



**COMPLAINTS HANDLING PROCEDURES
OF THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

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SOUTH AFRICAN HUMAN RIGHTS COMMISSION – COMPLAINTS HANDLING PROCEDURES

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CHAPTER 1: PURPOSE OF PROCEDURES

Purpose

1. (1) The South African Human Rights Commission (the SAHRC/Commission) must make known publicly the particulars of the procedure to be followed in conducting an investigation of any alleged violation of human rights.
- (2) The Complaints Handling Procedures contain details regulating the conduct of proceedings by the Commission in conducting an investigation.
- (3) These Procedures govern every investigation by the Commission. At times the circumstances of a particular case may require a deviation from these Procedures.
- (4) These procedures should be read in conjunction with the South African Human Rights Commission Act, 40 of 2013 (the Act) and are supplemented by internal procedures and directives.
- (5) The Commission is concerned with complaints about the violation of children's human rights and the need to protect children in the process of investigating human rights violations and, for these reasons, has adopted special measures and guidelines to cater for complaints of those kinds.

CHAPTER 2: MAKING ENQUIRIES AND LODGING COMPLAINTS

Making enquiries

2. (1) Where a complainant is unsure if they can lodge a complaint they should contact the Commission by phone on +27 11 877 3600 or by email to complaints@sahrc.org.za. A complainant can also visit any of the nine Provincial Offices of the Commission.
- (2) If the Commission is unable to assist with the enquiry or complaint, it may refer the complainant to an institution or person who can assist.

Complaints which may be investigated

3. (1) The Commission is competent to investigate on its own initiative or on receipt of a complaint, any alleged violation of human rights.
- (2) The Commission has a wide discretion to decide whether to investigate a complaint or not, and in making such a determination shall at all times act fairly.
- (3) Where the Commission is unable to deal with a complaint, it will explain why.
- (4) If, after preliminary investigation, the Commission is of the opinion that there is substance in any complaint, it must, in so far as it is able to do so, assist the complainant and other persons adversely affected thereby, to secure redress.
- (5) The Commission has no jurisdiction to deal with complaints regarding violations of human rights, through conduct that occurred prior to 27 April 1994.
- (6) The Commission may decline to investigate a complaint where the alleged violation occurred more than 3 years prior to the lodging of the complaint with the Commission. In instances where a complaint is rejected on this ground, the Commission will provide the complainant with written reasons for its decision.

Place of lodging a complaint

4. (1) A complaint must be lodged at the Provincial Office in the area where the alleged violation of a human right took place.
- (2) In instances where it cannot be established where an alleged violation took place or if an alleged violation has taken place in one or more provinces, then a complaint must be lodged at the Provincial Office –
 - (a) Where the respondent resides, carries on business or is employed; or
 - (b) As determined by the Commission, on notice to the complainant.

Information required when lodging a complaint

5. In lodging a complaint, the complainant must –

- (1) Indicate whether the complaint is lodged personally or on behalf of another person, group or class of persons, association, organisation or organ of state and, if so, provide particulars;
- (2) Provide the following personal information –
 - (a) Full names of the complainant;
 - (b) The race and gender of the complainant (for statistical purposes only);
 - (c) The physical and postal address of the complainant;
 - (d) The telephone and/or facsimile numbers of the complainant and his or her e-mail address, if available;
 - (e) The preferred method of communication; and
- (3) Provide full details of the alleged violation, including but not limited to -
 - (a) The date and place of occurrence of the alleged violation;
 - (b) The nature of the human right alleged to be violated;
 - (c) Particulars of any person, group or class of persons, association, organisation, juristic body, or organ of state who or which is allegedly in violation of a human right, if known;
 - (d) The names and contact details of any person who may provide information relevant to the complaint;
 - (e) Information regarding other mechanisms which the complainant has employed in an attempt to resolve the complaint, if any;
 - (f) Particulars of any person who has been involved in an attempt to resolve the complaint, if any;
 - (g) Whether the complaint requires urgent attention and the reasons therefor, including the harm, actual or potential, if the complaint is dealt with by the Commission in the ordinary course;
 - (h) Any other relevant information or supporting documents that can be used during the investigation:

Provided that such documents may be furnished to the Commission at a later stage but before a finding is made; and

- (i) The way in which the alleged violation should, in the opinion of the complainant, be resolved or the nature of the redress sought.

