



# COMMUNITY GRIEVANCE MECHANISM TOOL

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## INTRODUCTION

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This grievance mechanism tool is divided into two parts:

- The Mode of Redress: this section contains an explanation of all possible modes of redress within the Kenyan Legal System
- The Grievance Tool: this section is a step by step explanation for communities on how they can present their grievances to the institutions envisioned in the Mode of Redress section.

### Conceptual Background

#### a) Key Concepts

##### **Rights:**

Through the usage of procedural rights, communities can engage in the governance of their natural resources and subsequently able to seek remedies to their grievances.

There are three critical rights in promoting citizen participation:

- Access to Information
- Access to decision making through public participation
- Access to redress- (Judicial and Non- judicial remedies)

##### **Empowerment:**

There are two components of empowerment- authority and resources

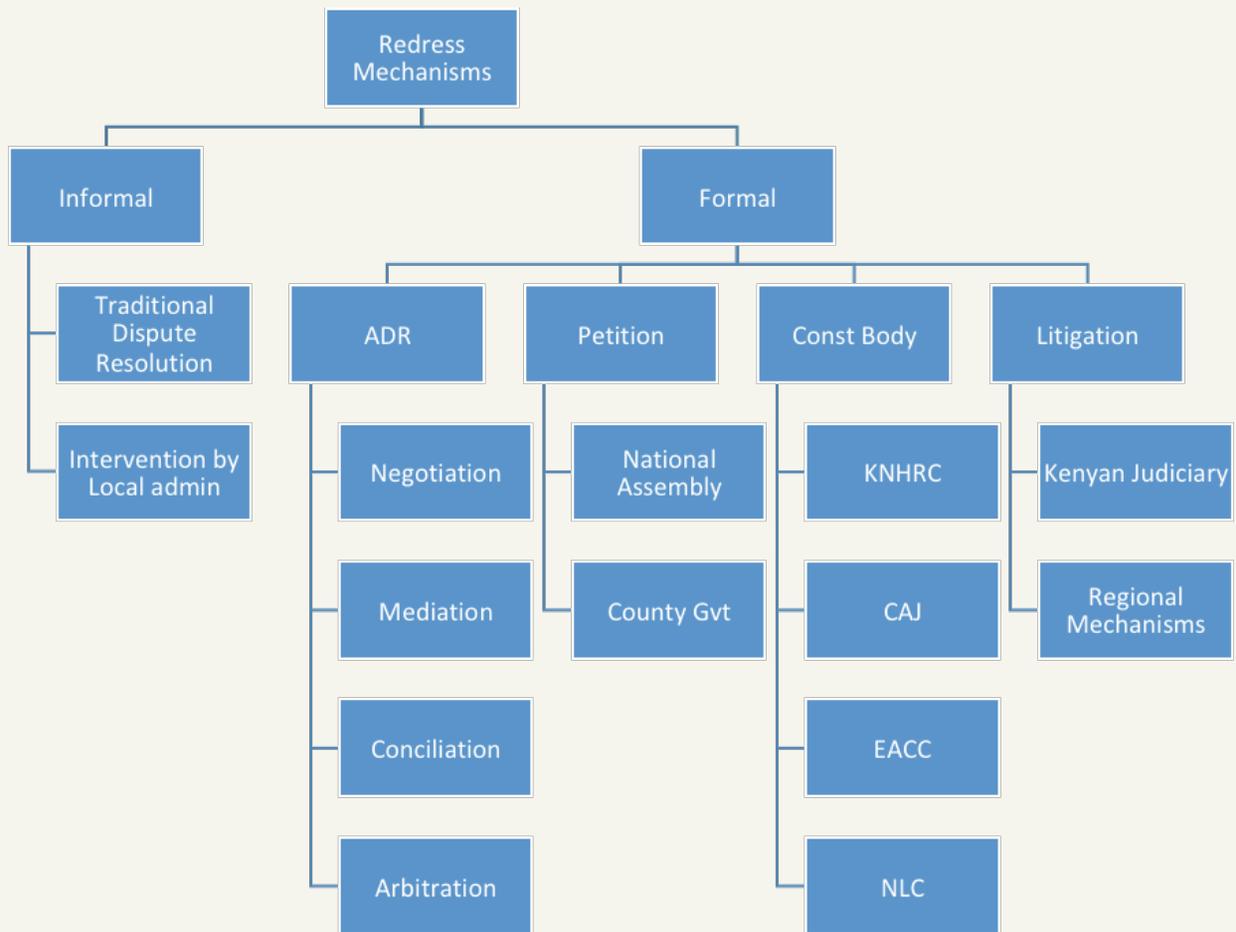
- Authority: This is conferred either by law or by influence (political leaders).  
It is important for one to understand who holds the authority through influence and who has the authority through law. (role of company, county government, national government and communities)
- Resources: This relates to the Human and Financial Resources.  
Human resource: it is important for the affected people to know how to pursue their claims. It is upon the civil society to build the level of understanding and the necessary skills; the grievance mechanism tool will only be effective when the communities can effectively use it.  
Financial Resources: when seeking a resolution to their disputes, communities require access to finance- this will be used for travelling and in the administrative costs of Alternative Dispute Resolution, for instance, setting up meetings and reimbursing the arbitrators (for instance for the baraza la wazee)

#### b) Definitions

During the meeting participants explored their understanding of the following terms:

- *Community*: in addition to the definitions in the Community Land Act, Mining Act and the Constitution of Kenya it was agreed that the definition of community should be all inclusive and always with the aim to improve the lives of the community members.
- *Grievance*: this is a dissatisfaction which can result in a dispute, concern, claim or problem
- *Mechanism*: a formal way through which grievances are addressed

## Overview of Redress Mechanisms for Communities



## Modes of Redress

There are a number of ways to resolve disputes provided for in national law, regional law and internationally. Note that traditional dispute resolution and other “informal” modes of dispute resolution can be effectively employed as was the case in Turkana County when the community wanted greater job opportunities. Elders from the community and Tullow officials went through a process of dispute resolution which resulted in them having a quota for them to use vehicles belonging to members of the local community.

