing panel before it has reached its decision shall not of itself render any proceedings void. Correcting irregularities.

(2) Any irregularity under sub regulation (1) coming to the attention of the hearing panel may be cured or waived through such directions by the hearing panel may deem fit.

(3) A clerical mistake in any document, recording a decision of the hearing panel or an error arising in such a document from an accidental slip or omission may be corrected by the hearing panel.

37. (1) A party to a complaint shall, upon request in writing, be supplied with copies of the hearing panel's proceedings as of right. Copies of proceedings.

(2) The Commission may charge a minimal fee for the request under sub regulation (1) and may decline to grant the request until the fee has been paid.

PART VI—PUBLIC HEARINGS

38. (1) The Commission may on its own motion or on the basis of a complaint presented to it, conduct a public hearing. Public hearings.

(2) In determining whether a complaint should be heard in public, the Legal Services Department shall be satisfied that the complaint—

- (a) contains matters of broad public interest;
- (b) involves an alleged violation of group rights; or
- (c) contains matters with policy implications;

39. (1) The Commission shall designate a sub-committee of the Commission for the purposes of conducting a public hearing of the complaints referred to it by the Commission. Procedure in public hearings.

(3) The composition and conduct of the business and affairs of the sub-committee designated under sub-regulation (1) shall be as provided in the Second Schedule.

(4) Except as provided in the Second Schedule, the sub-committee may regulate its own procedure.

[Subsidiary]

Public hearing report.

40. (1) Upon the conclusion of a public hearing, the committee of the Commission shall submit its final report and recommendations to the Commission for adoption.

(2) Upon adoption by the Commission, the report of public hearing shall be presented to the Government and may be published and disseminated to the public.

PART VII—MISCELLANEOUS

Forms.

41. Except as specifically provided in these Regulations, the forms to be used in the Commission shall be such forms as the Commission may, from time to time, design or approve with such modification as may be necessary or proper to adopt.

Other orders of the Commission.

42. All orders of the Commission other than those made other than under Part IV and V of these Regulations, shall be reduced in writing, sealed and authenticated through the signature of the chairperson or Secretary of the Commission or a commissioner.

Amicus curiae.

43. The Commission may apply to appear as *amicus curiae* in any proceedings in a court or judicial tribunal and may admit, on application, any person to appear in proceedings before it as *amicus curiae*.

FIRST SCHEDULE

FORM 1

(r. 5 (3))

REPUBLIC OF KENYA



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

COMPLAINT NO. OF 20

COMPLAINANT DATA COLLECTION FORM

1. Complainant Identity

Name: Surname Middle First

Victim yes/no Next-of-kin Other (please specify)

Reasons why the victim(s) is/are unable to submit the complaint personally

Name of victim(s)

Personality (sanity) of victim(s)

Adult or minor

Address/contact of victim(s)

Whereabouts of victim(s)

If next of kin state the relationship

Identification No.

Age bracket (tick one): 0—10 11—20 21—30 31—40 41 and above

Gender:

Profession/Occupation:

Marital Status (tick one):

Single Married Divorced Widowed Separated

Number of children (optional):

Nationality:

Province: District:

Physical address:

.....

Postal address:

.....

Telephone number:

Close relative's name:

Address:

.....

Do you have a telephone? (Please give number:)

Is it your own telephone?

Or another person's? Whose? Is it your phone no. or a friend's?

Relationship:

Referring person/organization:

Respondent's telephone contacts

2. Incident of Violation

Date: Time Year:

Place/Location:

Method or nature of violation or abuse (e.g. massacre, sexual assault, torture, abduction, wrongful or unfair dismissal etc) (Attach signed statement of the victim):

.....

.....

.....

3. Cause of Violation

State reason or likely reason behind the said abuse and or violation e.g. political, ethnicity, criminal motive etc.

.....

.....

.....

[Subsidiary]

4. Particulars of the Person or Institutions Complained Against

Name, (if known):

Individual Institution

Distinguishing features of the individual (e.g. uniforms, marks, height or skin colour):
.....
.....
.....

Civilian/Government official (state one):

Telephone number

Postal address Code Town

Physical address

District Location

Building/House Room no.

Someone else who knows the perpetrator(s)

Name:

5. Evidence

a) Testamentary

(i) (Attach signed statement of the complainants or next of kin)

(ii) (Attach signed statement of the witness (es), if any.)

b) Documentary

(Attach e.g. P3 form, photos, if any, and statements or reports, newspaper cutting etc.)

c) Physical

(attach for instance photos showing the location or place where the incident occurred, bullets and any other evidence.)

d) Medical evidence

(Attach medical reports, if available.)

6. Witness Detail

Were there any witnesses to the violation; If yes please state their—

(a) Name:

(b) Age:

(c) Relationship:

(d) Contact address:

(e) Close relative's address:

Does the witness know where the perpetrator(s) was? If yes where?

