



**PROCEDURE FOR HANDLING COMPLAINTS
RELATED TO BROADCAST CONTENT**

CA/PROC/MMS/COMP-01

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COMMUNICATIONS AUTHORITY OF KENYA**

SECTION 1: INTRODUCTION

1. This complaints handling procedure has been prepared by the Communications Authority of Kenya ('the Authority') 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 Authority with respect to making, receiving, handling and resolving of broadcast related complaints.

1.1 Definitions

Unless otherwise specified, all words used in this document will have the same meaning attributed to them in the Act and the Regulations.

“Act” means the Kenya Information and Communications Act, 1998, as amended;

“Code” means the Programming Code prescribed and enforced by the Authority in terms of clause 46H of the Act;

“Complaint” means any complaint made by the complainant in respect of the broadcast content alleging non-compliance by a broadcaster with the terms of the Code, Act or Regulations;

“Complainant” means any person who has lodged a complaint with a broadcaster or the Authority;

“Authority” means the Communications Authority of Kenya.

“Customer” means any person to whom a broadcasting service is provided;

“Broadcaster” means a person who provides a broadcasting service under the Act.

“Tribunal” means the Communications and Multimedia Appeals Tribunal.

1.2 Objectives of the complaints procedure is to:

- 1.2.1 Recognise and protect the consumer's rights to complain within the constraints of the Act, regulations and the Programming Code.
- 1.2.2 Publicise the existence of the Authority's complaints procedures on broadcast content.

1.2.3 Provide uniform and effective complaints handling procedures on broadcast content in accordance with the requirements of the Act.

1.2.4 Provide a fair and timely mechanism for resolving complaints on broadcast content.

1.3 Regulatory Framework

The Kenya Information and Communications Act, 1998, as amended vests the Authority with the responsibility of administering the broadcasting content aspects and provisions of the Act, including mechanisms on handling broadcasting complaints. The Act and the Kenya Information and Communications (Broadcasting) Regulations, 2009 ('the Regulations') also vests upon the Authority the responsibility of ensuring:

1.3.1 The provision by broadcasters of appropriate internal mechanisms for disposing of complaints in relation to broadcasting services.

1.3.2 Section 46 L of the Act and Part VI of the Regulations requires broadcasters to develop a complaints handling procedure, for handling complaints from persons who may be aggrieved by its broadcasts or who allege that a broadcaster is not complying with the Act.

1.3.3 Broadcasters are required to submit their Complaints handling procedures to the Authority for approval.

1.3.4 Communications and Multimedia Appeals Tribunal

1.3.4.1 The Act establishes the Communications and Multimedia Appeals Tribunal ('the Tribunal') as an appeals mechanism to complainants dissatisfied with the broadcasters or Authority's decisions.

1.3.4.2 The Act also provides for a complainant who has been aggrieved by an action or decision of the Authority and any successor thereof or a person licensed under this Act, to lodge their complaint within 60 days after the occurrence of the event or the making of the decision, against which he is dissatisfied, make a claim or appeal to the Tribunal.

1.3.5 The Programming Code

The Section 46H of the Act and Part V of the Regulations also confer powers to the Authority to prescribe a Programming Code setting standards for the time and manner of programmes to be broadcast by licensees under the Act. The Authority has

developed a Programming Code to set standards for the content of programmes as follows:

- 1.3.5.1 Free-to-air radio and television broadcasters are required by the Act and the terms of their licences to observe those standards in the provision of their services.
- 1.3.5.2 The Code is a public document that consumers are encouraged to be familiar with it. Complaints and investigations about issues raised concerning standards covered in the Code will be governed by these procedures.
- 1.3.5.3 The Authority may launch investigations on its own initiative as well as investigate complaints.
- 1.3.5.4 This Complaints Handling Procedure will also apply to contraventions by broadcasters of a Programming Code enforced by a body of broadcasters referred to in Section 46H of the Act. Complaints relating to a Programming Code adopted by a self-regulatory body should be adjudicated and resolved in accordance with that body's enforcement mechanisms as approved by the Authority.

1.4 Future Review of the Complaints handling Procedure

The Complaints handling Procedure is subject to interpretation in the light of changing circumstances, and in some matters it may be necessary, from time to time, to introduce new requirements.

1.5 Confidentiality

All complaint information will be handled sensitively and will follow relevant data protection requirements.

SECTION 2: BROADCASTER'S COMPLAINTS HANDLING PROCEDURE

2.1 Scope

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.