Redress mechanisms can be in variety of ways:

- Community-led
- Company led
- Government-led
- A combination of the above 3

Below are a compilation and explanation of the different dispute resolution modes

### Informal

#### Legal Foundations:

Article 159 of The Constitution of Kenya, 2010 provides for Alternative and Traditional forms of dispute resolution. These are applicable only to the extent that they do not contravene the Bill of Rights, the Constitution and other written laws and are not repugnant to justice and morality.

*159. (1) Judicial authority is derived from the people and vests in and shall be exercised by, the courts and tribunals established by or under this Constitution.*

*(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—*

*(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);*

*(3) Traditional dispute resolution mechanisms shall not be used in a way that—*

*(a) contravenes the Bill of Rights;*

*(b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or*

*(c) is inconsistent with this Constitution or any written law.*

This, in essence, means that informal methods of dispute resolution should be properly used to arrive at a fair solution for all involved: the company and the community.

In this instance, the government is to be seen as a referee advocating for the rights of all involved with a bias to the welfare of the most vulnerable citizens.

#### Traditional Dispute Resolution:

The council of elders constituted, and they mediate the issue. This was the mode employed in the Turkana Case.

A variety of means can be used in Traditional Dispute Resolution, the list below seeks to categorise some of the ways but is in no way conclusive as different communities have diverse ways of resolving disputes:

- Council of elders (Baraza la Wazee)- they mediate and arbitrate disputes between two parties and in most cases come up with an award
- Intervention by the Chiefs (traditional chiefs and/or local administration)

#### Intervention by Local Administration

Local Administration was established in the pre-2010 constitutional dispensation and chiefs still dispense their duties under the Chiefs' Act (Cap 128).

In Schedule Six provision 18 of the 2010 constitution, local administration units continue to exist. In many areas there are chiefs who administer the affairs of villages, these structure complements and enhances the work of the County governments.

In some instances, communities can approach Chiefs who will help adjudicate their grievances. This is an effective way to deal with small issues and nip developing problems in the bud.

## Formal

This section outlines methods of dispute resolution set down in legislation and which have detailed definite procedures outlined. This section shall be divided into alternative dispute resolution, administrative modes, quasi-judicial and judicial modes of dispute resolution.

### Alternative Dispute Resolution

Alternative Dispute Resolution constitutes of 4 different main methods.

- Negotiation
- Mediation
- Conciliation
- Arbitration

In ADR both parties must consent to the process, come in good faith and be willing to reach a mutually agreeable solution.

#### Negotiation

A negotiation is an interactive process between parties seeking to find common ground on an issue or dispute where the involved parties seek to make or find a mutually acceptable agreement that will be honoured by all the parties concerned<sup>1</sup>.

There are a variety of ways that communities can engage in negotiations, either with the government or extractive companies.

It would be advisable for the community to come together and air out their grievances in unison, possibly form a committee that includes representatives of men, women and young people and agree on the key issues they want to negotiate for and the possible outcomes they would be willing to accept.

#### Mediation

Mediation is essentially a negotiation facilitated by a neutral third party.

The mediator facilitates a voluntary, mutually acceptable settlement. Both parties must be willing to negotiate and come to an amicable agreement.

The primary role of mediators is:

- i. Identify issues;
- ii. Explore possible bases for agreement;
- iii. Discuss the consequences of reaching impasse; and
- iv. Encourage each party to accommodate the interests of other parties through negotiation.

Unlike arbitrators, mediators lack the power to impose a decision on the parties if they fail to reach an agreement on their own<sup>2</sup>.

#### Conciliation

Conciliation is very similar to mediation, unlike a mediator the conciliator provides the parties with a non-binding settlement proposal.

The steps followed are:

- i. Identify issues;
- ii. Explore possible bases for agreement;
- iii. Discuss the consequences of reaching impasse; and
- iv. Encourage each party to accommodate the interests of other parties through negotiation.
- v. Propose a settlement
- vi. Parties discuss and make necessary changes to the agreement

#### Arbitration

According to the Chartered Institute of Arbitration, Arbitration is a non-judicial process for the settlement of disputes where an independent third party - an arbitrator - makes a decision that is binding<sup>3</sup>.

The arbitrator chosen is usually an expert in the subject matter and listens to both parties before making a decision.

Arbitration has been used successfully in Kenya, case in point is the Lake Turkana Wind Projects where arbitration was done between the host community and the developer.

<sup>1</sup> Negotiation Experts, 'Definitions,' <https://www.negotiations.com/definition/>. <sup>2</sup> Find Law, 'Alternative Dispute Resolution (ADR): Overview', <http://adr.findlaw.com/arbitration/arbitration-overview.html>. <sup>3</sup> <http://www.ciarb.org/dispute-appointment-service/arbitration/what-is-arbitration>

## Administrative

The administrative remedies discussed here are petitions to elected bodies and application to constitutional bodies.