Can witness(es) recognize the perpetrators? (Tick one)

Yes No

7. Remedy Sought

Please state the kind of help you would like the Commission to offer

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

8. Action by the Complainant

(Briefly state the steps or action you have taken since the violation or abuse took place e.g. reported the matter to the police, church, labour, tribunal, non-governmental body, filed a suit in court etc.).

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

FOR OFFICIAL PURPOSES

9. Assessment

(Briefly state the Commission’s assessment of the violation).

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

10. Declaration

(a) I hereby certify that the information given is true to the best of my knowledge and the same has been given voluntarily.

Signature of the Complainant (or next of kin) Date

(b) I hereby certify that the information submitted can be used in reports and for purposes of the promotion of human rights. This information can be shared with organisations with similar objectives.

I would prefer my case to be used anonymously (without the victim’s name) please tick one:

Yes No

Signature of the Complainant (or next of kin)..... Date

11. Interviewer’s Details

Name:

Position:

Signature: Date

[Subsidiary]

FORM 2

(r. 21)

REPUBLIC OF KENYA



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

COMPLAINT NO. OF 20

.....]
.....] COMPLAINANT(S)

AGAINST

.....]
.....] RESPONDENT(S)

SUMMONS FOR PERSONAL ATTENDANCE

(Section 19(1) and 20(2) of the Kenya National Commission on Human Rights Act, 2002 (No. 9 of 2002)

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 PERSONALLY OR THROUGH
YOUR AUTHORISED REPRESENTATIVE**

Appear before the Commission at its offices situated on the 9th Floor N.S.S.F. Building, Block "A" Eastern Wing, on the day of 200..... at O'clock in the forenoon, or soon thereafter, and provide such documentary and oral information to the Commission regarding the complaint as may be requested or in your possession.

Documents required:
.....
.....
.....

ISSUED UNDER MY HAND THIS DAY OF 20

.....
for KENYA NATIONAL COMMISSION ON HUMAN RIGHTS.

Section 19 (6) of the Kenya National Commission on Human Rights Act, provides that a person who fails, without lawful excuse, to comply with this Summons or having complied, knowingly gives false or misleading information is liable on conviction, to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both fine and imprisonment.

FORM 3

(r. 21) (1)

REPUBLIC OF KENYA



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

COMPLAINT NO. OF 20

.....]
.....] COMPLAINANT(S)

AGAINST

.....]
.....] RESPONDENT(S)

SUMMONS FOR PRODUCTION OF DOCUMENTS

(Section 19 (1) and 20 (2) of the Kenya National Commission on Human Rights Act, 2002 (No. 9 of 2002)

To:
.....

Whereas this Commission is investigating the above complaint;

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

YOU ARE HEREBY REQUIRED TO PERSONALLY OR THROUGH
YOUR AUTHORIZED REPRESENTATIVE

Produce and present, or cause to be produced and presented to this Commission at its said offices within fourteen days from receipt of this Summons, all such documents and/or information as are material to the complaint, and specifically all documents as hereunder listed or as indicated in a Schedule attached hereto.

Documents required:

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

ISSUED UNDER MY HAND THIS DAY OF 20

.....
for KENYA NATIONAL COMMISSION ON HUMAN RIGHTS.

Section 19 (6) of the Kenya National Commission on Human Rights Acts, provides that a person who fails, without lawful excuse, to comply with this Summons or having complied, knowingly gives false or misleading information is liable on conviction, to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both fine and imprisonment.

[Subsidiary]

FORM 4

(r. 24) (3)

REPUBLIC OF KENYA



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

COMPLAINT NO. OF 20

.....]

.....] COMPLAINANT(S)

AGAINST

.....]

RESPONDENT(S)

.....]

To:

.....

CONCILIATION NOTICE

(Under regulation 24 (3) of the Kenya National Commission on Human Rights (Complaint Procedures) Regulations, 2005

Whereas all the parties to this complaint have indicated willingness to pursue conciliation in resolving the complaint;

TAKE NOTICE that a conciliation meeting has been scheduled for the day of 2004 at O'clock in the afternoon at the Commission's offices situated at 9th Floor, N.S.S.F. Building, Block "A" Eastern Wing.

Issued this day of 20.....

.....
for KENYA NATIONAL COMMISSION ON HUMAN RIGHTS.

FORM 5

(r. 28) (3)

REPUBLIC OF KENYA



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

COMPLAINT NO. OF 20

.....]

.....] COMPLAINANT(S)

AGAINST

.....]

RESPONDENT(S)

.....]

To:

.....

APPEARANCE NOTICE

(Under regulation 28(3) of the Kenya National Commission on Human Rights (Complaint Procedures) Regulations, 2005

Whereas the above-named Complainant has instituted a claim against you, particulars of which are already;

within your knowledge, and the complaint has now been placed before the Complaints Hearing Panel for determination

YOU ARE HEREBY required to enter appearance in person or by advocate or any other authorized representative within fourteen days of the date hereof.

Issued this day of 20.....

.....

for KENYA NATIONAL COMMISSION ON HUMAN RIGHTS.

Take notice that if no appearance is made by you as required, the Commission may take any appropriate decision in your absence, including hearing the complaint.