In the interests of timely resolution, the Authority considers that complainants should follow the complaints procedure subscribed to by the broadcaster before making a complaint to the Authority. The complainant shall first approach the broadcaster or the relevant self-regulatory body of broadcasters for resolution of the complaint and if not satisfied with the response, the complaint can then be submitted to the Authority.

2.2 Complaints handling timelines

The broadcaster's complaint handling procedure shall require prior approval of the Authority before being implemented and must be lodged with the Authority 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 Details of broadcasters complaints handling procedures

The broadcaster's complaints handling procedure, shall among other things, cover the following areas:

- 2.3.1 Identity of the official registered name of the broadcasting entity as well as the broadcast station identity specific to different broadcast services offered;
- 2.3.2 the contacts and names of persons authorized to receive and handle customer complaints;
- 2.3.3 the manner in which the complaint may be lodged including the applicable languages;
- 2.3.4 identify details which need to be submitted when lodging a complaint including any forms that may require to be completed;
- 2.3.5 the need for the complainant to retain a copy of every correspondence exchanged between complainant and broadcaster;
- 2.3.6 the option for the complainant to forward a copy of the complaint to the Authority for information purposes if he/she so wishes;
- 2.3.7 the manner in which the complaint will be investigated and the process of investigation;
- 2.3.8 the timeframe of responding to the complainant, and resolving the complaint;
- 2.3.9 for broadcasters who are members of a Programming Code enforced by a body of broadcasters referred to in Section 46H of the Act, the option for the complainant to

escalate the complaint to the Authority and the requirement that the complainant should first follow the complaints resolution redress procedure of that body before escalating the complaint to the Authority if not satisfied with the response by the broadcasters;

- 2.3.10 the option of the complainant to escalate the complaint to the Authority if not satisfied with the response of the broadcaster;
- 2.3.11 the option of the complainant to escalate the complaint directly to the Tribunal without having to go to the Authority if not satisfied with the response of the broadcaster;
- 2.3.12 the manner in which complaints from Persons with Disabilities who may lack language and/or writing skills shall be addressed.
- 2.3.13 methods of recording and tracking of complaints, together with the associated responses;
- 2.3.14 duration of storage of records of complaints received and actions taken;
- 2.3.15 retention and production of recordings of any programme which is the subject matter of a complaint;
- 2.3.16 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);
- 2.3.17 the incorporation of a mechanism whereby listeners and/or viewers have opportunity to file their complaints in real time regarding a programme that is on air and a mechanism for immediate response or action on matters that need urgent action while the programme is on air; such media of filing complaint should include but not limited to Short Message Service, hotline, etc.

2.4 Approval of Broadcasters' Complaints Procedure

The broadcaster must ensure that:-

- 2.4.1 Its complaints handling procedure is documented and submitted to the Authority for approval before implementation.
- 2.4.2 It notifies the Authority with the details of persons designated to handle complaints from the public.
- 2.4.3 If the Authority is of the opinion that the broadcaster's complaint handling procedure does not meet the set guidelines, the same shall be rejected.

2.4.4 The Authority shall notify the concerned broadcaster of its decision and the broadcaster will be required to make the necessary changes as proposed by the Authority 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 Authority.

2.5 Publicizing of complaints procedure once approved

Upon approval of the complaints handling procedure, the broadcaster shall:-

2.5.1 Inform their listeners and 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.

2.5.2 Inform consumers that the first opportunity to provide resolution for the complaint should be given to the broadcaster and if dissatisfied they can escalate the complaint to the Authority or Tribunal.

2.5.3 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, the complainant shall refer the complaint to the Authority or Tribunal.

2.6 Disposing of broadcast transcripts or recordings

The broadcaster shall not dispose of broadcast transcripts or recordings related to a complaint so long as it has not been resolved either by the broadcaster, the Authority, the Tribunal or the High Court of Kenya. In this case, the clause in the licence stipulating the minimum duration to retain a copy of recordings of broadcasts shall not apply.

2.7 Broadcaster's accountability to the Authority

At the end of every financial year, the broadcaster shall submit to the Authority a written report of all complaints received during the period and the manner in which they were addressed.

