

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

**The National Gender and Equality Commission (Complaints Handling Practice and Procedure) Regulations, 2020**

Arrangement of Regulations

Regulations	<b>PART I - PRELIMINARY</b>
1.	Citation and Commencement
2.	Interpretation
3.	Purpose of the Regulations
4.	Overriding Objective
	<b>PART II – PROCEDURE FOR LODGING COMPLAINTS, ADMISSION AND RESPONSE TO COMPLAINTS.</b>
5.	Persons by Whom Complaints May be Lodged
6.	Complaints by a Child and Persons of Unsound Mind
7.	Nature of Complaints
8.	Form of Complaint
9.	Procedure for Lodging Complaints
10.	Register of Complaints
11.	Assessment of Complaints
12.	Exemption from Payment of Fees
13.	Joinder and Misjoinder
14.	Substitution and Addition of Parties
15.	Consolidation of Complaints

16.	Confidentiality
17.	Withdrawal of Complaints
	<b>PART III – INVESTIGATION OF COMPLAINTS</b>
18.	Commencement of Investigation
19.	Procedure for Investigation
20.	Summon of Witnesses
21.	Investigation Report
22.	Procedure After Investigation
23.	Investigation by the Commission
	<b>PART IV – RESOLUTION OF COMPLAINTS BY ALTERNATIVE DISPUTE RESOLUTION MECHANISMS</b>
24.	Alternative Dispute Resolution
25.	Who May Attend at Negotiation or Mediation
26.	Consequences of Non-attendance
27.	Procedure Where Resolution is Reached
	<b>PART V – HEARING AND RESOLUTION OF COMPLAINT BY THE COMMITTEE</b>
28.	Composition of the Committee
29.	Commencement and Notice of Hearing
30.	Persons Who May Attend at Hearing
31.	Procedure at Hearing
32.	Right to be Heard
33.	Conclusion of Hearing
34.	Notification of Outcome
35.	Application of Part to Inquiries of the Commission
	<b>PART VI – MISCELLANEOUS PROVISIONS</b>

36.	Language of the Commission
37.	Enlargement of Time
38.	Evidence
39.	Appeal and Review
First Schedule	<p>Form No NGEC 1 – Complaint Form</p> <p>Form No NGEC 2 – Summons for Personal Attendance</p> <p>Form No NGEC 3 – Summons to Produce Documents</p> <p>Form No NGEC 4- Notice of Negotiation/Mediation</p> <p>Form No NGEC 5- Hearing/ Pronouncement of Findings</p>
Second Schedule	Investigation Report

	<b>PART I - PRELIMINARY</b>
Citation and Commencement	<p>1. These Regulations may be cited as The National Gender and Equality Commission (Complaints Handling Practice and Procedure) Regulations, 2020 and shall come into force on such date as the Cabinet Secretary may, by notice in the Gazette, appoint.</p>
Interpretation	<p>2. In these Regulations, any word or expression to which a meaning has been assigned in the Act has the meaning so assigned to it, and unless the context otherwise requires –</p> <p>“Act” means the National Gender and Equality Commission Act, 2011;</p> <p>“Admission” means the process by which the eligibility of a complaint is determined by the Commission, and “admit” and “admitted” shall, wherever they occur, be construed accordingly;</p> <p>“Authorised Officer” means a person appointed in accordance with regulation 11(2) (a), and in exercise of the Commission’s power under section 28 of the Act, to investigate a complaint lodged under these Regulations;</p> <p>“Child” has the meaning assigned to it under Article 260 of the Constitution;</p> <p>“Commission” has the meaning assigned to it under section 3 of the Act and, for the purposes of these Regulations, includes the Committee;</p> <p>“Committee” means a committee of the Commission established under section 18 of the Act to hear and resolve complaints lodged with the Commission in accordance with these Regulations;</p>

“Complainant” means a person who lodges a complaint with the Commission in accordance with these Regulations;

“Complaint” means an oral or written communication made to the Commission, or to such other person as may be authorised by the Commission for that purpose, pursuant to section 29(1) of the Act, alleging a violation or denial of a right to equality or freedom from discrimination;

“Constitution” means the Constitution of Kenya, 2010;

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

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

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

“Legal Department” means the department of the Commission for the time being responsible for matters relating to legal services, complaints handling and investigations of complaints;

“Mediation” means a voluntary and confidential alternative dispute resolution mechanism in which a neutral third party assists the complainant and the respondent to resolve their dispute amicably on mutually agreeable terms, and mediation has the same meaning as conciliation;

“Person,” in relation to a respondent, has the meaning assigned to it under Article 260 of the Constitution;

	<p>“Reconciliation” means a process by which the relationship between the complainant and the respondent is renewed following amicable resolution of a complaint whether by negotiation or by assistance of a neutral third party as a result of which the parties forgive one another and make good the injury (if any) suffered by one or the other;</p> <p>“Respondent” means a person against whom a complaint is lodged with the Commission in accordance with these Regulations;</p> <p>“Summons” means an order of the Commission, in writing, directing a person to appear before and testify or produce a document before the Committee;</p>
Purpose of the Regulations	<p>3. The purpose of these Regulations is to regulate the procedure for –</p> <p>(a) lodging complaints with the Commission pursuant to section 33 of the Act;</p> <p>(b) the form in which complaint may be lodged;</p> <p>(c) inquiry or investigation into complaints, lodged with the Commission, in accordance with Part III of the Act;</p> <p>(d) hearing of complaints and admission of evidence;</p> <p>(e) resolution of matters brought before the Commission by means of alternative dispute resolution mechanisms pursuant to Article 159(2) (c) of the Constitution and section 29(2) of the Act;</p>

