KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

ADMISSIBILITY CRITERIA
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What is the Kenya National Commission on Human Rights?
The KNCHR is an independent national human rights institution created under Article 59(4) of the Constitution and KNCHR Act No. 14 of 2011. Its core mandate is to further the protection and promotion of human rights in Kenya.

What are Human Rights?
Human Rights are those basic entitlements that make our lives satisfying and meaningful. They are rights or freedoms that one is entitled to or guaranteed because they are human and are recognized as birth rights, so, they are inalienable, universal, interrelated and indivisible. Human rights are provided for under Chapter 4 of the Constitution of Kenya, 2010.

What is a Human Rights Complaint?
The State is bound by law to protect every person's human rights. If it is unable to do that or if the State or its agents or any person who is acting on behalf of the State, does anything to reduce, disrespect or interfere with another person's human rights then it becomes a violation.

Against who are Human Rights claimed?
Human Rights are primarily claimed against the State. However, if a private person violates someone's rights, for example, relating to life or liberty, the victim can approach the State to take action against the violator. If the State fails to stop and punish the violator then it becomes a human rights violation.

Complaints that can be admitted by the KNCHR
- Generally, the Commission will admit all complaints disclosing any breach of human rights as enshrined in Chapter 4 of the Constitution, and our mandate is to investigate the complaints and give recommendations on possible redress mechanisms. Examples of rights enshrined in the Constitution are, right to life, human dignity, freedom and security of the person, freedom of expression, freedom of association, economic and social rights, rights of an arrested person, rights of persons detained, held in custody or imprisonment, right to a fair hearing etc.
- Complaints against state organs, state and private corporations and individuals can be admitted so long as they disclose human rights violations.
• Beating, chaining or torture of a suspect by government security agents e.g. the police.
• A prisoner being denied beddings by prison warders because he/she has refused to offer a bribe.
• Systemic discrimination on ethnic, racial lines or of vulnerable groups.
• Complaints of abuse of office by public servants, for example, malicious prosecution of persons.
• Complaints of alleged violation of the rights contained in the Kenyan Constitution or applicable international treaties and conventions on human rights ratified by Kenya.

Complaints that may not be admitted by the KNCHR
The cases that are not admissible by the Commission are covered by Section 30 of the Kenya National Commission on Human Rights Act No. 14 of 2011.

Some of them include:
• Any matter which is pending before a court of law or judicial tribunal. Here, if a matter has been inordinately delayed, the Commission may inquire into the process, but not the merit of the case. Section 30(a)
• Complaints of a criminal nature that require the action of police officers in the first instance e.g. assault cases. Section 30 (b) The Commission can however, intervene where the police are guilty of inaction, to investigate and/or attempt to address the inaction.
• A matter essentially involving the relations or dealings between the Government and the Government of a foreign state or international organization recognized as such under international law. Section 30©
• A matter relating to the exercise of the prerogative of mercy-Section 30(d).
• A matter relating to equality and freedom from discrimination. Section 30(e).
• Matters in respect of which there is a right of appeal or other legal remedy unless, in the opinion of the Commission, it is not reasonable to expect that right of appeal or other legal remedy to be resorted to Section 30(f).
• Matters that for the time being under investigation by any other person or Commission established under the Constitution or any written law Section 30(g).
• Matters to do with refugees especially in relation to request for
asylum/relocation, humanitarian assistance/financial requests, KNCHR will refer such matters to the UNHCR and other partner organizations.

- Written complaints that are obviously trivial or frivolous. This will depend on the nature of the case. A complaint that is vague and badly written. However, in such instances, the KNCHR may, where the complainant has provided a contact address, ask for more details from complainant.

- The Commission does not provide legal representation to complainants in a court of law. In such cases, complainants are referred to our partner organizations who will review the cases and advise the complainants e.g Kituo Cha Sheria, FIDA (K) CLAN or CRADLE. Although in exceptional cases, it may take public interest cases to court.

- Labour matters depending on the gravity of the complaint a petitioner ought to have exhausted all redress mechanisms. Each labor complaint will be treated on its own merit and those that show a human rights violation will be admitted. A telephone inquiry will be the first step in order to determine whether or not the complaint will be admitted. The commission shall endeavor to resolve any matter brought before it by conciliation, mediation or negotiation.

- Complaints that are civil in nature e.g divorce, custody and maintenance, breach of contract etc.

**How can one file a complaint?**

- You may visit the KNCHR’s office and present your complaint orally to an officer of the Commission who would then put it in writing; or
- Write a letter detailing the facts of your complaint; or
- Telephone the Commission; or
- Send an email to the Commission; or
- Report the matter through the KNCHR website. www.knchr.org.