SECTION 3: THE AUTHORITY'S COMPLAINT HANDLING PROCEDURE

- 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 Authority if the complainant is not satisfied with the broadcaster's action or the action of the body of broadcasters referred to in Section 46H of the Act as the case shall warrant. However, the complainant is free to copy the complaint to the Authority for information purposes only.
- 3.2 Any complaint, save for information purpose, lodged directly with the Authority without giving the broadcaster the first opportunity to resolve the complaint shall be noted and referred back to the applicant to follow the correct procedure that is prescribed herein, except in situations where the broadcaster fails to respond to the complaint within 45 days from the date of complaint.
- 3.3 Complainants should submit their complaint to the broadcaster in writing within thirty (30) days of the relevant programme or of the occurrence of the matter complained of. Ordinarily the broadcaster will not accept complaints lodged after this deadline. However, the broadcaster shall have the discretion to respond to complaints lodged beyond the stipulated period, save in cases where the Authority compels the broadcaster to respond.
- 3.4 Where a complaint is submitted later than 30 days after the broadcast, the complainant should explain why the complaint was not submitted earlier. The Authority will then consider all relevant factors (including the complainant's explanation for the delay in submitting the complaint and the limited periods during which broadcasters are required to keep recordings) in deciding whether or not the Authority should investigate the complaint despite the delay in its submission. Where the Authority decides that the matter should be investigated, it shall notify the concerned broadcaster who shall be required to fully cooperate.
- 3.5 Where a complainant has previously complained directly to the broadcaster or to a body of broadcasters, the complainant should wait to see if he/she is satisfied with the broadcaster's or the body of broadcaster's response before referring it to the Authority. If the complainant is not satisfied, the complainant should refer his/her

complaint to the Authority (with the broadcaster's response) as soon as possible and in any event within 14 days of the final response or determination by the relevant broadcaster or body of broadcasters under its procedures. If the complainant has not received a response to, or a determination of his or her complaint from the broadcaster within 45 days of submitting the complaint, the complainant should submit it to the Authority.

3.6 Where the complainant submits a complaint simultaneously to the broadcaster and the Authority, ordinarily, the Authority will not proceed to consider the complaint until the broadcaster has first had an opportunity to resolve the complaint itself under its procedures. In such a case the complainant should inform the Authority when he/she has received the broadcaster's response or determination, and confirm whether he/she wishes to proceed with his/her complaint.

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

3.8 Submission of complaints

Complaints will be made in writing as per the guidelines to filling-in form CA/F/BCAST/COMP-01 annexed hereto and will be handled by the Authority as follows:

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

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

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

3.8.2 The Notice of Complaint shall include sufficient detail about the complainant and the matter complained of. Specifically, complaints should include the following details:

- 3.8.2.1 The complainant's name and full contact details (including physical, postal and e-mail addresses);
- 3.8.2.2 The nature of the complaint and (where possible) the particular parts of the programme complained about;
- 3.8.2.3 The name of the broadcaster, location where the said service was received, the programme name/title, date and time of the programme;
- 3.8.2.4 The sections of the Regulations / code breached (if familiar with Regulations /programme code);
- 3.8.2.5 A copy of any relevant supporting documents/evidence, including copies of correspondence relating to the complaint with the broadcaster;
- 3.8.2.6 The basis of the complaint;
- 3.8.2.7 Nature of damage or injury suffered or violation complained or the relief or remedy sought;
- 3.8.2.8 An indication whether (and, if so, when) the complainant has submitted a complaint to the relevant broadcaster.

3.9 Complaints submitted by the Persons with Disabilities

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 authorized officers of the Authority.

3.10 Contact information:

All complaints shall be addressed to:

The Director General

Communications Authority of Kenya

Waiyaki Way

P.O. Box 14448-00800

Nairobi.

Email: broadcast.complaint@ca.go.ke

Fax: +254-20-4451866

Tel: +254-20-4242000

3.11 Acknowledgement of Complaints

3.11.1 The complaints handling process will only commence once the Authority receives a duly completed Form CA/F/BCAST/COMP-01 or a written complaint containing all the required details from the complainant.

3.11.2 The Authority 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 the concerned broadcaster.

3.11.3 After receipt of the complaint the Authority will carry out a process of initial assessment and investigations on the substance of the complaint. The Authority will first consider, whether on its face, a complaint(s) raises potential substantive issues under the Code which warrant investigation by the Authority. It will do so by reference to the gravity and/or extent of the matter complained of, including, for example, whether it involves ongoing harm, harm to minors and/or financial harm.

3.11.4 If the Authority considers that it should assess the matter further, it may ask the broadcaster for a copy of the relevant programme at this stage, which must be provided within seven (7) days. Based on an initial assessment of the complaint and a review of the relevant broadcast, the Authority will consider whether there may have been a breach of particular provisions of the Act, Regulations or Code which the Authority considers requires a response from the broadcaster. If not, the Authority will decide not to investigate.