	<p>(f) determination of complaints; and</p> <p>(g) Referral of complaints not falling to be resolved by the Commission.</p>
Overriding Objective	4. The overriding objective of these Regulations is to facilitate the fair, impartial, just, expeditious, proportionate and affordable determination of complaints lodged with the Commission in accordance with these Regulations.
	<b>PART II – PROCEDURE FOR LODGING COMPLAINTS, ADMISSION AND RESPONSE TO COMPLAINTS.</b>
Persons by Whom Complaints May be Lodged	<p>5. (1) Any of the persons specified in Article 22(2) of the Constitution and section 32 of the Act may lodge a complaint with the Commission in accordance with these Regulations.</p> <p>(2) The consent required under section 32(2) (b) of the Act shall be in writing and signed by the aggrieved person, or by a person entitled to represent the aggrieved person pursuant to section 32(2) (a) of the Act.</p> <p>(3) A person in whose behalf a complaint is lodged in accordance with sub-regulation (1) may, at any time before determination of the complaint, apply to the Committee in writing requesting the Committee to allow them to take over and conduct the complaint in their own name.</p> <p>(4) A request made to the Committee pursuant to sub-regulation (3) shall be served on all persons named as party to the complaint.</p>

<p>Complaints by Children and Persons of Unsound Mind</p>	<p>6. (1) A complaint by a child shall be lodged in the name of the child, a parent, guardian or other intermediary.</p> <p>(2) A child on whose behalf a complaint is lodged shall, on attaining majority, elect whether he or she will proceed with the complaint.</p> <p>(3) Where the child elects to proceed with the complaint, the child shall apply to the Committee for an order discharging the parent, guardian or intermediary, and for leave to proceed in the child's name.</p> <p>(4) A complaint by a person of unsound mind shall be lodged in their name by an intermediary pursuant to Article 22(2) (a) of the Constitution.</p> <p>(5) A person is of unsound mind within the meaning of this regulation if, on inquiry by the Court pursuant to Section 26 of the Mental Health Act, they are found to be of unsound mind or suffering from such mental disorder as to render them incapable of protecting their rights.</p>
<p>Nature of Complaints</p>	<p>7. (1) Subject to section 30 of the Act, a person may lodge a complaint with the Commission alleging discrimination, differential treatment, marginalisation, inequality, or any other act or omission which undermines or impairs the equalization of opportunity to the complainant's prejudice or to the prejudice of a class of persons of whom the complainant is a member.</p> <p>(2) Without prejudice to the generality of sub-regulation (1), the act or omission contemplated in this regulation shall relate only to the claimant's right to equality and freedom from discrimination guaranteed by Article 27 of the Constitution.</p>



Form of Complaint	<p>8. (1) A complaint lodged under these Regulations shall be in Form No. NGEC1 set out in the First Schedule, and signed by –</p> <p>(a) the complainant; or</p> <p>(b) a representative of the complainant in that behalf, as contemplated by section 32(2) (a) of the Act.</p> <p>(2) Where a complaint is made orally pursuant to section 33(1) of the Act to an officer of the Commission, the officer shall reduce the complaint into writing, and cause the complaint to be duly signed, so as to meet the formal requirements of sub-regulation (1).</p> <p>(3) Where a complaint is lodged by a representative of the complainant, the complaint shall not fail by reason only that the representative is unable to provide to the Commission such relevant information or documents as would otherwise be within the power or control of the complainant.</p>
Procedure for Lodging Complaints	<p>9. A complaint shall be deemed as duly lodged with the Commission if –</p> <p>(a) delivered to the offices of the Commission;</p> <p>(b) delivered to such other place as the Commission may, from time to time, designate;</p> <p>(c) transmitted by way of electronic mail to the designated email address of the Commission;</p>

	<p>(d) sent by way of registered post to the designated postal address of the Commission;</p> <p>(e) sent to the Commission through a duly registered courier service; or</p> <p>(f) if made orally to an officer of the Commission, when the complaint is reduced to writing in accordance with regulation 8(2).</p>
<p>Register of Complaints</p>	<p>10. (1) The Commission shall keep and maintain a register, to be known as the Register of Complaints, in which the Commission shall record all complaints lodged with the Commission, and which shall be numbered and recorded sequentially.</p> <p>(2) The Register of Complaints shall disclose –</p> <p>(a) the full name and contact information of the complainant;</p> <p>(b) the sequential number and date on which the complaint was lodged;</p> <p>(c) the name and contact information of the respondent;</p> <p>(d) the nature of the complaint;</p> <p>(e) the date on which the complaint was resolved;</p>