### Petitions to Elected Bodies (Parliament & County Government)

A petition is a written address, embodying an application or prayer from the person or persons preferring it, to the body, or person to whom it is presented, for the exercise of his or their authority in the redress of some wrong, or the grant of some favour, privilege, or license <sup>4</sup>.

Article 37 of the Constitution of Kenya allows for petitions to public authorities.

Enabling constitutional provision: Assembly, demonstration, picketing and petition.

37. Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.

In this section, we shall refer the Petitions to Parliament (Procedure) Act, 2012 and other county specific laws providing of petitions to County Assemblies and County Executive Committees.

### General Structure

The General structure of a Petition is derived from section 3 of the Petitions to Parliament (Procedure) Act, 2012. This structure is replicated in the laws governing petitions at the County Government level.

A petition shall

- a. Be handwritten, printed or typed;
- b. Be in English or Kiswahili and be written in respectful, decorous and temperate language;
- c. Be free of alterations and interlineations in its text;
- d. Be addressed to the National Assembly or the Senate; - this may change if the petition is addressed to the County Assembly, County Executive Committee or any other body
- e. Have its subject-matter indicated on every sheet if it consists of more than one sheet;
- f. Indicate whether any efforts have been made to have the matter addressed by a relevant body and whether there has been any response from that body or whether the response has been unsatisfactory;
- g. Indicate whether the issues in respect of which the petition is made are pending before any court of law or other constitutional or legal body;
- h. Conclude with a clear, proper and respectful prayer, reciting the definite object of the petitioner or petitioners regarding the matter to which it relates;
- i. Subject to paragraph (m), contain the names, addresses, identification numbers, signature or a thumb impression of the petitioner or of every petitioner, where there is more than one petitioner;
- j. Contain only signatures or thumb impressions, as the case may be, and addresses and identification numbers written directly onto the petition and not pasted thereon or otherwise transferred to it;
- k. Not have any letters, affidavits or other documents annexed to it; - during public hearings, these may be presented
- l. In the case of a petition presented by a Member of Parliament on behalf of a petitioner, be countersigned by the Member presenting it; and
- m. Be signed by the petitioner, or if the petitioner is unable to sign, by a witness in whose presence the petitioner shall make his or her mark on the petition.

<sup>4</sup> The Law Dictionary, accessed at <http://thelawdictionary.org/petition/>

### National Assembly and Senate

The Article 199 of the Constitution of Kenya 2010 grants citizens the right to petition Parliament<sup>5</sup>, whereas the Petitions to Parliament (Procedure) Act, 2012<sup>6</sup> outlines the manner in which a petition should be presented.

Schedule 3 of this Act provides a precise petition form.

When to Use This: It is advisable that if a community wishes to present a petition to one of the houses of parliament (Senate or national assembly), it should have attempted other non-judicial forms of dispute resolution so that the matter is handled with the seriousness it deserves.

### County Government

The County Governments Act, 2012 in sections 15 and 88 gives citizens the right to petition the county assemblies and county governments<sup>7</sup>. This same act requires the County Governments to respond to petitions by citizens.

The following counties have domesticated the Petition to Parliament (Procedure) Act, 2012:

County	Body Petitioned	Relevant Law	Provisions
Baringo	CEC	Baringo County Public Participation Act, 2015 t	section 20- 24 & Third Schedule
Elgeyo Marakwet	CEC	Elgeyo/ Marakwet County Public Participation Act, 2014	Part IV Section 26-33
Isiolo	CA	Isiolo County Civic Education and Public Participation Act, 2015	Part VI (Section 30- 36) and the second schedule
Kericho	CA	Kericho County Petition to County Assembly (Procedure) Act, 2014	
	CEC	Kericho County Public Participation Act, 2014	Part IV (Section 26- 33) & 4th Schedule
Kisii	CEC	Kisii County Public Participation Act, 2015	Part V (Section 33- 40) and the third schedule
Kisumu	CEC	Kisumu County Public Participation Act, 2015.	Part IV (section 29- 36) and third schedule
Machakos	CEC	Machakos County Public Participation Act, 2014	Part III (Section 9- 16)
Meru	CEC and CA	Meru County Public Participation Act, 2014	Petition to County Assembly- Part V (Section 25- 30) Petition to County Executive Part VI (Section 31- 37) First and second schedule
Nairobi	CEC	Nairobi City County Public Participation Act, 2015	section 14-21 & schedule
Nakuru	CEC	Nakuru County Public Participation Act, 2016 -	section 13 & 2nd Schedule
	CA	Nakuru County Petition to County Assembly (Procedure) Act, 2014	

(2) Citizen petitions shall be made in writing to the county government.

(3) County legislation shall give further effect to this section

<sup>5</sup> The Constitution of Kenya 2010, Article 119 (1) Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation. (2) Parliament shall make provision for the procedure for the exercise of this right.

<sup>6</sup> Petitions to Parliament (Procedure) Act, 2012 <http://www.kenyalaw.org/lex//actview.xql?actid=No.%2022%20of%202012>. <sup>7</sup> County Governments Act, 2012. <sup>8</sup> The Baringo County Public Participation Act, 2015 <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/BaringoCountyPublicParticipationAct2015.pdf>

15. Right to petition county assembly

(1) A person has a right to petition a county assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.