Confidentiality

- 6. (1) (a) The complainant may, when lodging a complaint, or at any stage thereafter, request that his or her personal particulars be kept confidential and not be disclosed to any person outside the Commission's offices:

Provided that if the complainant is a mental health care user or in a child complaint, the personal information of the complainant or child involved must be kept confidential and may not be made public. The complainant's identity may only be disclosed, where necessary, in the course of the investigation and to assist the complainant to secure appropriate redress.

- (b) Any confidentiality request as contemplated in paragraph (a), must be supported by a written statement explaining why the information is confidential.

- (2) If a complainant has requested that their particulars be kept confidential and the Commission is of the view that these particulars are necessary in order to resolve the complaint, it must, in writing –

- (a) Inform the complainant as soon as is reasonably possible after receipt of such request of the particulars, which in their view, must be disclosed;
- (b) Explain to the complainant the reasons therefore; and
- (c) Request the complainant's written consent to disclose such particulars.

- (3) (a) The Commission may, if disclosure of the complainant's particulars is in its view necessary to resolve the complaint, decline to investigate the complaint if the complainant refuses or fails to respond to the request as contemplated in subarticle (2).

- (b) The Commission must, as soon as reasonably possible, inform the complainant, in writing, of the decision, giving full reasons.
- (4) Notwithstanding anything to the contrary contained in any law, no person may disclose to any other person the contents of any document in the possession of a Commissioner or a member of staff or the record of evidence given before the Commission during an investigation, unless the Commission determines otherwise.

Format of lodging a complaint

- 7. (1) A complaint to the Provincial Office should preferably be in writing but an oral complaint in person or by telephone may be accepted –
 - (a) If it is not possible for a complainant to reduce it to writing;
 - (b) If it is not possible for a complainant to send a written complaint to the Provincial Office; or
 - (c) If the complaint concerns an urgent matter making it inadvisable to insist on a written complaint.

Late lodging of a complaint

- 8. (1) The Provincial Manager may, on good cause shown, grant condonation to a complainant to lodge a complaint with the Provincial Office after the expiry of 3 years from the occurrence of the alleged violation of a human right.
- (2) In such instances, the Provincial Manager must consider the following factors, and may request additional information from the complainant, when assessing the complaint –
 - (a) The reasons for the delay in lodging the complaint;
 - (b) Whether the refusal to investigate the complaint will cause prejudice to the complainant, any other person, group or class of persons, association, organisation or organ of state;

- (c) Whether the complaint has not been resolved with full details of any other proceedings regarding the complaint;
- (d) Whether the alleged violation is ongoing;
- (e) Whether a practical remedy for or solution to the complaint is available; and
- (f) Any other relevant information that the Provincial Manager may regard as special circumstances as to why the complaint should be investigated.

CHAPTER 3: MEDIATION, CONCILIATION OR NEGOTIATION BY COMMISSION

Commission may mediate, conciliate or negotiate any complaint

9. The Commission may, by mediation, conciliation or negotiation endeavour –
- (a) To resolve any dispute; or
 - (b) To rectify any act or omission, emanating from or constituting a violation of or threat to any human right.

CHAPTER 4: INVESTIGATIONS BY COMMISSION

Format and procedure of investigations

10. (1) Unless otherwise determined, the anticipated duration as well as the format of the investigation will be communicated to the complainant.
- (2) In the investigation of any alleged violation of human rights, the Commission may –
- (a) Require from any person such particulars and information as may be reasonably necessary in connection with any investigation;
 - (b) Require any person by notice in writing under the hand of a Commissioner, addressed and delivered by a member of staff or a sheriff, in relation to an

investigation, to appear before it at a time and place specified in such notice and to produce to it all articles or documents in the possession or custody or under the control of any such person and which may be necessary in connection with that investigation:

Provided that such notice must contain the reasons why such person's presence is needed and why any such article or document should be produced; and