3.12 Threshold for resolving Complaints

The Authority may decline to resolve any complaint that:-

- (a) does not raise any issue under the Act or Regulations or Code;
- (b) does not conform to the provisions of the Act or directions given by the Authority;
- (c) is trivial, frivolous or vexatious; or
- (d) is not presented in accordance with the Regulations or directions of the Authority;
- (e) has been filed with any other authority or body that has jurisdiction to hear and resolve the complaint.

3.12.1 The Authority shall notify the complainant in writing the reasons for declining.

3.13 Preliminary assessment of complaints and request for additional information

3.13.1 If the Authority decides to resolve the complaint, the Authority shall within seven (7) days provide the broadcaster with a copy of the complaint and notice with a summary of the material parts of the complaint, set out the particular provisions of the Code which it considers are relevant and applicable to the complaint (where necessary); and invite the broadcaster to make representations in writing and to provide any relevant material/evidence in support of its representations. The Authority may also request the broadcaster to:-

3.13.1.1 Review the complaint with the view of summarily resolving the complaint to the satisfaction of the complainant;

3.13.1.2 Submit an extract of the records related to the complaint prepared in the prescribed form and in accordance with the programming code;

3.13.1.3 Submit a copy of recordings (audio/video) which are the subject of the complaint, provided that subscription broadcasting service providers will be afforded a reasonable opportunity to request and obtain such recordings from their channel suppliers;

3.13.1.4 Submit copies of correspondences, reports of investigations, any other material that the Authority deems relevant to assist in resolving the matter.

3.13.2 The broadcaster shall, within 15 days after being notified, provide a response signed by the authorized official broadcaster together with the required information or items.

3.13.3 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 Authority shall decide as to whether to grant an extension or not.

3.14 Consideration of Complaints and Representations

3.14.1 The Authority shall consider all the representations and material evidence provided by the complainant and the broadcaster with respect to the complaint. At the request of the Authority, the aggrieved party and/or the broadcaster may be invited to respond to issues requiring clarifications.

3.14.2 The Authority may, for the purposes of making a decision on a complaint, hold such hearings, inquiries and investigations, as it may consider appropriate. The Authority shall decide on the procedure to be followed at such hearings.

3.14.3 Upon reviewing the substance of the complaint and the supporting evidence, if the Authority is of the opinion that the broadcaster has contravened the Code, the Regulations and or the Act, the Authority shall make a decision in this regard and provide reasons for the decision. The Authority may recommend one or more of the following sanctions be imposed in accordance with the Law.

3.14.3.1 direct the broadcaster to desist any further contraventions;

3.14.3.2 direct the broadcaster to pay a fine or impose any other sanction in accordance with the provisions of the Act;

3.14.3.3 direct the broadcaster to take such remedial action as is necessary to address the non-compliance; and

3.14.3.4 direct a licensee to comply with any settlement reached between the Authority and that licensee prior to finalization of the matter.

3.14.4 In the event that the broadcaster does not resolve the complaint, or fails to reply to the Authority's notice despite the extension of time, the Authority will act to resolve the complaint by deciding on the matter, in which case the

Authority's decision shall be binding on both parties. The Authority shall thereafter communicate its decision to the broadcaster.

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

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

3.14.5.1 shall decide that the complainant accepts the said resolution if it finds that the complainant's rejection is deemed unreasonable;

3.14.5.2 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 Authority shall be binding to all concerned parties. The Authority shall thereafter communicate the decision to the broadcaster and the complainant.

3.14.6 Upon reviewing the substance of the complaint and supporting evidence, if the Authority is of the opinion that a broadcaster has contravened the Code, Regulations and the Act, the Authority shall make a decision in this regard and provide reasons for the decision. The Authority may recommend one or more sanctions be imposed in accordance with the Act. Any party aggrieved by the Authority's decision on the matter, may appeal to the Appeals Tribunal within 30 days from the date of the decision.

Annex 1

Form CA/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):	

- Broadcaster (indicate name of Broadcast service)
- 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)

- Dissatisfied with broadcaster's remedy.....
- No response from broadcaster.....
- Has not first contacted broadcaster.....

Recommended way forward:

- To be attended to by CA.....

- Not complete. Request complainant to submit Missing Information

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

- Rejected (To be first referred to the broadcaster).....

- Others

Date:

Name & Signature of Authorised officer

Guide to filling-in Form CA/F/BCAST/COMP-01 – 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.

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.

3. 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.

4. 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.

5. 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 Authority’s office either by hand/post/fax. Scanned copies of duly signed forms may be sent by email.