	<p>(f) the outcome of the determination and the recommendations (if any) made in resolution of the complaint;</p> <p>(g) if the complaint falls outside the jurisdiction of the Commission, the action taken or reference made (as the case may be), and the date of such reference to the appropriate State agency; and</p> <p>(h) any other information which the Commission considers necessary to record.</p>
<p>Assessment of Complaints</p>	<p>11. (1) Upon registration of a complaint in accordance with regulation 10(1), the Legal Department of the Commission shall assess the complaint to ascertain –</p> <p>(a) whether the complaint falls within the jurisdiction of the Commission; or</p> <p>(b) Whether the complaint warrants referral to a different State agency for appropriate action.</p> <p>(2) Upon assessment of the complaint, the Legal Department may –</p> <p>(a) admit the complaint and refer the complaint to an authorised officer to undertake preliminary investigation thereon;</p> <p>(b) summarily reject the complaint; or</p> <p>(c) Refer the complaint to another State agency for appropriate action, and notify the complainant of the referral in writing.</p>

(3) Where, in the considered opinion of the Legal Department, a complaint does not merit admission for determination by the Committee, the Legal Department shall, within twenty one days of the registration of the complaint –

(a) summarily reject the complaint and record its reasons therefor in the Register of Complaints; and

(b) Give the complainant written notice of its decision in that regard together with reasons therefor.

(4) Where the complainant is aggrieved by the decision to summarily reject the complaint under this regulation, the complainant may appeal to the Commission in writing within fourteen days of receipt of the notice.

(5) On considering the appeal made pursuant to sub-regulation (4), the Commission may –

(a) allow the appeal and direct that the complaint be admitted, whereupon the Commission shall direct the Legal Department to appoint an authorised officer to conduct preliminary investigations thereon; or

(b) disallow the appeal, whereupon –

(i) the complaint shall stand rejected;

(ii) the Commission shall record, in the Register of Complaints, its decision in that regard; and

	(iii) within fourteen days of its decision, give written notice thereof to the complainant, setting out its reasons for disallowing the appeal.
Exemption from Payment of Fees	12. No fees shall be charged for lodging a complaint with the Commission under these Regulations.
Joinder and Misjoinder	<p>13. (1) Where two or more claimants have complaints in which they are jointly interested against the same respondent, or against two or more respondents jointly, the complainants may unite such complaints in the same complaint.</p> <p>(2) On admission of a joint complaint lodged under sub-regulation (1), the Commission shall give written notice of the complaint to the person, or to each of the persons against whom the complaint is made –</p> <p>(a) by personal service upon each of them in accordance with regulation 18(1)(a); or</p> <p>(b) Where personal service is not reasonably practicable, by public advertisement in such manner as the Commission may determine.</p> <p>(3) Where the complainant is in doubt as to the persons from whom he or she is entitled to obtain redress, he or she may join two or more respondents in order that the question as to which of the respondents is liable, and to what extent, may be determined as between all the parties.</p> <p>(4) No complaint shall be defeated by reason of the misjoinder or non-joinder of parties, and the Committee may, in a complaint, deal with the matter in controversy so far as regards the rights and interests of the parties properly before the Committee.</p>

<p>Substitution and Addition of Parties</p>	<p>14. (1) Where a complaint has been lodged in the name of the wrong person as complainant, or where it is doubtful whether it has been lodged in the name of the right complainant, the Committee may, at any stage of the complaint, if satisfied that the complaint has been lodged through a <i>bona fide</i> mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as complainant upon such terms as the Committee thinks fit.</p> <p>(2) The Committee may, at any stage of the proceedings, either of its own motion or on the application of a party to a complaint, and on such terms as the Committee considers just, order that the name of any party improperly joined, whether as complainant or respondent, be struck out, and the name of a person who ought to have been joined, whether as complainant or respondent, or whose presence before the Committee may be necessary in order to enable the Committee to effectively and completely adjudicate upon and settle all questions raised in the complaint, be added.</p> <p>(3) Where the name of a complainant or a respondent is struck out before the hearing of a complaint, the Committee shall serve a notice to that effect to the complainant before the date fixed for hearing.</p> <p>(4) Where a respondent is joined, or substituted in a complaint, the amended copy of the complaint, and any summons issued in the proceeding, shall be served on the new respondent and on the join respondent or respondents, as the case may be.</p>
<p>Consolidation of Complaints</p>	<p>15. (1) The Committee may consolidate and resolve, at the same time, two or more complaints in any case where –</p> <p>(a) one complainant lodges two or more complaints against one respondent;</p>

	<p>(b) one complainant lodges two or more similar complaints against two or more respondents; or</p> <p>(c) Two or more complainants separately lodge similar complaints against one or more respondents.</p> <p>(2) Where two or more complainants lodge separate complaints raising similar issues against one or more respondents, the Committee may –</p> <p>(a) consolidate the complaints; or</p> <p>(b) Treat one complaint as the test complaint, and stay further action on the other complaints with which it is consolidated until the test complaint is resolved, whereupon its outcome shall be binding on the remaining complaints.</p> <p>(3) The Committee shall not consolidate any claims under these Regulations if it is shown to the satisfaction of the Committee that such consolidation is likely to prejudice the rights or interests of any of the parties thereto.</p>
Confidentiality	<p>16. (1) The complainant may, when lodging a complaint, or at any stage thereafter, request that the particulars contained in the complaint be kept confidential and not be disclosed to any unauthorized person.</p> <p>(2). Notwithstanding sub-regulation (1), where the complainant is a child, the personal information of the complainant shall be kept confidential and not be disclosed to any unauthorized person.</p>

(3) A request for confidentiality pursuant to sub-regulation (1) shall be in writing supported by a statement explaining why the information should be kept confidential.