*Note: You can contact the Commission through Tel: 2717900/08/28, 0724256448, 0726610159, 0736780000, 0733780000, haki@knchr.org or complaints@knchr.org.*

Please note that if you file a complaint, you become a Complainant and if a complaint is made against you, you become a Respondent.
Who can file a complaint?
- An individual Complainant
- A person appointed by the Complainant
- Any person authorized by law to act for the Complainant
- A group of persons. However, one or more persons can be authorized to complain on behalf of a group
- An organization
- A member of the National Assembly with the consent of the aggrieved person

Who can the complaint be against?
- A private individual
- A private organization/company
- A public officer/organization
- The State, which means the central government and all people, agencies and institutions that assist in running the country, for example, the police, army, the courts and local authorities.

Does the Commission charge any fees?
No. The commission does not charge any fees for filing any case with it.

What is the Commission's policy on confidentiality?
The Commission shall not disclose or publish matters or information given or received by it in confidence without the prior consent of a party or informant.

What happens after filing a complaint?
- A complaint received is first registered and referred to the legal department for analysis to determine whether it discloses a human rights violation.
- If the matter discloses a human rights violation, the complaint will be admitted and investigated within 21 days.
- The commission will carry out initial investigations by making inquiries with the respondent who is expected to respond to the complaint in writing within fourteen (14) days after receiving an inquiry letter from the commission.
- Where the respondent's response is inadequate or where such response is not received at all, the Commission may carry out further investigations.
What steps can the Commission take at the end of an investigation?

- Refer matter to the Director of Public Prosecutions (DPP) or any other relevant authority or undertake such action as the Commission may deem fit.
- Recommend to the complainant enforcement of his right under the Article 22 of the Constitution.
- Recommend other appropriate methods of settling the complaint to the complainant and other body concerned.
- Provide a copy of the report to all the interested parties.
- Submit summonses as it deems necessary in fulfillment of its mandate.

In addition to the above steps, the Commission, can also in its own name, commence and prosecute appropriate proceedings in the High Court to enforce the violation of human rights.

Further, the Commission may apply to appear as a friend of the court in any proceedings in a court of law or judicial tribunal and may admit any person to appear in proceedings before it as a friend.

Where after investigations it is found that the complaint lacks merit, no further action will be taken.

Steps to be taken when a complaint that falls outside the mandate of the Commission?

The complainant will be informed that the complaint does not fall within the mandate of the Commission. He will be advised accordingly, or in some cases, the complainant will be referred to a civil society organization or a government department that has the technical capacity or mandate to assist. Complainants are also given invaluable advice as to how to handle the problem.

Note; The Commission has a network of referral partners' comprising of civil society organizations that enables it to effectively refer complaints that do not fall within its mandate.
Can a complainant appeal when he is informed that a compliant does not fall within the mandate of the Commission?
Yes. The said appeal should be addressed to the Commissioner in charge of the Complaints and Investigations department and received within twenty one (21) days from the date the complainant received the dismissal notice.

Can you withdraw a complaint?
Yes. A complainant can withdraw a complaint pending before the Commission at any stage during its consideration. However, the Commission, in the interest of the public may continue to investigate such complaint.

Can a complaint already before the Commission be amended?
Yes. The Commission may accept or reject the request for amendment of a complaint, response or any other communication to the Commission by any of the parties to the complaint, having regard to the circumstances of the case.

Can a complaint before the Commission lapse after it has been admitted?
Yes. A complaint may lapse if the complainant fails or neglects to respond to communication from the Commission for a period of three (3) months from the date of the last communication.

Can the Commission consolidate similar complaints that have been filed before it?
Yes. Where two or more complaints in which the same or similar allegations are raised against a respondent(s), the Commission may order a consolidation of such complaints, or treat one complaint as the test complaint and stay action on the other complaints consolidated with it, until the test complaint is determined.

Can one be joined to a complaint already before the Commission?
Yes. For example, where a complaint has been filed before the Commission as a group complaint, an individual member of the group can request the Commission to enjoin him/her as a party to the complaint.

Also, where a complaint has been mistakenly filed in the name of a wrong person as complainant, the Commission may order any other person to be substituted or
joined as complainant, if it would be necessary for the determination of the real claim to a right in question.

The Commission may also order the name of any person, whose presence is necessary for the effective determination of any complaint before it, be enjoined in the complaint either as a complainant or respondent.

**What happens where a complainant does not know against whom to lodge the complaint?**
A complainant may lodge a claim against two or more respondents, if he/she is in doubt as to the person from who to obtain redress. This does not make the complaint invalid. The Commission will advise the complainant on the right body to channel the complaint.