(2) Each county assembly shall prescribe a procedure for exercising the right under subsection (1).

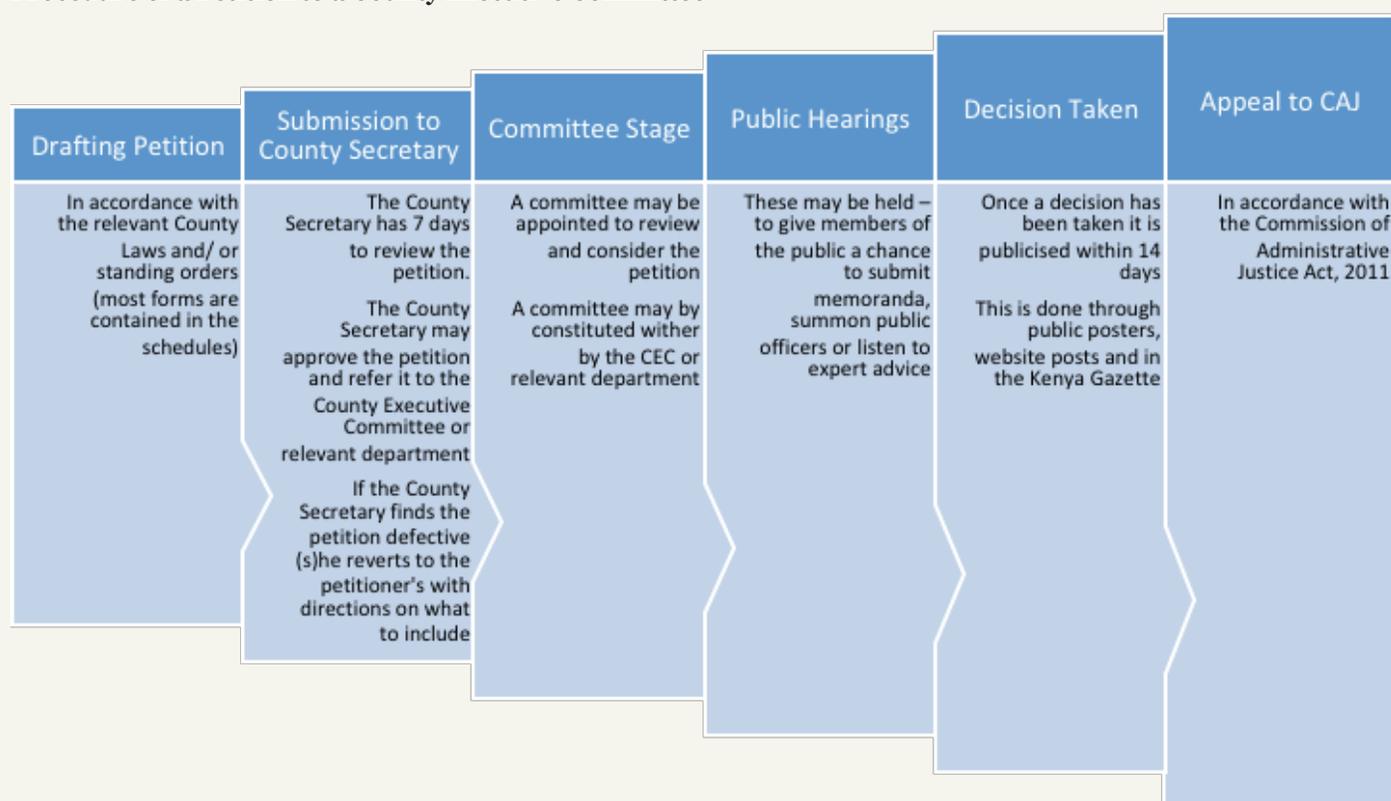
88. Citizens right to petition and challenge

(1) Citizens have a right to petition the county government on any matter under the responsibility of the county government.

89. Duty to respond to citizens' petitions or challenges

County government authorities, agencies and agents have a duty to respond expeditiously to petitions and challenges from citizens

## Procedure of a Petition to a County Executive Committee



## Petition to the County Assembly

These are governed by the Standing Orders or Acts where applicable. The procedure may slightly vary depending on the relevant county, however, in this tool, we shall provide general guidance.

- i. Presentation: Petitions may be presented to the Clerk of the Assembly by the petitioner(s) or tabled by a Member of the Assembly with the permission of the speaker on behalf of the petitioner(s).
- ii. Review: Once presented to the clerk, the petition is reviewed within seven days then tabled
- iii. Action on Petition: This is governed by the Standing Orders of the relevant county assembly.
- iv. Communication of a decision: A decision should be communicated to concerned parties, including the petitioners, within 15 days of arriving at it.

## Constitutional Bodies

These bodies created in Article 59 of the Constitution of Kenya, 2010 have the power to receive complaints related to their sphere of work, investigating and holding a public hearing and making recommendations to the relevant authorities and/ or parliament.

The functions of these bodies include, but are not limited to:

- a. promoting respect for human rights and develop a culture of human rights;
- b. promoting gender equality and equity generally and coordinating and facilitating gender mainstreaming in national development;
- c. promoting the protection, and observance of human rights in public and private institutions;
- d. monitoring, investigating and reporting on the observance of human rights in all spheres of life in the Republic, including observance by the national security organs;
- e. receiving and investigating complaints about alleged abuses of human rights and taking steps to secure appropriate redress where human rights have been violated;
- f. on their initiative or on the basis of complaints, investigating or researching a matter in respect of human rights, and make recommendations to improve the functioning of State organs<sup>11</sup>

<sup>11</sup> Constitution of Kenya 2010, Article 59 (2)

It is important to note that these bodies have a quasi-judicial function, and in some instances, one may be required to refer their complaints to one of these bodies before going to court.