(4) Where a complainant makes a request pursuant to sub-regulation (1), and the Committee is of the considered view that it is necessary to disclose the particulars in issue in order to facilitate resolution of the complaint, the Committee shall, within seven days of receipt of the request –

(a) inform the complainant in writing of the particulars which the Committee considers necessary to disclose;

(b) explain to the complainant the reasons for the disclosure; and

(c) request the complainant to furnish written consent to disclose such particulars.

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

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

(a) appeal to the Commission; or



	(b) apply for review to the Court pursuant to Article 47 of the Constitution.
Withdrawal of Complaints	<p>17. (1) A complainant may, at any time before the resolution of a complaint, withdraw the complaint by notice in writing to the Commission and to all persons named as party to the complaint.</p> <p>(2) Where notice of withdrawal is given after commencement of hearing under Part V, the withdrawal shall take effect only with leave of the Committee on such terms as the Committee directs.</p> <p>(3) Upon withdrawal of a complaint under this regulation, the Commission shall make an entry in the Register of Complaints marking the complaint as withdrawn.</p>
	<b>PART III – INVESTIGATION OF COMPLAINTS</b>
Commencement of Investigation	<p>18. (1) Upon admission of a complaint, the Legal Department shall, within seven days of the admission –</p> <p>(a) serve a copy of the complaint upon the respondent, requiring the respondent to submit a written response to the complaint within fourteen days from the date of service; and</p> <p>(b) after expiry of the fourteen days prescribed in paragraph (a), appoint an authorised officer to investigate the complaint and submit a report thereon –</p> <p>(i) if the respondent fails to lodge a response to the complaint within the specified period or at all; or</p> <p>(ii) if the respondent denies the claimant’s claim in the complaint.</p>

	<p>(2) Upon appointment under sub-regulation (1), the officer shall, within seven days of the appointment –</p> <p>(a) invite the complainant for an interview to –</p> <p>(i) ascertain the nature of the complaint and clarify the matters falling to be investigated;</p> <p>(ii) explain to the complainant the role and powers of the Commission in relation to the issues raised in the complaint;</p> <p>(iii) explain the procedure for the investigation and determination of the complaint, indicating the time within which the Commission is expected to deal with the complaint; and</p> <p>(iv) if necessary, request further information from the complainant; and</p> <p>(b) Prepare and submit to the Legal Department a written report of the interview.</p> <p>(3) Upon receipt of the requisite information and evidential documents (if any) from the complainant, the authorised officer shall proceed to investigate the complaint.</p>
<p>Procedure for Investigation</p>	<p>19. (1) When undertaking investigations under this Part, the authorised officer may –</p>

	<p>(a) require the complainant to submit such other or further information or evidential documents as the officer considers necessary to facilitate the investigation; or</p> <p>(b) Interview the respondent or any other person, and require them to submit such information or documents, as the officer considers necessary for the determination of the issues raised in the complaint.</p> <p>(2) Without prejudice to the generality of sub-regulation (1), the authorised officer may, unless otherwise directed by the Commission, undertake investigations under this Part by means of –</p> <p>(a) telephone communication, audio-visual communication, electronic mail or other form of correspondence;</p> <p>(b) Research, inspection, fact-finding mission, survey or questionnaire;</p> <p>(c) face-to-face meetings with persons summoned to appear before the Committee in accordance with regulation 20; or</p> <p>(d) requisition and consideration of evidential documents in the power and control of a person, whether or not named as party to the complaint.</p>
<p>Summon of Witnesses</p>	<p>20. (1) To facilitate investigations under this Part, the Commission may, in exercise of its powers under section 27 (a) of the Act, and either of its own motion or on request by a party, summon a person to appear before an authorised officer of the Commission for the purpose of examination, or to produce any document, relating to the complaint.</p>

	<p>(2) A summons to appear before the authorised officer shall be in Form No. NGEC2.</p> <p>(3) Where a person is summoned to produce a document as contemplated in sub-regulation (1), the summons shall be in Form No. NGEC3.</p>
Investigation Report	<p>21. (1) The investigation report prepared pursuant to sub-regulation (2) shall contain, but shall not be limited to, the matters set out in the Second Schedule, and shall be accompanied by –</p> <p>(a) written statements of the persons interviewed during the investigation, and signed by the makers thereof; and</p> <p>(b) duly authenticated copies of the evidential documents (if any) submitted for consideration in support of, or in response to, the complaint.</p> <p>(2) The authorised officer shall, within thirty days of the commencement of the preliminary investigations, submit a report on their findings to the Legal Department for onward transmission to, and consideration by, the Committee.</p>
Procedure After Investigation	<p>22. (1) Upon receipt by the Legal Department of the report on preliminary investigation, the Legal Department may –</p> <p>(a) refer the complaint to the Committee for hearing and determination of the complaint;</p> <p>(b) refer the complaint for mediation; or</p>

