



**Communications
Commission
of Kenya**

PROCEDURE FOR HANDLING COMPLAINTS RELATED TO BROADCAST CONTENT

1. Introduction

The Kenya Communications (Amendment) Act No.1 of 2009 (“the Act”) and the Kenya Communications (Broadcasting) Regulations, 2009 (‘the Regulations’) vests upon the Communications Commission of Kenya (“the Commission”) the function of ensuring the provision by broadcasters of appropriate internal mechanisms for disposing of complaints in relation to broadcasting services. Section 46 L of the Act and Part VI of the Regulations requires broadcasters to develop a complaints handling procedure, subject to approval by the Commission, by which persons aggrieved by the broadcasts can file a complaint. The section also provides for appeal to the Commission and the Appeals Tribunal should the complainant be dissatisfied with the broadcaster’s or the Commission's decisions.

The Section 46H of the Act and Part V of the Regulations also confer powers to the Commission to prescribe a programming code for all broadcasters. The code is a public document that consumers are encouraged to be familiar with.

Section 46S of the Act (Miscellaneous Amendment Bill 2009) establishes a Broadcasting Content Advisory Council that is responsible for making decisions on administration and development of broadcasting content aspects, compliance with broadcasting codes /ethics and mechanisms on broadcasting complaints handling.

This complaints handling procedure has been prepared by the Commission in exercise of its powers conferred by Sections 46A and 46L of the Act as well as Part VI of the Regulations. The procedure sets out the steps to be taken by broadcasters, consumers of broadcast services and the Commission with respect to making, receiving, handling and resolving of broadcast related complaints. In

this context, broadcaster has the same meaning as defined in the Kenya Communications (Amendment) Act, No.1 of 2009.

2. Broadcaster's complaint handling procedure

- 2.1. All broadcasters are required by the Section 46L of the Act and Part VI of the Regulations to develop their own procedures for handling complaints from aggrieved consumers of their broadcasting services. Broadcasters are under no obligation to resolve a complaint if the complaint is lodged after 30 days from the date the subject matter of complaint was broadcast. [Note: This time limit is not applicable to complaints escalated to CCK-complaints escalated after the limit will still be admissible]
- 2.2 The broadcaster's complaint handling procedure shall require prior approval of the Commission before being implemented and must be lodged with the Commission within
 - 2.2.1 Ninety (90) days after date of issuance of the licence for new broadcasters.
 - 2.2.2 Forty five (45) days after date of issuance of the licence for broadcasters who were already operational prior to commencement of the Regulations.
- 2.3 The broadcaster's complaints procedure, shall among other things, cover the following areas:
 - (i) Identity of the official registered name of the broadcasting entity as well as the broadcast station identity specific to different broadcast services offered;
 - (ii) the physical, postal , and email addresses where complaints can be sent;
 - (iii) the contacts and names of persons authorized to receive and handle customer complaints;

- (iv) the manner in which the complaint may be lodged including the applicable languages;
- (v) identify details which need to be submitted when lodging a complaint including any forms that may require to be completed;
- (vi) the need for the complainant to retain a copy of every correspondence exchanged between complainant and broadcaster;
- (vii) the manner in which the complaint will be investigated and the process of investigation
- (viii) the timeframe of responding to the complainant, and resolving the complaint;
- (ix) the option of the complainant to escalate the complaint to the Commission if not satisfied with the response by the broadcaster;
- (x) how physically challenged and illiterate consumers who may not be capable of providing complaints in writing shall be addressed;
- (xi) methods of recording and tracking of complaints, together with the associated responses;
- (xii) duration of storage of records of complaints received and actions taken;
- (xiii) retention and production of recordings of any programme which is the subject matter of a complaint;
- (xiv) categories of complaints which the broadcaster is under no obligation to respond to (complaints considered frivolous, vexatious or an abuse of the complaint process or from complainants who choose to remain anonymous);

2.4 The broadcaster must ensure that:-

2.4.1 its complaints handling procedure is documented and submitted to the Commission for approval before implementation.

2.4.2 it notifies the Commission with the details of persons designated to handle complaints from the public.

- 2.5 The Commission shall present the broadcaster's complaints handling procedure to the Broadcast Content Advisory Council for deliberation and approval. If the Council is of the opinion that the broadcaster's complaint handling procedure does not meet the provided guidelines, the same shall be rejected and the Commission shall notify the concerned broadcaster accordingly to make the necessary changes as proposed by the Council to be compliant before re-application for approval within 30 days from date of notification. In the interim period, the broadcaster shall be required to handle any complaints received in accordance with the procedure determined by the Commission.
- 2.6 Upon approval of the complaints handling procedure, the broadcaster shall:-
- 2.6.1 inform their listeners/ viewers of the existence of the complaints procedure and how an aggrieved person can lodge a complaint regarding the broadcast station at least once a week.
- 2.6.2 inform consumers that the first opportunity to provide resolution for the complaint should be given to the broadcaster and if dissatisfied can escalate the complaint to the Commission.
- 2.7 In the event that the complainant is not satisfied with the resolution of the complaint provided by the broadcaster, including but not limited to instances where the broadcaster fails to respond to the complaint within a maximum period of 45 days from the date of lodging the complaint, then the complainant shall refer the complaint to the Commission.
- 2.8 The broadcaster shall not dispose off broadcast transcripts/recordings related to a complaint so long as it has not been summarily resolved either by the broadcaster, the Commission the Tribunal or the High Court. In this

case, the clause in the licence stipulating the minimum duration to retain a copy of recordings of broadcasts shall not apply.