This scenario played out in 2017 in the High Court in Nyeri where the court directed a group of Samburu Pastoralists who claimed that their ancestral land had grabbed resulting in a historical land injustice, to direct their complaint first to the National Land Commission<sup>12</sup>.

This section shall address complaints that can be referred to the following bodies:

- i. Kenya National Human Rights Commission
- ii. Commission of Administrative Justice
- iii. Ethics and Anti- Corruption Commission
- iv. National Lands Commission

### **Kenya National Commission on Human Rights**

This commission is established in article 59 (4) of the Constitution of Kenya 2010 and governed by the Kenya National Commission on Human Rights Act.

#### *Types of Issues*

The Commission investigates issues which relate to denial of rights espoused in Chapter 4 of the Constitution of Kenya (the Bill of Rights).

- i. It is important to note that the following issues identified in section 30 of the KNCHR Act, cannot be investigated by the commission:
  - ii. a matter pending before any court or judicial tribunal;
  - iii. a matter relating to relations between the State and any foreign State or international organization recognized as such under any international law;
  - iv. a matter relating to the exercise of the prerogative of mercy;
  - v. a matter relating to equality and freedom from discrimination;
  - vi. anything in respect of which there is a right of appeal or other legal remedy unless, in the opinion of the Commission, it is not reasonable to expect that right of appeal or other legal remedy to be resorted to; or
  - vii. any matter for the time being under investigation by any other person or Commission established under the Constitution or any other written law.

#### *Who Can Lodge a Complaint?*

Section 32 of the KNCHR Act provides for the following to lodge a complaint:

- i. The aggrieved person
- ii. If the aggrieved person is unable to act for themselves or is dead, their family members or any other suitable person may lodge the complaint
- iii. A member of the National Assembly with the consent of the aggrieved person

#### *How to Lodge a Complaint*

Section 33 of the KNCHR Act provides that a complaint alleging a violation of human rights may be made orally or in writing addressed to the secretary or any other person in the commission.

Further, the commission's website directs that a complaint may be lodged in the following manner:

You can write to the Commission using P.O. Box 74359/00200 Nairobi. You can also telephone the Commission on 020-2717908, or on Mobile phone 0726610159 and state that you want to lodge a complaint. The Commission will then call you at its cost. You can also email the Commission at the [complaints@knchr.org](mailto:complaints@knchr.org) or lodge the complaint

(<http://www.knchr.org/Lodgecomplaintonline.aspx> ) on the website or SMS to 22359.

What the Commission can do

<sup>12</sup> Joseph Lekamario & 248 Others v African Wildlife Foundation & 4 others [2017] eKLR, accessed at <http://kenyalaw.org/caselaw/cases/view/140125/>

**Investigation:**

Once a complaint has been received the Commission may require the complainant to give more information and cooperate during the investigation of the complaint.

Per section 39 of the KNCHR Act, the commission may hold public hearings as part of their investigation.

**Action After Inquiry**

- a. Once the commission has investigated a matter, section 41 of the KNCHR Act provides for the following steps to be taken:
- b. where the inquiry discloses a criminal offence, refer the matter to the Director of Public Prosecutions or any other relevant authority or the Commission may take action against the concerned person (s) as it deems fit
- c. recommend to the complainant a course of other judicial redress which does not warrant an application to the High Court as provided for under Article 22 of the Constitution;
- d. recommend to the complainant and to the relevant government agency or other body concerned other appropriate methods of settling the complaint or to obtain relief;
- e. provide a copy of the report to all interested parties; and
- f. submit summonses as it deems necessary in fulfilment of its mandate.

**Commission on Administrative Justice**

This commission is established in Article 59 (4) of the Constitution of Kenya, 2010 and governed by the Commission on Administrative Justice Act, 2011 and the Commission on Administrative Justice Regulations, 2013.

***Complaints Handled***

The CAJ handles complaints relating to:

- vii. abuse of power,
- viii. unfair treatment,
- ix. manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector;
- x. Denial of access to information request by public and relevant private bodies- this is provided for in Section 14 of the Access to Information Act, 2016

Additional issues are contained in Regulation 12 of the Commission on Administrative Justice Regulations, 2013.

It is important to note that per Section 30 of the CAJ Act, the following complaints cannot be investigated:

- a. proceedings or a decision of the Cabinet or a committee of the Cabinet;
- b. a criminal offence;
- c. a matter pending before any court or judicial tribunal;
- d. the commencement or conduct of criminal or civil proceedings before a court or other body carrying out judicial functions;
- e. the grant of Honours or Awards by the President;
- f. a matter relating to the relations between the State and any foreign State or international organization recognized as such under international law;
- g. anything in respect of which there is a right of appeal or other legal remedy unless, in the opinion of the Commission, it is not reasonable to expect that right of appeal or other legal remedy to be resorted to; or
- h. any matter for the time being under investigation by any other person or Commission established under the Constitution or any other written law.