	(c) having regard to the nature of the complaint, make recommendations to the Commission that the complaint be the subject of an inquiry pursuant to section 33(4) (b) of the Act.
Investigation by the Commission	23. The provisions of this Part apply, with necessary modifications, to cases in which the Commission, of its own motion pursuant to section 29(1) of the Act, conducts investigations on alleged violation of, or threat to the right to equal treatment or non-discrimination.
	<b>PART IV – RESOLUTION OF COMPLAINTS BY ALTERNATIVE DISPUTE RESOLUTION MECHANISMS</b>
Alternative Dispute Resolution	<p>24. (1) Upon receipt of the authorised officer’s preliminary investigation report, the Commission shall, in the spirit of Article 159(2) (c) of the Constitution, and pursuant to section 29(2) of the Act, take all necessary steps to secure resolution of the complaint by –</p> <p>(a) negotiation between the complainant and the respondent;</p> <p>(b) reconciliation;</p> <p>(c) failing negotiation or reconciliation, by mediation with the assistance of a certified mediator duly accredited to practice in Kenya as a mediator; or</p> <p>(d) a combination of two or more methods of alternative dispute resolution.</p> <p>(2) In determining whether a complaint should be submitted to negotiation or mediation, the Commission shall take into account –</p>

(a) the nature of the complaint;

(b) whether the complaint discloses a criminal offence, in which case the Commission shall not subject the complaint to negotiation or mediation;

(c) whether resolution of the complaint by means of alternative dispute resolution would offend public policy;

(d) whether the complainant or the respondent has or have previously refused to co-operate with the Commission in any proceedings involving both or either of them;

(e) whether any of the parties, without lawful justification or other reasonable cause, have previously failed to attend at any inquiry or proceedings of the Commission relating to a complaint to which they were a party;

(f) whether the complaint raises issues of public interest, in which case the complaint may be considered appropriate for public inquiry or other means of resolution; and

(g) any other matter which the Commission considers relevant for consideration.

(3) Where the Commission schedules a meeting for negotiation or reconciliation, the Commission shall give notice to all persons named as party to the complaint in Form No. NGEC4 set out in the First Schedule.

	<p>(4) Where the complaint proceeds to mediation, the mediator shall be appointed by –</p> <p>(a) agreement of the complainant and the respondent; or</p> <p>(b) failing agreement, by the chairperson for the time being of the Nairobi Centre for International Arbitration on request of –</p> <p>(i) any of the parties to the complaint, with written notice to the other or others; or</p> <p>(ii) the Commission, with notice to all persons named as party to the complaint.</p> <p>(5) On appointment of a mediator, the Commission shall schedule the complaint for mediation and give notice, in Form No. NGEC4 set out in the First Schedule, of the first and all subsequent sessions of the mediation, to all persons named as party to the complaint.</p>
<p>Who May Attend at Negotiation or Mediation</p>	<p>25. (1) Where a negotiation session is scheduled and duly notified, a negotiated resolution is considered as having been properly reached only if –</p> <p>(a) the claimant and the respondent, and all other persons (if any) named as party to the complaint are present and attend at the session in person; or</p> <p>(b) if any of the persons mentioned in paragraph (a) are represented in the negotiations by a legal practitioner, or by a duly authorised</p>

	<p>agent appointed in writing for that purpose, with authority to legally bind the appointing party.</p> <p>(2) Negotiations between the parties under this Part shall be conducted with the assistance of a panel of at least three persons comprised of –</p> <p>(a) at least one member of the Commission;</p> <p>(b) a duly licensed legal practitioner in the employment of the Commission; and</p> <p>(c) one person who is not an employee of the Commission, but who is an expert on the matters raised in the complaint.</p> <p>(3) Nothing in this regulation prevents a party to a complaint from attending at a mediation session accompanied by a legal representative or other person from whom they may obtain advice from time to time, but who shall not play any active role in the mediation process.</p>
<p>Consequences of Non-attendance</p>	<p>26. (1) If any party fails to attend at a negotiation or mediation session, or fails to come to an agreement at such sessions, the Commission may proceed to have the complaint resolved in accordance with Part V.</p> <p>(2) Without prejudice to the generality of sub-regulation (1), the Commission may dismiss a complaint if the complainant –</p> <p>(a) willfully refuses or neglects to participate in negotiations or mediation notwithstanding voluntary submission thereto; or</p>



	<p>(b) fails to attend three consecutive negotiation or mediation sessions duly convened and notified in accordance with regulation 24(5).</p> <p>(3) Where the Commission dismisses a complaint under this regulation, the Commission shall, within seven days of its decision, notify the parties in writing in that regard.</p>
Procedure Where Resolution is Reached	<p>27. (1) Where the complaint is resolved through negotiation or mediation, the Commission shall –</p> <p>(a) record the terms on which the complaint is resolved and require the parties to sign the resolution on the agreed terms; and</p> <p>(b) enter an abstract report of the agreement in the Register of Complaints in accordance with regulation 10(2) (f).</p> <p>(2) If the complaint is not resolved by means of negotiation or mediation, it shall proceed to hearing for resolution by the Committee.</p>
	<b>PART V – HEARING AND RESOLUTION OF COMPLAINT BY THE COMMITTEE</b>
Composition of the Committee	<p>28. (1) Upon submission of the preliminary investigation report prepared under Part III, and failing resolution of a complaint by alternative dispute resolution mechanisms, the complaint shall be submitted to hearing and resolution by a standing Committee of the Commission constituted pursuant to section 18 of the Act.</p> <p>(2) The Committee shall be comprised of at least three, but not more than five, members appointed by the Commission from time to time</p>