- (c) Through a Commissioner, administer an oath to or take an affirmation from any person referred to in paragraph (b), or any person present at the place referred to in that paragraph, irrespective of whether or not such person has been required under the said paragraph to appear before it, and question him or her under oath or affirmation in connection with any matter which may be necessary in connection with that investigation.
- (3) (a) When the Commission exercises its powers and performs its functions in the course of an investigation, as provided for under section 15 of the Act, any person questioned under subarticle (2) must -
- (i) answer all questions put to him or her regarding any fact or matter connected with the investigation notwithstanding that the answer may incriminate him or her; and
 - (ii) produce to the Commission any article or document in his or her possession or custody or under his or her control which may be necessary in connection with that investigation.
- (b) Any person referred to in paragraph (a) is only competent and compelled to answer a question or compelled to produce any article or document if the provisions of section 15(2)(b) of the Act have been complied with.
- (4) The provisions of section 15(3) and (4) of the Act bear reference and are specifically incorporated herein.
- (5) If any person, during the course of an investigation, is being implicated in the matter being investigated, the Commission must afford such person an

opportunity to be heard in connection therewith by way of the giving of evidence or the making of submissions. Such person or his or her legal representative is entitled, through the Commission, to question other witnesses, determined by the Commission, who have appeared before the Commission in terms of section 15 of the Act.

- (6) If it is in the interests of justice or if harm to any person might otherwise ensue, the Commission or a Commissioner may direct that any person or category of persons or all persons the presence of whom is not desirable may not be present at the proceedings during the investigation or any part thereof.
- (7) In the investigation of any alleged violation of human rights, any Commissioner, or any member of staff or a police officer authorised thereto by a Commissioner may enter and search any premises and collect any evidence as contemplated in section 16 of the Act.
- (8) In some cases, the Commission may decide to discontinue an investigation of a complaint. In the event that the Commission makes such a determination, it shall explain the reasons why to the affected parties in writing.

CHAPTER 5: CONCLUSION OF COMPLAINTS AND INVESTIGATIONS

Conclusion of complaints

11. A complaint is concluded under the following circumstances –
 - (a) after an assessment if the complaint is rejected or in the case of a referral, if no further action is required;
 - (b) in the case of a referral where the Commission determines to monitor the matter, and which may be reopened by the Commission where required;
 - (c) if the complaint is resolved by means of conciliation, negotiation or mediation;
 - (d) after an investigation where it is found that –

- (i) there was no violation of a human right; or
 - (ii) there was a violation of or threat to a human right and the said violation is remedied, considering the human rights affected and the circumstances of the case;
- (e) if a complaint is withdrawn by the complainant and the Head of Legal Services or Provincial Manager as applicable is satisfied that there are no compelling reasons to proceed with the investigation;
- (f) if a complainant does not provide further particulars as requested:
Provided that the complaint may be re-opened on good cause shown by the complainant;
- (g) after issuing findings relating to an investigation; or
- (h) after resolution of a matter subsequent to the institution of legal proceedings in a competent court or tribunal.

Notifying parties of outcome of complaint and/or investigation

12. (1) The Head of Legal Services or Provincial Manager must, where applicable, make a provisional report available to the parties and any person, association, organisation or organ of state impacted in any finding or recommendation in the report.
- (2) The person, association, organisation or organ of state implicated in the provisional report must be given a reasonable opportunity to respond in writing to the provisional findings and directives.
- (3) An extension of time may be granted by the Head of Legal Services or the Provincial Manager on request by the party with an explanation as to the reasons for the extension and on a further period as determined by the Head of Legal Services or Provincial Manager.
- (4) If the Commission makes any finding or recommendation in respect of a matter investigated by it known to the head of the organisation or institution or the executive authority of any national or provincial department concerned, the head

of the organisation or institution or the executive authority of any national or provincial department concerned must within 60 days after becoming aware of such finding or recommendation respond in writing to the Commission, indicating whether his or her organisation, institution or department intends taking steps to give effect to such finding or recommendation, if any such steps are required.