*Who Can Lodge a Complaint?*

Per Section 32 of the CAJ Act, 2012 a complaint can be lodged by:

- i. The aggrieved person
- ii. If the aggrieved person is unable to act for themselves or is dead, their family members or any other suitable person may lodge the complaint
- iii. A member of the National Assembly with the consent of the aggrieved person

*How to Lodge a Complaint*

Section 33 of the CAJ Act provides that a complaint may be made orally or in writing addressed to the secretary or any other person in the commission.

- Schedule 1 of the Commission on Administrative Justice Regulations, 2013 provide a form which should be used when lodging a complaint
- It is advisable for a complainant to physically go to the CAJ offices, make their complaint and receive a reference number.

*What the Commission can do*

- a. In resolving a complaint, the Commission may do the following:
  - b. conduct investigations;
  - c. requisite and obtain information or documents;
  - d. conduct an inquiry;
  - e. undertake mediation, negotiation and conciliation;
  - f. constitute a hearing panel;<sup>13</sup>.

Once a matter has been investigated, the Commission may:

- a. recommend an appropriate remedy;
- b. award appropriate compensation to the complainant;
- c. recommend the removal of the respondent from State or Public office;
- d. issue a formal caution or warning to the respondent; or
- e. publish the action taken in the Commission's Statutory Report<sup>14</sup>.

**Ethics and Anti-Corruption Commission**

The EACC is established in Article 79 of the Constitution governed by the Ethics and Anti-Corruption Commission Act, 2011.

*What Complaints*

The EACC investigates the following complaints:  
acts of corruption, bribery or economic crimes

Violation of codes of ethics or other matter prescribed under the EACC Act, the Anti-Corruption and Economic Crimes Act or any other law enacted under Chapter Six of the Constitution;

Unethical conduct by public officers

*Who Can Lodge a Complaint?*

Any aggrieved party can lodge a complaint.

*How to Lodge a Complaint*

The EACC website (<http://www.eacc.go.ke/default.asp?pageid=16>) provides for lodging of a complaint in the following manner:

- In person
- By phone
- By email
- By post

<sup>13</sup> Regulation 19, Commission on Administrative Justice Regulations, 2013. <sup>14</sup> Regulation 19, Commission on Administrative Justice Regulations, 2013

*What the EACC Can Do*

The EACC will investigate the complaint and after a full investigation has been conducted. The following may be done:

- i. Recommend cases to the Director of Public Prosecutions for prosecution.<sup>15</sup>
- ii. Conduct mediation, conciliation or negotiation.<sup>16</sup>

**National Land Commission.**

The NLC is established in Article 67 of the Constitution of Kenya 2010 and governed by the National Land Commission Act, 2012.

- a. Its functions include
  - b. managing public land on behalf of the national and county governments;
  - c. advising the national government on a comprehensive programme for the registration of title in land throughout Kenya;
  - d. conducting research related to land and the use of natural resources, and make recommendations to appropriate authorities;
  - e. initiating investigations, on its initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
  - f. encouraging the application of traditional dispute resolution mechanisms in land conflicts<sup>17</sup>;

*What Complaints*

The NLC is the correct forum for claims of historical land injustices and make recommendations<sup>18</sup>. (Historical Land Injustices are those that occurred between 15th June 1895 and 27th August 2010)

The High Court Joseph Lekamario & 248 Others v African Wildlife Foundation & 4 others [2017] and Ledidi Ole Tauta & Others v. Attorney General & 2 others (2015) eKLR held that all claims for historical land injustices should first be directed to the NLC, as this is the best forum to deal with them. Once the NLC has made a determination an aggrieved party may within 28 days of publication of the decision appeal to the High Court<sup>19</sup>.

*Who Can Lodge*

Complaints to the NLC should be lodged by proprietors or occupants of the land in question.

*How to Lodge*

The National Land Commission (Historical Land Injustices Rules), 2016 provide a clear framework on how the NLC shall hear and determine cases of historical land injustices.

Complaints should be lodged per Rule 7 and shall be reduced into writing by a designated officer of the commission. It is essential that communities lodging complaints ensure they obtain a tracking number from the NLC.

Rule 7, below, states the manner in which a complaint should be lodged:

1. A claim shall be lodged using a Form, a letter, a Memorandum or through oral submission and shall include the following information—
  - The name, address and location of the claimant
  - A description of the property including parcel number or other appropriate description where no parcel number is available;
  - The date of the claim;
  - The particulars of the respondent if any;
  - The grounds on which the claim is based and, or description of the injustice;
  - Number and particulars of witnesses they wish to call
  - Period when the injustice occurred;
  - Resultant effect;
  - Previous attempts made to resolve the injustice;
  - Suggested remedy;
2. A claimant may provide any document necessary to support the claim.

<sup>15</sup> Ethics and Anti-Corruption Commission Act, 2011. Section 11 (d). <sup>16</sup> Ethics and Anti-Corruption Commission Act, 2011. Section 13 (d). <sup>17</sup> Constitution of Kenya, Article 67 (2) <sup>18</sup> National Land Commission Act, 2012., section 15 <sup>19</sup> The National Land Commission (Historical Land Injustices Rules), 2016 Rule 29

3. Where the claim is made at the instance of the Commission on its own motion or where it is made in writing, orally or otherwise by a claimant, the claim shall be reduced into writing by a designated officer of the Commission using Form NLC/HLI/01 in the First Schedule.

#### *What the Commission Can Do*

Upon hearing the matter, the NLC shall make a determination.