	<p>to hear and resolve complaints lodged with the Commission and consisting of –</p> <p>(a) the chairperson of the Commission, or a member of the Commission designated by the chairperson, who shall be Chair to the Committee;</p> <p>(b) two members of the Commission who shall be of opposite gender;</p> <p>(c) at least one person, who has knowledge and skills in matters relating to the complaint, co-opted by the Commission into the membership of the Committee in accordance with section 18(2) (a) of the Act; and</p> <p>(d) the Chief Executive Officer of the Commission, or a member of staff of the secretariat designated by the Chief Executive Officer, who shall provide administrative support to the Committee.</p> <p>(3) A member of the Commission, or an officer of the Commission engaged in preliminary investigations under Part III or in negotiation or mediation of the complaint in accordance with Part IV, shall not be appointed to membership of the Committee.</p>
<p>Commencement and Notice of Hearing</p>	<p>29. (1) The Committee shall, within seven days of receipt of the preliminary investigation report, appoint the date, time and place for the hearing of the complaint.</p> <p>(2) Subject to sub-regulation (1), the Committee shall give at least twenty one days' written notice of hearing of the complaint, in Form No. NGEC5 set out in the First Schedule, to –</p>

	<p>(a) all persons named as party to the complaint;</p> <p>(b) the legal counsel and other persons (if any) representing the parties in the proceeding;</p> <p>(c) a person required to attend at the hearing to give oral evidence or produce a document in support or defence of the complaint; and</p> <p>(d) a person required to attend at the hearing to produce a report, or to give expert evidence or opinion relating to the complaint.</p>
<p>Persons Who May Attend at Hearing</p>	<p>30. (1) Subject to sub-regulation (2), hearings of the Committee under this Part shall be open to the public.</p> <p>(2) Without prejudice to the generality of sub-regulation (1), the Committee may, either of its own motion or on request by a party to the complaint, decide to conduct the hearing of a complaint in private where the Committee is of the considered view that the public hearing of the complaint, or disclosure of any evidential material to the public, would –</p> <p>(a) prejudice the complainant’s right to privacy or human dignity;</p> <p>(b) prejudice the successful resolution of the complaint;</p> <p>(c) undermine the security of a party to the complaint, or of a person attending at the hearing; or</p>

	<p>(d) compromise the discharge of the functions of the Committee or mandate of the Commission.</p> <p>(3) Despite sub-regulations (1) and (2), where the complaint involves a child, the hearing of the complaint shall be conducted in private, and no person other than the parties to the complaint or legal counsel, or intermediary duly appointed for that purpose, shall attend at the hearing unless –</p> <p>(a) their attendance at the hearing is necessary for the effective resolution of the complaint;</p> <p>(b) for good reason or in the interest of justice, the Committee has allowed them to attend at the hearing; or</p> <p>(c) their attendance at the hearing is a source of comfort to, or is otherwise in the best interest of, the child.</p> <p>(4) Before determining that the hearing of a complaint shall be in private, the Committee shall hear and consider representations in that regard from the persons named as party to the complaint.</p> <p>(5) Where the complainant or other person required to attend at the hearing of a complaint is a person with disability, the Committee shall provide reasonable accommodation and give such support as may be required by that person to fully participate in the hearing.</p> <p>(6) Despite anything contained in this regulation to the contrary, the Committee may direct that a person or class of persons, or all persons the presence of whom is, for good reason, not desirable, shall not be present at the hearing of a complaint or part thereof.</p>

<p>Procedure at Hearing</p>	<p>31. (1) In discharge of its functions under this Part, the Committee shall, among other procedural matters –</p> <p>(a) consider the findings of the preliminary investigation together with all written statements, reports and evidential documents submitted to the Committee;</p> <p>(b) interview the parties, witnesses, and other persons appearing before the Committee, with a view to establishing the facts of the complaint;</p> <p>(c) determine what witnesses to summon and interview, and the order in which they are to be heard;</p> <p>(d) play an active role in questioning and hearing the parties directly or through their legal counsel or other representatives, including intermediaries;</p> <p>(e) determine what information, oral or documentary evidence may be disclosed and admitted at the hearing;</p> <p>(f) hear and consider submissions on points of law or fact from legal counsel or other persons (if any) representing the parties or either of them;</p> <p>(g) give such directions relating to the procedure at hearing as the Committee considers necessary for the effective discharge of its functions under this Part; and</p> <p>(h) exercise its discretionary powers to resolve each complaint independently of previous decisions in similar complaints.</p>
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(2) Without prejudice to the generality of sub-regulation (1), the Committee may give such directions relating to the disclosure or publication of any information or evidence presented to the Committee as it thinks fit, including directions that –

(a) the presentation by a person of such information or evidence to the Committee shall be in private; or

(b) where a complaint involves a child, that –

(i) the identity of the child shall not be disclosed; or

(ii) any evidence to be adduced by a child be presented either by the child or by an intermediary, or by both.