- (5) The findings of an investigation by the Commission must, when it seems it fit but as soon as possible, be made available to the complainant and any person implicated thereby.

CHAPTER 6: GENERAL PROVISIONS

Grounds for conducting joint investigations

13. (1) The Head of Legal Services or Provincial Manager as applicable may conduct a joint investigation with another institution or organ of state if –
- (a) the mandate of that institution or organ of state overlaps with the mandate of the Commission in respect of the resolution of the complaint;
 - (b) the Commission does not have resources, capacity or in-house expertise to resolve the matter without assistance of that institution or organ of state;
 - (c) the nature and the complexity of the matter warrant the assistance of that institution or organ of state; or
 - (d) a collaboration agreement exists between the Commission and the other institution or state organ and the matter falls within the mandate of both, and that institution or organ of state agrees to such a joint investigation.
- (2) The Head of Legal Services or Provincial Manager as applicable must, if he or she intends to conduct a joint investigation –
- (a) inform the parties within 7 days of exercising the power contemplated in subarticle (1) –
 - (i) of the intention to conduct a joint investigation;

- (ii) of the particulars of the institution or organ of state which will be involved in the joint investigation;
 - (iii) of the reasons for the joint investigation; and
 - (b) invite the parties to respond on or before a specified date, in writing to the intended joint investigation.
- (3) The Head of Legal Services or Provincial Manager as applicable must, within 7 days after consideration of the responses from the parties, make a final decision and inform the parties in writing within 7 days of the final decision of the outcome.

Recording of proceedings, investigations and hearings

14. (1) Any proceedings in terms of the Act and these Procedures and any discussions held, oral submissions made or evidence given as part of an investigation must be recorded by the Chairperson of the Panel, the Head of Legal Services, the Provincial Manager or any member of staff, as duly designated, in any manner he or she deems fit.
- (2) The Chairperson of the Panel, the Head of Legal Services, the Provincial Manager or any member of staff, as duly designated, must, before the commencement of any recording, inform the persons present of the fact that a recording will be made and of the manner of recording.

Language used during proceedings, investigations and hearings

15. (1) All proceedings, investigations and hearings in terms of the Act and these Procedures will be conducted in English, unless a party requests that the proceedings be conducted in another official language.
- (2) A party who needs the services of an interpreter during any proceedings, investigations and hearings as contemplated in subarticle (1), must give reasonable notice to the Chairperson of the Panel, the Head of Legal Services, the Provincial Manager or any member of staff, as duly designated, who must make the necessary arrangements for the interpreter or related.

Costs

16. (1) The Commission may not charge any fee for the handling of complaints.
- (2) Any person who is represented by an advocate or attorney is responsible for the costs involved in securing his or her services.
- (3) Any person appearing before the Commission in terms of section 15(1)(c) who is not in the public service, is entitled to receive witness fees as prescribed in section 17 of the Act.

Institution of legal proceedings

17. (1) (a) The Commission may institute legal proceedings in a competent court or tribunal, as contemplated in section 13(3)(b) of the Act, in its own name, or on behalf of a person or a group or class of persons at any stage.
- (b) The Commission may institute legal proceedings in its own name, or on behalf of a person or a group or class of persons as contemplated in section 20(1)(f) of PEPUDA.

General timeframes

18. Unless otherwise provided for in these procedures, the Head of Legal Services, Provincial Manager, or other member of Commission staff, where applicable, must:
- (a) notify all Complainants, Respondents or persons impacted by any decision, finding or recommendation, of the decision, finding or recommendation and the reason for that decision, finding or recommendation not later than 7 days from the date that decision, finding or recommendation is made
- (b) if required by these procedures to make a decision or take action, make that decision or take that action within 5 days of the date on which the criteria requiring the decision to be made or the action to be taken was met.

Repeal or amendment of Procedures

19. These Procedures remain in force until repealed or amended by the Commission on public notice.

Short title and commencement

20. These Procedures are called the Complaints Handling Procedures of the South African Human Rights Commission and come into operation on the date provided on publication on the Commission's website and repeal of the previous procedures by publication in the Gazette.

Operational on 1 January 2018