[Subsidiary]

FORM 6

(r. 28) (7)

REPUBLIC OF KENYA



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

COMPLAINT NO. OF 20

.....]

.....] COMPLAINANT(S)

AGAINST

.....]

RESPONDENT(S)

.....]

To:
.....

INVITATION TO FIX HEARING DATE AND FOR DIRECTIONS

(Under Regulation 28 (7) Kenya National Commission on Human Rights
(Complaint Procedures) Regulations, 2005)

Whereas the above-named complainant has instituted a claim against you,
particulars of which are already within your knowledge, and the complaint has
now been placed before a complaints hearing panel for determination.

YOU ARE HEREBY required to attend the Commission in person or by
representative on any day within the next seven days in the afternoon in order
to take a convenient hearing date for the complaint and to receive directions
for hearing.

Issued this day of 20.....

.....
for KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

TAKE NOTICE that if you do not attend as required, a date shall be fixed, and
directions issued in your absence.

FORM 7

(r. 28(8))

REPUBLIC OF KENYA



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

COMPLAINT NO. OF 20

.....]

.....] COMPLAINANT(S)

AGAINST

.....]

RESPONDENT(S)

.....]

To:

.....

HEARING NOTICE

(Under Regulation 28(8) of the Kenya National Commission on Human Rights (Complaint Procedures) Regulations, 2005)

Whereas the above-named complainant has instituted a claim against you, particulars of which are already within your knowledge, and the complaint has now been placed before the Complaints Hearing Panel for determination;

YOU ARE HEREBY required to appear in this Commission on the day of200 in the forenoon/afternoon and to bring your witnesses with you.

Issued this day of 20.....

.....
for KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

TAKE NOTICE that if you, or your advocate or authorized representative do not attend hearing as required, the case may be heard in your absence.

[Subsidiary]

FORM 8

(s. 19 of Act)

REPUBLIC OF KENYA



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

COMPLAINT NO. OF 20

.....]

.....] COMPLAINANT(S)

AGAINST

.....]

RESPONDENT(S)

.....]

RELEASE ORDER

(Under section 19 of the Kenya National Commission on Human Rights
Act, 2002)

(No. 9 of 2002)

To:

.....

.....

WHEREAS has been in your
custody since the..... day of 200.... and whereas the Commission is
satisfied that the said person is being unlawfully detained or restricted, this is
to direct you to cause the immediate release of the said
from your custody forthwith.

Issued this day of 20.....

.....
for KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

SECOND SCHEDULE

(r. 39)

**PROVISIONS AS TO THE COMPOSITION AND CONDUCT OF
BUSINESS AND AFFAIRS OF THE PUBLIC INQUIRY
SUB-COMMITTEE**

1. (1) The public inquiry sub-committee shall consist of not less than five but not more than nine members of which at least two must be commissioners. Composition.

(2) Subject to sub-paragraph (1), the sub-committee of the Commission may utilize the services of any public servant pursuant to section 20 of the Act or co-opt such experts as may be necessary for the performance of its tasks.

(3) The chairperson of the sub-committee shall be appointed by the chairperson of the Commission from amongst the commissioners who are members of the sub-committee.

(4) The chairperson of the sub-committee shall—

- (a) chair the sittings of the inquiry;
- (b) sign letters of attendance to the Commission or any other summons issued by the sub-committee; and
- (c) issue statements on behalf of the sub-committee or designate a member of the sub-committee to issue such statements.

2. The public inquiry sub-committee shall—

- (a) investigate the subject matter of the inquiry;
- (b) draw a timetable for the inquiry and direct the general and specific conduct of the inquiry;
- (c) ensure attendance of witnesses and any interested party required to testify before it;
- (d) compile a report upon conclusion of the inquiry and make appropriate recommendations for action; and
- (e) perform such other tasks as may be necessary for the proper conduct of the inquiry in accordance with such rules as the sub-committee may determine.

Functions of
sub-committee.

3. (1) The parties to the hearing may adduce oral or written evidence. Presentation of
evidence.

(2) Where the evidence given is in writing, it shall be by way of a sworn memorandum or affidavit signed by the person giving the evidence.

(3) Where the evidence under subparagraph (1) is given by group

[Subsidiary]

of individuals, the memorandum or affidavit shall be deponed by their representatives but shall be signed by all the members of the group.

Hearings in camera.

4. (1) Where the evidence being adduced before the sub-committee is security related, the sub-committee may, taking into account the nature of the evidence, decide to hear such evidence in camera.

(2) Notwithstanding the provisions of subparagraph (1), the sub-committee may hear any evidence in camera upon request by the party adducing it.

Right of representation.

5. Any person whose attendance is required at the public inquiry shall have the right to be represented by an advocate of his choice or by such other person as he may appoint.

Procedure at public inquiry.

6. No matter shall be heard by the sub-committee unless such matter has been—

(a) subjected to preliminary investigations under these Regulations;
and

(b) considered by the Legal Services Department and subsequently referred to the sub-committee.