Section 15 (9) of the NLC act provides for the following remedies:

restitution;

- a. Compensation, if it is impossible to restore the land;
- b. Resettlement on an alternative land;
- c. Rehabilitation through the provision of social infrastructure;
- d. Affirmative action programmes for marginalized groups and communities;
- e. Creation of wayleaves and easements;
- f. Order for revocation and reallocation of the land;
- g. Order for revocation of an official declaration in respect of any public land and reallocation;
- h. Dale and sharing of the proceeds;
- i. Defund to a bona fide third-party purchaser after valuation; or
- j. Declaratory and preservation orders including injunctions.

#### *Quasi-Judicial Bodies*

Various Acts of Parliament provide for Tribunals to adjudicate on the specific issues. Tribunals are better suited to hear some matters as they are staffed by experts and practitioners in the specialised fields.

In this section we shall discuss two of these bodies:

- i. The National Environmental Tribunal
- ii. The Water Appeals Board

#### **National Environmental Tribunal (NET)**

Established under section 125 of the Environmental Management and Co-ordination Act, 1999.

The National Environmental Tribunal Procedure Rules, 2003 govern the manner in which the NET conducts its hearings.

##### **What Complaints**

The National Environment Tribunal hears appeals on following matters which arise from under EMCA, 1999 and its Regulations the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under EMCA, 1999 and its Regulations.

- i. The imposition of any condition, limitation or restriction on a licence;
- ii. The revocation, suspension or variation of a licence;
- iii. The amount of money which one is required to pay as a fee;
- iv. The imposition against a person of an environmental restoration order or environmental improvement order by the NEMA

Timing: Appeals must be made to the NET within sixty days of the occurrence of the event against which one is dissatisfied.

##### **Who Can Lodge an Appeal?**

Appeals to the NET can be lodged by the person aggrieved by a decision of NEMA such as:

- i. A company against whom NEMA has made an adverse order or decisions
- ii. Any aggrieved party including communities as the right to a clean and healthy environment for everyone is envisioned in Article of the Constitution and Section 3 of EMCA, 1999

##### *How to Lodge an Appeal*

An appeal to the NET is lodged per Rule 4 of the National Environmental Tribunal Procedure Rules, 2003.

It is advisable for the appellant to engage the help of a Civil Society Organisation and a Lawyer in conducting the appeal.

##### *What the NET can Do*

According to Section 129 (3) of EMCA, 1999 the NET can do the following:

- a. Confirm, set aside or vary the order or decision in question;
- b. Exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the

appeal is brought; or

- c. Make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just.
- d. Upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined, this decision may also be reviewed by the NET upon application;<sup>20</sup>.

Under section 130 of EMCA, 1999 an unsatisfied party may, within 30 days of a decision, appeal the decision of the National Environmental Tribunal to the Environment and Environment and Land Court.

### **Water Appeals Board**

The Water Appeals Board is established under section 84 of the Water Act 2002.

The Water Appeal Board Rules, 2007 give direction on the manner in which appeals are done.

#### *Issues Dealt With*

The Board hears appeals on decision taken by the Water Resources Management Authority, Water Supply and Water Services Regulatory Board and the Cabinet Secretary in charge of the Ministry of Water and Irrigation<sup>21</sup>.

Appeals to the board are made concerning water use rights and permits and groundwater rights.

#### *Who Can Lodge an Appeal?*

Complaints can be lodged by affected parties.

Their submissions can be made to the board by:

- a. Lawyers.
- b. Arbitrators registered by the Chartered Institute of Arbitrators of Kenya.
- c. Qualified professionals as stipulated in the Water Resources Management Rules. Corporate Officers and other Professionals as may be approved by the Board .

#### *What the Board Can Do*

After considering the relevant facts, the board may:

- a. Affirm the original decision;
- b. Vary the original decision;
- c. Quash the original decision; or
- d. Make an appropriate decision as justice requires .

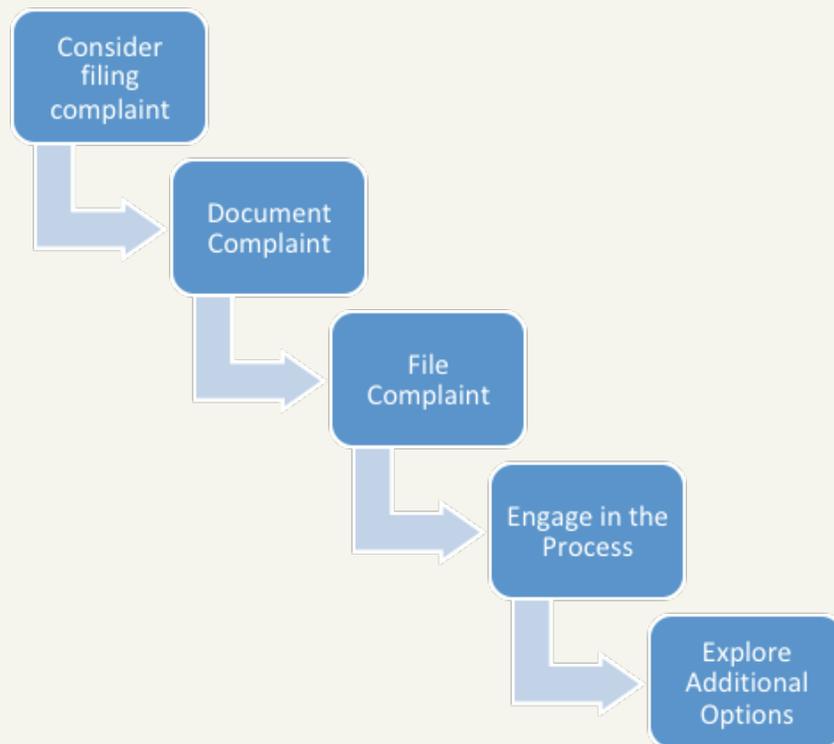
<sup>20</sup> Environmental Management and Co-ordination Act, 1999, section 129. <sup>21</sup> Water Act 2002, section 85 (1)

## Judicial

Kenyan Judiciary

Regional Mechanisms

## Grievance Mechanism Tool



### Step 1: Consider filing a complaint

At this point, one should evaluate their issues, identify the specific grievances and envision possible outcomes in their dispute resolution journey.