- 2.9 At the end of every financial year (30th June), the broadcaster shall submit to the Commission a written report of all complaints received during the period and the manner in which they were addressed.

3. Complaints Handling by the Commission

3.1 Any complaint related to the conduct of a broadcaster shall first be lodged with the broadcaster and shall only be escalated to the Commission if the complainant is not satisfied with the broadcaster's action.

3.2 Any complaint lodged directly with the Commission without giving the offending broadcaster the first opportunity to resolve the complaint shall be rejected by the Commission except in situations where the offending broadcaster fails to respond to the complaint within 45 days. In addition, complaints lodged with the offending broadcaster after 30 days from the date the material of complaint was broadcast shall not be admissible.

3.3 Complainants who are familiar with the Regulations and the prescribed Code of Programming are encouraged to quote sections of the Regulations or the code which in their view the broadcaster has breached.

3.4 The complaints handling procedure by the Commission is as follows:

3.4.1 All complaints shall be made in writing (letter, e-mail or fax) and shall be made either:-

a) by completing the prescribed Form CCK/F/BCAST/COMP-01 annexed hereto ("the Notice of Complaint") or

b) Where a complaint is not made on Form CCK/F/BCAST/COMP-01, all the required details as prescribed in the Form must be included in the written complaint.

3.5 The Notice of Complaint shall include the following details:

- 3.5.1 the names and addresses of the party lodging the complaint;
- 3,5.2 the subject of the complaint and its brief overview;
- 3.5.3 The name of the broadcaster, location where the said service was received, the programme title, date and time aired;
- 3.5.4 The sections of the Regulations / code breached (if familiar with Regulations /programme code)
- 3.5.5 a copy of any relevant supporting documents/evidence, including copies of correspondence relating to the complaint with the offending broadcaster;
- 3.5.6 The basis of the complaint, including reason of dissatisfaction with the resolution provided by the broadcaster, where applicable
- 3.5.7 nature of damage or injury suffered or violation complained; or
- 3.5.8 the relief or remedy sought.

3.6 In cases where the complainant is disadvantaged due to the lack of language and/or writing skills or has some form of disability which may render him/her unable to clearly present the complaint, the complainant may seek assistance from authorised officers of the Commission

3.7. All complaints shall be addressed to :

The Director General
Communications Commission of Kenya
Waiyaki Way
P.O.Box 14448-00800
Nairobi.
Email: broadcast.complaint@cck.go.ke
Fax:+254-20-4451866
Tel: +254-20-4242000

- 3.5 The complaints handling process will only commence once the Commission receives a duly completed Form CCK/F/BCAST/COMP-01 or a written complaint containing all the required details from the complainant.
- 3.6 The Commission shall acknowledge receipt of the complaint within 10 days of receipt of the complaint. The complaint shall however be returned back to the complainant if it is established that the complaint was not first referred to the concerned broadcaster. The Commission shall decline to resolve any complaint which in its view
- (a) does not raise any issue under the Act or Regulations or code
 - (b) does not conform to the provisions of the Act, Regulations or directions given by the Commission;
 - (c) is trivial, frivolous or vexatious; or
 - (d) is not presented in accordance with the Regulations or directions of the Commission
- 3.7 The Commission will study the substance of the complaint and when found necessary, notify the offending broadcaster of the same in writing. In this regard, the Commission may request the broadcaster to:-
- 3.7.1 Review the complaint with the view of summarily resolving the complaint to the satisfaction of the complainant;
 - 3.7.2 submit an extract of the records related to the complaint prepared in the prescribed form and in accordance with the programming code;
 - 3.7.3 submit a copy of recordings (audio/video) covering the period specified in the complaint for further review;
 - 3.7.4 submit copies of correspondences, reports of investigations, any other material that the Commission deems relevant to assist in resolving the matter
- 3.8. The broadcaster shall reply to the Commission within fifteen (15) days from the date of Commission's request and provide the required

information/items. A reminder letter shall be issued if the broadcaster fails to meet the deadline and the complainant shall be adequately informed of the progress of the investigations as necessary.

3.9 The broadcaster may request for an extension of time to handle the complaint in which case the complainant shall be duly informed. Such a request shall be duly supported by facts and the Commission shall decide as to whether to grant an extension or not.