**What happens where a complaint before the Commission bears a mistake as to the identity of the parties to the complaint?**
This does not make the complaint wrong or lack merit. In such cases, the Commission may deal with the issues in dispute in so far as it relates to the rights and interests of the parties before it.

The Commission may also order the name of any party improperly joined to a complaint to be struck out and the name of the right person joined in as parties. In such a case, all the parties will be notified and the complaint amended accordingly.

**How are parties to a complaint served with Commission documents?**
Any document (other than routine correspondence) required to be served upon the parties to a complaint shall, where applicable, be served or delivered personally on the person.

Where this is not possible, then service may be made by:

a) Leaving the duplicate document with any adult person residing with the person, some adult member of the person's family, or the person's employer or employee or the person's advocate. An incorporated company or body shall be served through its dully authorized officer.

b) Affixing the duplicate of the document to some conspicuous place in the
person's house/homestead, office/workplace or in the Commission.
c) Sending the document to the person's proper address by registered post or by
other verifiable form of posting. Such document will be presumed to have been
received by the addressee seven (7) days from the date it was received for
dispatch by the post office.
d) Publishing the particulars of the complaint in a newspaper circulating in the
person's area or in any other media.

What happens when one is served with a document?
He/she should sign or put a mark in recognition of the receipt of the document.
Refusal to do so shall be recorded in writing by the person effecting the service of
the document.

Who serves Commission documents?
Service of Commission documents, such as summons and notices, can be made
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.

Can the Commission effect service through substituted service?
Yes. The Commission may make an order for substituted service where the
person 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.

Which are the languages of the Commission?
English and Kiswahili. However, if a party does not understand either of these
languages, the Commission will provide him/her with an interpreter.

When does the Commission conduct investigations?
Upon admitting a complaint, the Commission's Legal Services Department shall
conduct two (2) types of investigations:
a) A preliminary investigations. This involves notifying the person against whom
the complaint is made about the complaint with a request for comments. A
complainant may be required to respond to the comments that the
Commission has received from the respondent.
b) Further investigations. These will be conducted where after the preliminary investigations, the complaint is not resolved and more information is required to resolve a complaint (complete this sentence). Further investigations will include sites visits to scenes of violations for information gathering, collecting evidence from witnesses, where necessary, issuing summons for witnesses or respondents to appear before the commission to give information or produce documents necessary for investigations.

Am I required to be present during investigations?
No. But you may be contacted to clarify issues arising during the investigations.

**ALTERNATIVE DISPUTE RESOLUTION (ADR)**

What is ADR?
It is a process where parties to a complaint agree to invite an independent third party to assist them arrive at an amicable solution to their complaint.

When can the Commission refer a complaint for conciliation?
The Legal Services Department may, advice parties to a complaint in writing that their dispute may be resolved through conciliation, mediation or negotiation.

What is the procedure at ADR meeting?
Where all the parties to a complaint state in writing that they are willing to have their complaint resolved by way of conciliation, the Commission shall constitute a conciliation panel consisting of at least one designated commissioner, a member of the Legal Services Department and, where necessary, an expert versed on the issues under consideration.

What happens at the end of the conciliation ADR Session?
At the conclusion of the conciliation process, and where both parties to a dispute agree to the conciliation, they shall sign a conciliation agreement bearing the details of the agreement, the common seal of the Commission and signed by the designated commissioner. If the matter cannot be resolved by conciliation, mediation or negotiation and the Commission determines there is discrimination carried out unjustly or unreasonably, the Commission shall make such recommendations as it deems fit- Section 29(d).
INQUIRIES /PUBLIC HEARINGS

When can the commission conduct an inquiry/public hearing?

a) Upon advice of the legal services department following a complaint received by the Commission.

b) On its own motion.

What kinds of complaints can be subject of public inquiry?

a) Complaints that contain matters of broad public interest.

b) Complaints that involve an alleged violation of group rights. For example, the Commission conducted a public hearing in Marereni, Malindi on the salt mining companies, Public Inquiry on Insecurity in 2007, Sexual and Reproductive Health Inquiry 2011 following a complaint it received over alleged violation of human rights.

c) Complaints that contain matters with policy implications.

Who will conduct the public hearing?

Commissioners and members of staff from the Commission. The Commission may also co-opt experts with the requisite skills and knowledge in the matter before the Inquiry.

What role can an individual or organization play during the hearings of a Public Hearing?

To give evidence either orally or in written form.

What happens at the end of a Public Hearing?

Upon the conclusion of a public hearing, the team shall submit its final report and recommendations which will be published and disseminated to the relevant government officers, stakeholders and the public.
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