The following should be done:

- Identification of issues and documentation of evidence
- Identification of person(s) responsible for the issue
- Identification of duty bearers
- Mapping out of grievance mechanism that may apply to the issue identified. Using the Modes of Redress Section, one should choose the appropriate forum.
- Identify your desired outcome.
  - Identify the most desired and least desired outcomes
  - Consider your chances of getting a remedy
  - Consider the next course of action if the desired outcome is not achieved

### Step 2: Preparing and Writing the Complaint

This is the documentation stage. This should be done even if the complaint shall be made orally; this will enable tracking of the process.

The following points should be considered:

- Letters or memos (external and internal) should be written in consultation with the community
- Complaint letters should contain the following:
  - Statement of the issue with specific dates and locations
  - The remedy sought and/ or action points
  - Relevant evidence (pictorial, testimonials and any other evidence) should be attached
  - Signatures of community members
- When documenting you should involve other organisations such as Community Based Organisations, Self Help Groups and Civil Society Organisations

**Step 3: Filing the Complaint**

When filing a complaint, you should ensure you have submitted your documentation in the following manner:

- Hardcopy: be sure to have the letter stamped by the relevant governmental bodies
- Soft copy: once you send the email download your email with a copy of the time stamp and file it

Step 4: Engaging in the process (tracking of complaints)

The timelines below apply for the tracking of complaints by

- Government: within 21 days should respond
- Company- follow up and engage with the company if not possible use government commissions (KNHRC and CAJ)- see who can voice the issue

**Step 5: Exploring Additional Options depending on whether you are satisfied with the solution provided**

100%  
RECYCLED



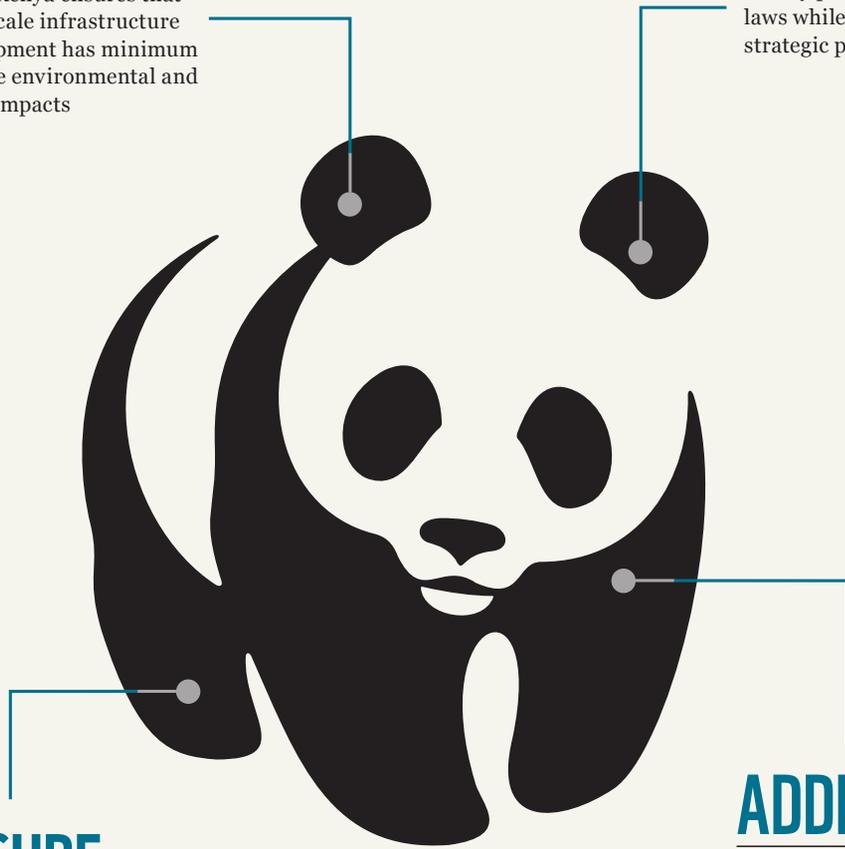
# OUR STRATEGIC OBJECTIVES

## RESPOND

WWF Kenya ensures that large scale infrastructure development has minimum adverse environmental and social impacts

## ENGAGE

WWF Kenya engages in and influences global, regional, national and county policies and laws while leveraging strategic partnerships



## SECURE

WWF Kenya ensures that key freshwater, marine and forest ecosystems are secured and populations of flagship species in target places are stable or increasing.

## ADDRESS

WWF Kenya is keen to see that agricultural and fisheries production systems are based on environmentally and socially sustainable practices.



### Why we are here.

To stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature.

[www.wwfkenya.org](http://www.wwfkenya.org)