3.10 The Commission shall present all the material evidence provided by the complainant and the broadcaster with respect to the complaint to the Broadcasting Content Advisory Council for deliberation and decision. The Commission shall also present to the BCAC other broadcast content related evidence it may have gathered in the course of its operations that it considers may become potential complaint material. At the request of the Council, the aggrieved party and/or the broadcaster may be invited to respond to issues requiring clarifications.

3.11 Upon studying the substance of the complaint and the supporting evidence, if the Council is of the opinion that the offending broadcaster has violated The Code/The Regulations/ or The Act, the Council shall make recommendations to the Commission regarding the appropriate action to be taken against the offender in accordance with the provisions of the Act.

3.12 In the event that the broadcaster does not resolve the complaint, or fails to reply to the Commission's notice despite the extension of time, the Commission will present the matter to the Council who will act to resolve the complaint by deciding on the matter, in which case the Council's decision shall be binding on both parties. The Commission shall thereafter communicate the decision of the Council to the broadcaster.

3.13 In the circumstances where the resolution offered by the broadcaster is not satisfactory to the complainant, the Council:-

3.13.1 shall decide whether the rejection by the complainant of the resolution offered is reasonable;

3.13.2 shall decide that the Complainant accepts the said resolution if it finds that the complainants rejection is deemed unreasonable;

3.13.3 shall act to resolve the complaint by deciding on the matter if the rejection of the resolution offered by the offending broadcaster is determined to be reasonable

In this case the decision by the Commission shall be binding to all concerned parties. The Commission shall thereafter communicate the decision of the Council to the broadcaster and the Complainant.

3.14 Any party aggrieved by the Commission's decision on the matter, may appeal to the Appeals Tribunal within 30 days from the date of the decision.

Annex 1

Form CCK/F/BCAST/COMP-01 - Notice of Complaint

Particulars of Complainant/	
Name/:	
ID No./Passport No./Company Registration No:	Telephone No: Fax: Email :
Address:	
Particulars of offending Broadcaster	
Name of company	
Business Address:	
Have you referred the complaint to any of the following parties (please tick): <input type="radio"/> Broadcaster (indicate name of Broadcast service) <input type="radio"/> Others/specify	
Complaint Details/	
Sections of Regulations/Code you believe have been breached:/Grounds of complaint	
Supporting Documents:	
Remedy sought:	
Complainant Declaration/	
I/We hereby agree that the information provided is/are true.	
Date
..... Signature/ (insert company rubber stamp or seal)	
For Office use only	

Complaint No.....	
Date Case Received.....	
History of Resolution (tick)	
<input type="radio"/> Dissatisfied with broadcaster's remedy..... <input type="radio"/> No response from broadcaster..... <input type="radio"/> Has not first contacted broadcaster.....	
Recommended way forward:	
<input type="radio"/> To be attended to by CCK..... <input type="radio"/> Not complete. Request complainant to submit Missing Information <input type="radio"/> Rejected (To be first referred to the broadcaster)..... <input type="radio"/> Others	
Date:	Name & Signature of Authorised officer

Guide to filling-in Form A – Instructions to Complainant

1. Particulars of Complainant

- (a) The complainant shall fill in his/her name in full, details of identity documents (ID/Passport Number) telephone number and mailing address
- (b) If the complainant is a corporate body, the claimant shall provide the registered company name, company registration number, registered address and business address.

2. Particulars of Broadcasting Station

- (a) The complainant shall fill in the particulars of the broadcasting station namely: Name of the broadcasting station, name of service, broadcasting area, and address in the column provided.

3. Complaint Details

- (a) The complainant should provide a general explanation as to the origin of the complaint including a brief statement of facts in chronological order

and the points at issue. Where relevant, if the complainant is a corporate body or a business, please provide the details of the business address or branch which raised the complaint.

4. Supporting documents

- (a) Please enclose all relevant documents including but not limited to any letters, contract or agreement as proof if any which relates to the complaint.
- (b) The supporting documents shall include any correspondence or document as proof of prior attempts to resolve the matter with broadcaster
- (c) Where a complaint is with respect to broadcast content, the complainant must indicate the date/time/programme name / and location. Where possible clauses of the Regulations/Code, or recordings of the broadcasts may be included

5. Remedy

- (a) The complainant shall fill in the remedy sought from the broadcaster.
- (b) The complainant is reminded that the remedy sought should be reasonable and realistic

6. General

- (a) If the space provided is insufficient, please continue on a separate sheet of paper and write "see overleaf". Any separate sheet of paper used should be attached to this Form and duly signed.
- (b) Having filled in the form, the complainant shall sign this Form personally. In the case of corporate body, this Form shall be signed by a duly authorized officer of the Company. The company rubber stamp should also be affixed to the signature accordingly.
- (c) The Form shall be delivered to the Commission's office either by hand/post/fax. Scanned copies of dully signed forms may be sent by email