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

(a) the purpose of the hearing; and

(b) the procedure, including the matters specified in sub-regulation (1).

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

(5) A party to a complaint has the right to –

	<p>(a) legal representation by a legal practitioner or by a person duly appointed by the party for that purpose; and</p> <p>(b) personally or by a representative, inspect and obtain copies of documents submitted to the Committee in the proceedings.</p>
Right to be Heard	<p>32. In conduct of the proceedings at the hearing of a complaint, the Committee shall give each party a reasonable opportunity to present their case, and to respond to the evidence presented by the other party by any of the following means, namely –</p> <p>(a) oral evidence;</p> <p>(b) witnesses or witness statements made on oath and submitted in support of their case or defence;</p> <p>(c) submission of evidential documents;</p> <p>(d) written submissions on points of law or fact; or</p> <p>(e) in the case of a child, an oral statement made either personally or through an intermediary, or by both.</p>
Conclusion of Hearing	<p>33. (1) At the conclusion of the hearing, each party to the complaint has the right to –</p> <p>(a) make closing statements either in person or by a representative appointed by the party in that regard; and</p>

	<p>(b) in the case of a child, to make a closing statement personally or through an intermediary, or by both.</p> <p>(2) Upon receipt of closing statements, the Committee shall –</p> <p>(a) consider all relevant oral and documentary evidence put to the Committee in support of, and in response to, the complaint;</p> <p>(b) make a finding on all issues falling to be resolved in the proceeding; and</p> <p>(c) determine the appropriate remedial action to be taken in resolution of the complaint, including suitable measures to redress the complaint.</p> <p>(3) The remedial measures or redress contemplated in sub-regulation (2) (b) include, but are not limited to –</p> <p>(a) any of the reliefs specified in section 41 of the Act;</p> <p>(b) the making of recommendations on –</p> <p>(i) the appropriate steps to be taken by the respondent to redress the violations complained of , and to ensure the promotion and protection of the complainant’s right to equality or non-discrimination;</p>
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(ii) the specific steps to be taken to stop unfair discrimination or similar violation of the rights of the complainant or other person or class of persons;

(iii) the specific steps to be taken to avail the opportunities or privileges unfairly withheld from the complainant, or other person or class of persons;

(iv) the implementation by the respondent of special measures to address inequality or unfair discrimination of the complainant or other persons or class of persons;

(v) the appropriate measures of intervention to ensure reasonable accommodation, by the respondent, of the complainant or other person or class of persons;

(vi) the audit of such policies or practices of the respondent as may be specified by the Committee;

(vii) the necessary steps to be taken by the respondent to ensure compliance with any of these Regulations, and the need to make periodic progress report to the Commission regarding compliance with such recommendations; or

(viii) the suitability of an unconditional apology towards amicable settlement of the complaint.

(4) Subject to sub-regulation (2), the Committee shall –

(a) prepare a report of its findings and recommendations, including the proposed measures of intervention and relief due the complainant; and

	<p>(b) enter into the Register of Complaints an abstract of its findings and recommendations in accordance with regulation 10(2) (f).</p> <p>(5) A finding or decision of the Committee shall be by consensus or, where the Committee is unable to reach a consensus, by a simple majority.</p>
Notification of Outcome	<p>34. The Commission shall, within seven days of the Committee's report made under regulation 33 (4) (a) –</p> <p>(a) give written notice of the Committees findings and recommendations to the persons named as party to the complaint; or</p> <p>(b) notify the parties, in Form No. NGEC5 set out in the First Schedule, of the date, time and place fixed for delivery of the findings and recommendations of the Committee.</p>
Application of Part to Inquiries of the Commission	<p>35. This Part applies, with necessary modifications, to investigations or public inquiry conducted by the Commission, either of its own motion or on request by a person or class of persons not being complainants within the meaning of these Regulations, of any matter relating to the right to equality and non-discrimination pursuant to section 29(1) of the Act</p>
	<b>PART VI – MISCELLANEOUS PROVISIONS</b>
Language of the Commission	<p>36. (1) Proceedings before the Commission under Parts IV and V shall be conducted in English, Kiswahili or Kenyan sign language.</p> <p>(2) The Commission shall, at its own cost, provide an interpreter upon the request of either party to, or any other person appearing to give evidence in, the proceedings of the Commission.</p>

Enlargement of Time	<p>37. (1) Where a limited time has been fixed for the doing of any act or taking any proceedings under these Regulations, or by summary notice or by order of the Committee, the Committee has power to enlarge such time on such terms (if any) as the Committee may think just.</p> <p>(2) The enlargement of time under sub-regulation (1) may be ordered notwithstanding that the application therefor is not made until after the expiration of the time fixed in these Regulations or by order of the Committee.</p>
Evidence	<p>38. (1) All evidence given before the Commission at the hearing shall be given on oath or affirmation.</p> <p>(2) All documents tendered in, to the Commission, shall be original and, where an original cannot be found or is obliterated, a certified copy of the original shall be tendered in.</p> <p>(3) Despite sub-regulations (1) and (2), strict rules of evidence do not apply to the proceedings of the Commission.</p>
Appeal and Review	<p>39. (1) The Commission has power to review, either of its own motion or on written request by a person aggrieved by, its own decision, including a decision of the Committee, on any of the following grounds –</p> <p>(a) a mistake or error apparent on the face of the record;</p> <p>(b) discovery of new and important matter or evidence; or</p>

	<p>(c) any other sufficient reason.</p> <p>(2) An appeal shall lie as of right from the decision of the Commission made under these Regulations to the Court on matters of fact or points of law, or both.</p> <p>(3) An appeal on the decision of the Commission shall be filed within twenty eight days of notification of the findings, failing which the findings shall stand binding.</p> <p>(4) Nothing in this regulation precludes a person aggrieved by an administrative decision of the Commission made under these Regulations from applying for review by the Court pursuant to Article 47 of the Constitution, and in accordance with the provisions of the Fair Administrative Action Act.</p> <p>(4) Subject to determination by the Court, an appeal from the decision of the Commission shall not operate as stay.</p>

*Regulation 8(1)*

Form No NGEC 1



The National Gender and Equality Commission

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

Between

Complainant ..... AB

and

Respondent ..... CD

COMPLAINT FORM

**1. Personal Details of the Person Lodging Complaint**

Name: Surname ..... Other names .....

Gender:  Male  Female  Intersex (tick where appropriate)

Physical address: .....

Postal address: ..... Postal code .....

Telephone Contact: ..... Email address .....

National Identification Card / Passport No.  
.....  
[SEP]

Profession/Occupation: .....Nationality: .....

County: ..... Location .....

## 2. Other Particulars

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

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

Reasons why the complaint is lodged in a representative capacity

The victim is a  Child  Person of Unsound Mind  Class of Persons  Other  
(specify) .....

Age bracket (tick one):  11 – 17  18—64  65 and above

If lodged in a representative capacity, state -

Name of Complainant. ....

Gender  Male  Female  Intersex (tick where appropriate)

Physical address: .....

Postal address: ..... Postal code.....

Telephone Contact : ..... Email address .....

National Identification Card / Passport No.  
.....  
[SEP]

Profession/Occupation: .....Nationality:  
.....  
[SEP]

County: ..... Location .....

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

Parent  Guardian  Next of Kin  Intermediary or  Legal Counsel

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

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

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

Name of the Respondent:.....

Physical address .....

Postal address ..... Postal code .....

Telephone Contact .....<sup>[1]</sup><sub>SEP</sub> Email address .....

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

.....

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

.....

**5. Evidential Documents in Support of the Complaint**

This form shall be accompanied by –

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

**6. Declaration**

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

Dated this

Name ..... Signature .....

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FOR OFFICIAL USE ONLY

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

**7. Remarks on Assessment of the Complaint**

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

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

If no, explain. ....

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

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

**8. Summary of Recommendations**

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

**Conclusion**

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

Dated this

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

*Regulation 20(2)*

Form No NGEC 2



The National Gender and Equality Commission

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

Between

Complaint ..... AB

and

Respondent ..... CD

SUMMONS FOR PERSONAL ATTENDANCE

To: .....

Whereas this Commission is investigating the above complaint

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



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

Issued this ..... day of ..... 20 .....

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

*Regulation 20(3)*

Form No NGEC 3



The National Gender and Equality Commission

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

Between

Complainant ..... AB

and

Respondent ..... CD

SUMMONS TO PRODUCE DOCUMENTS

To: .....

Whereas this Commission is investigating the above complaint;

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

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

Issued this ..... day of ..... 20 .....

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

*Regulation 24(3) and (5)*

Form No NGEC 4



The National Gender and Equality Commission

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

Between

Complaint ..... AB

and

Respondent ..... CD

NOTICE OF NEGOTIATION / MEDIATION

To: .....

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

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

Issued this ..... day of ..... 20 .....

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

*Regulation 29(2) and 34(b)*

Form No NGEC 5



The National Gender and Equality Commission

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

Between

Complaint ..... AB

and

Respondent ..... CD

HEARING /PRONOUNCEMNET OF FINDINGS

To: ..... Complaint /Respondent

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

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

Issued this ..... day of ..... 20 .....

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

*Regulation 21 (1)*

## **SECOND SCHEDULE**

### Investigation Report

- (a) the name and contact information of the complainant or complainants, as the case may be;
  
- (b) the name and contact information of the respondent or respondents, as the case may be;
  
- (c) the nature of the complaint;
  
- (d) the date on which the complaint was lodged;
  
- (e) the date on which the complaint was admitted;

(f) the date on which the authorised officer was appointed to undertake preliminary investigations;

(g) the period within which the preliminary investigations were carried out;

(h ) the names and contact information of the persons interviewed;

(i) the authorised officer's findings on the respective issues raised in the complaint;

(j) the date on which the report is made; and

(k) the name of the officer by whom the report is made.